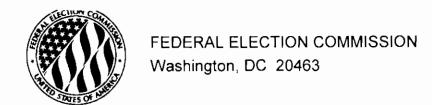
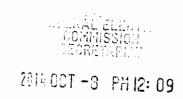
AGENDA DOCUMENT NO. 14-51-A





October 8, 2014

AGENDA ITEM

MEMORANDUM

To:

The Commission

For Meeting of 10-9-14

From:

Lisa J. Stevenson LJS by AN Deputy General Counsel

SUBMITTED LATE

Adav Noti Aw

Acting Associate General Counsel

Amy L. Rothstein ALL Assistant General Counsel

Theodore M. Lutz

Attorney

Subject:

Draft Interim Final Rule in Response to McCutcheon v. FEC

Attached is a draft Interim Final Rule that implements the Supreme Court's decision in *McCutcheon v. FEC* by removing regulatory limits on the aggregate amounts that an individual may contribute to federal candidates and political committees in each two-year election cycle.

We request that this draft be placed on the agenda for October 9, 2014.

Attachment

1	FEDERAL ELECTION COMMISSION					
2	11 CFR Part 110					
3	[NOTICE 2014-xx]					
4	Aggregate Biennial Contribution Limits					
5	AGENCY: Federal Election Commission.					
6	ACTION: Interim Final Rule.					
7	SUMMARY: The Commission is removing regulatory limits on the aggregate amounts that					
8	individual may contribute to federal candidates and political committees in each two-year					
9	election cycle. The Commission is taking this action in light of the Supreme Court's recent					
10	decision in McCutcheon v. FEC, which held that the aggregate contribution limits are					
11	unconstitutional. The Commission is accepting comments on these revisions to its regulations.					
12	DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].					
13	Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF					
14	PUBLICATION IN THE FEDERAL REGISTER].					
15	FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General					
16	Counsel, or Mr. Theodore M. Lutz, Attorney, 999 E Street, NW., Washington, DC 20463,					
17	(202) 694-1650 or (800) 424-9530.					
18	ADDRESSES: All comments must be in writing. Comments may be submitted electronically					
19	via the Commission's website at sers.fec.gov, reference REG 2014-01. Commenters are					
20	encouraged to submit comments electronically to ensure timely receipt and consideration.					
21	Alternatively, comments may be submitted in paper form. Paper comments must be sent to the					
22	Federal Election Commission, Attn.: Amy L. Rothstein, Assistant General Counsel, 999 E					
23	Street, NW., Washington, DC 20463. All comments must include the full name and postal					

- service address of a commenter, and of each commenter if filed jointly, or they will not be
- 2 considered. The Commission will post comments on its website at the conclusion of the
- 3 comment period.

SUPPLEMENTARY INFORMATION:

5 Background

4

- The Federal Election Campaign Act, 52 U.S.C. 30101-46 (formerly 2 U.S.C. 431-57)
- 7 ("FECA"), imposes limits on the aggregate amounts that an individual may contribute to federal
- 8 candidates, political parties, and other political committees during a two-year election cycle. 52
- 9 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)). The Commission has implemented FECA's
- aggregate limits in its regulations at 11 CFR 110.5.
- On April 2, 2014, the United States Supreme Court held that the aggregate contribution
- 12 limits are unconstitutional. McCutcheon v. FEC, 572 U.S. , 134 S. Ct. 1434 (2014) (plurality
- op.). To conform its regulations to the McCutcheon decision, the Commission is deleting 11
- 14 CFR 110.5 and is making technical and conforming changes to 11 CFR 110.1(c), 110.14(d) and
- 15 (g), 110.17(b), and 110.19. In an Advance Notice of Proposed Rulemaking published in today's
- 16 Federal Register, the Commission is separately seeking comment on whether to begin a
- 17 rulemaking to revise other regulations in light of certain language from the McCutcheon
- 18 decision.
- The Commission is taking this action without advance notice and comment because it
- 20 falls under the "good cause" exception of the Administrative Procedure Act ("APA"),
- 5 U.S.C. 553(b)(B). The revisions set forth herein are necessary to conform the Commission's
- 22 regulations to the Supreme Court's holding that the statutory aggregate limits are
- 23 unconstitutional. See McCutcheon, 134 S. Ct. at 1442. Because this action does not involve any

