



## **FEDERAL ELECTION COMMISSION**

### **11 CFR Part 110**

**[Notice 2012-08]**

#### **Limited Liability Partnerships (LLPs)**

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is proposing new rules addressing the treatment of limited liability partnerships (“LLPs”) for purposes of the Federal Election Campaign Act (“FECA” or the “Act”). LLPs are created under State law and share certain characteristics with both partnerships and corporations. The Commission is considering treating all LLPs that have opted for Federal corporate tax treatment pursuant to the Internal Revenue Service’s “check the box” provisions, as corporations for purposes of the Act. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** All comments must be in writing. Comments may be submitted electronically via the Commission’s website at <http://www.fec.gov/fosers/>. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463. All comments

must include the full name and postal service address of the commenter, and of each commenter if filed jointly, or they will not be considered. The Commission will post comments on its Web site at the conclusion of the comment period.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Federal Election Campaign Act, as amended, contains restrictions and prohibitions on contributions made for the purpose of influencing Federal elections. Partnerships, like individuals, may make contributions of up to \$2,500 per candidate per election to Federal office; \$30,800 aggregate per calendar year to national party committees; and \$5,000 aggregate per calendar year to other political committees.<sup>1</sup>

2 U.S.C. 441a(a)(1).

The Act prohibits corporations from making contributions in connection with a Federal election. 2 U.S.C. 441b(a). Instead, corporations may use their general treasury monies to establish separate segregated funds (“SSFs”) and solicit contributions from their restricted classes to their SSFs.<sup>2</sup> 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.5(b), (g). The SSF may then make contributions subject to the Act’s contribution limitations, as well as expenditures. An SSF has the same contribution limitations as individuals and partnerships, except that an SSF that is a multicandidate political committee may make contributions of up to \$5,000 per candidate per election to Federal office; \$15,000

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<sup>1</sup> Contributions to candidates’ authorized committees and national party committees are indexed for inflation. 2 U.S.C. 441a(c).

<sup>2</sup> A corporation’s “restricted class” consists of the corporation’s executive and administrative personnel, its stockholders and their families. 2 U.S.C. 441b(b)(4); 11 CFR 114.1(c) and 114.5(g).

aggregate per calendar year to national party committees; and \$5,000 aggregate per calendar year to other political committees.<sup>3</sup>

Partnerships are included in the Act's definition of "person" but are not otherwise specifically addressed. The Commission's regulation addressing partnerships is currently found at 11 CFR 110.1(e). This regulation requires that partnership contributions be attributed to the partnership and to each partner,<sup>4</sup> either: (1) in direct proportion to his or her share of the partnership profits; or (2) by agreement of the partners, as long as only the profits of the partners to whom the contribution is attributed are reduced and these partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them. 11 CFR 110.1(e)(1), (2)(i)-(ii). Unlike corporations, this regulation does not contemplate partnerships forming SSFs.

The Act and Commission regulations do not distinguish between types of partnerships. Under the IRS "check the box" rules,<sup>4</sup> the IRS provides equal treatment for limited liability companies ("LLCs") and LLPs. See 26 CFR 301.7701-3(c)(1)(i). An LLP is a form of general partnership that provides partners<sup>5</sup> with protection against personal liability for certain partnership obligations, just as shareholders of a corporation may generally be protected against personal liability for corporate obligations. Both forms of business entity may opt for treatment as an association, and consequently for corporate tax treatment, without regard to State law status. Id. A partnership that opts for treatment as an association "contributes all of its assets and liabilities to the association in exchange for stock in the association, and immediately thereafter, the

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<sup>3</sup> These contribution amounts are not indexed for inflation.

<sup>4</sup> No portion of such contribution may be made from the profits of a corporation that is a partner or from any other person who is otherwise prohibited from making Federal Contributions. See 11 CFR 110.1(e).

<sup>5</sup> Such partners could include individuals, as well as limited partners, general partners, LLPs, LLCs or corporations.

partnership liquidates by distributing the stock of the association to its partners.” 26 CFR 301.7701-3(g)(1)(i).

The Commission proposes to revise its rules on partnerships so that LLPs opting for association treatment (“Corporate LLPs”) would be treated as corporations in 11 CFR part 114. Corporate LLPs would no longer themselves be able to make contributions or to attribute them to their partners. Instead, Corporate LLPs could establish SSFs that could solicit contributions from their restricted classes, and would be able to use those funds to make contributions to candidates and political committees. In contrast, LLPs that do not “check the box” pursuant to the Internal Revenue Service’s provisions would be able to make contributions and those contributions would continue to be attributed to the partnership and its partners.<sup>6</sup>

On July 28, 2008, the Commission considered an advisory opinion request from Holland & Knight LLP (“Holland & Knight”) asking whether it should be treated as a corporation with the ability to establish an SSF. See Advisory Opinion 2008-05 (Holland & Knight). Holland & Knight was an LLP organized under Florida State law that elected to classify itself as an association taxable as a corporation for Federal tax purposes pursuant to 26 CFR 301.7701-3. The Commission concluded that in the absence of Commission regulations otherwise governing the treatment of LLPs, the requestor was a partnership for the purposes of the Act, because the requestor was organized and operated as an LLP, and not as a corporation, under State law. See Advisory Opinion 2008-05 (Holland & Knight) at 3.

#### **I. Proposed 11 CFR 110.21 Partnerships.**

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<sup>6</sup> These partners must be permissible sources under the Act. See note 4, above.

The Commission proposes to move its current partnership provision from current 11 CFR 110.1(e) to new 11 CFR 110.21. This new section would combine the Commission's