- 1 Commission discretion or policy judgments, notice and comment are unnecessary.
- 2 5 U.S.C 553(b)(B), (d)(3). A pre-publication notice and comment period would also be contrary
- 3 to the public interest because the 2014 election campaigns for federal office are ongoing, and so
- 4 the delay that would result from such a period might cause confusion among the public as to the
- 5 enforceability of the regulations addressed below.
- For the same reasons, these revisions fall within the "good cause" exception to the APA's
- 7 delayed effective date provision and the requirements of the Congressional Review Act.
- 8 5 U.S.C. 553(d)(3), 808(2). Moreover, because this interim final rule is exempt from the APA's
- 9 notice and comment procedure under 5 U.S.C. 553(b), the Commission is not required to conduct
- a regulatory flexibility analysis under 5 U.S.C. 603 or 604. See 5 U.S.C. 601(2), 604(a). Nor is
- the Commission required to submit these revisions for congressional review under FECA. See
- 12 52 U.S.C. 30111(d)(1), (4) (formerly 2 U.S.C. 438(d)(1), (4)) (providing for congressional
- review when Commission "prescribe[s]" a "rule of law"). Accordingly, these revisions are
- 14 effective upon publication in the Federal Register.

Explanation and Justification

15

- 16 FECA imposes two types of limits on the amount that individuals may contribute in
- connection with federal elections. The "base limits" restrict how much an individual may
- contribute to a particular candidate or political committee per election or calendar year. See
- 19 52 U.S.C. 30116(a)(1) (formerly 2 U.S.C. 441a(a)(1)). The "aggregate limits" restrict the
- amounts that an individual may contribute to all candidate committees, political party
- 21 committees, and other political committees in each two-year election cycle. See
- 22 52 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)). Under the aggregate limits, as indexed
- for inflation in the 2013-14 election cycle, an individual could contribute up to \$48,600 to

- candidates and their authorized committees, and up to \$74,600 to other political committees, of
- which no more than \$48,600 could be contributed to political committees other than national
- 3 party committees. See Price Index Adjustments for Contribution and Expenditure Limitations
- 4 and Lobbyist Bundling Disclosure Threshold, 78 FR 8530, 8532 (Feb. 6, 2013).
- On April 2, 2014, the Supreme Court held that the aggregate contribution limits at
- 6 52 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)) are unconstitutional. See McCutcheon,
- 7 134 S. Ct. at 1442, 1450-59. Accordingly, the Commission is removing the regulation at
- 8 11 CFR 110.5 that implements that statutory provision and is making technical and conforming
- 9 amendments at 11 CFR 110.1(c)(3), 110.14(d)(1), 110.14(g)(2), 110.17(b), and 110.19, as
- 10 explained further below. The Court's decision did not affect the base limits. See McCutcheon,
- 11 134 S. Ct. at 1442.
- 12 11 CFR 110.1
- Section 110.1(c) implements FECA's base and aggregate limits on contributions to
- political party committees. Current 11 CFR 110.1(c)(3) states that each national political party
- 15 committee may receive up to the base limit from an individual contributor, but "the limits of 11
- 16 CFR 110.5 shall . . . apply to contributions made by an individual" to such committees. The
- 17 Commission is deleting this reference to the aggregate limits.
- 18 11 CFR 110.5
- Section 110.5 directly implements FECA's aggregate limits, 52 U.S.C. 30116(a)(3)
- 20 (formerly 2 U.S.C. 441a(a)(3)). The Commission is deleting 11 CFR 110.5 in its entirety and
- 21 reserving that section.

I	11 CFR 110.14
2	Section 110.14(d)(1) provides, among other things, that "contributions made to a delegate
3	for the purpose of furthering his or her selection count against the limitation under
4	11 CFR 110.5." The Commission is deleting this reference to the aggregate limits.
5	Similarly, section 110.14(g)(2) provides that an individual's "[c]ontributions to a delegate
6	committee count against the limitation under 11 CFR 110.5." The Commission is deleting
7	paragraph (g)(2) and redesignating current paragraph (g)(3) as new paragraph (g)(2).
8	11 CFR 110.17
9	Section 110.17(b) implements FECA's price index increases for certain contribution
10	limits, including the aggregate limits. The Commission is deleting both the reference to the "bi-
11	annual aggregate contribution limitation" in the title of section 110.17(b) and the citation in the
12	text to section 110.5. Additionally, at 11 CFR 110.17(b)(1), the Commission is deleting the
13	citation to section 110.5(b)(3).
14	11 CFR 110.19
15	Section 110.19 provides that, so long as certain conditions are satisfied, minors may
16	make contributions "that in the aggregate do not exceed the limitations on contributions of 11
17	CFR 110.1 and 110.5." The Commission is deleting the citation to 110.5.

- 1 List of Subjects in
- 2 <u>11 CFR Part 110</u>
- 3 Campaign funds, Political committees and parties.

2 CFR chapter I, as follows: 3 PART 110-CONTRIBUTION AND EXPENDITURE LIMITATIONS AND 4 **PROHIBITIONS** 5 1. Revise the authority citation for part 110 to read as follows: 6 Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118, 7 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510. 8 2. Revise the section heading and paragraph (c)(3) of § 110.1 to read as follows: 9 § 110.1 Contributions by persons other than multicandidate political committees (52 U.S.C. 10 30116(a)(1)). 11 12 (c) 13 Each recipient committee referred to in 11 CFR 110.1(c)(2) may receive up to the (3) 14 \$25,000 limitation from a contributor. 15 16 3. Remove and reserve § 110.5. 17 4. Revise paragraphs (d)(1) and (g) of § 110.14 to read as follows: § 110.14 Contributions to and expenditures by delegates and delegate committees. 18 19 * 20 (d) 21 The limitations on contributions to candidates and political committees under 11 (1) 22 CFR 110.1 and 110.2 do not apply to contributions made to a delegate for the 23 purpose of furthering his or her selection.

For the reasons set out in the preamble, the Federal Election Commission amends 11

1

1	*	*	*	*	*			
2	(g)	Contributions made to and by a delegate committee.						
3		(1)	The li	imitatio	ons on contributions to political committees under 11 CFR 110.1 and			
4			110.2	apply	to contributions made to and by a delegate committee.			
5		(2)	A del	egate e	ommittee shall report contributions it makes and receives pursuant to			
6			11 CI	FR part	104.			
7	*	*	*	*	*			
8	5.	Revise paragraph (b) introductory text and paragraph (b)(1) of § 110.17 to read as						
9	follow	vs:						
10	§ 110.	10.17 Price index increase.						
11	*	*	*	*	*			
12	(b)	Price	index i	ncrease	es for contributions by persons and political party committees to			
13		Senat	orial ca	ndidate	es. The limitations on contributions established by 11 CFR 110.1(b)			
14		and (c) and 110.2(e) shall be increased only in odd-numbered years by the percent						
15		difference between the price index, as certified to the Commission by the Secretary of						
16		Labor, for the 12 months preceding the beginning of the calendar year and the price index						
17		for the base period.						
18		(1)	The i	ncreaso	ed contribution limitations shall be in effect as provided in 11 CFR			
19			110.1	(b)(1)(ii), 110.1(c)(1)(ii), and 110.2(e)(2).			
				. , . , .				

1	6.	Revise § 110.19 introductory text to remove "and 110.5".
2		
3		On behalf of the Commission,
4		
5		
6		Lee E. Goodman,
7		Chairman,
8		Federal Election Commission.
9		
10	DATE	ED:
11	BILL	ING CODE 6715-01-P
12		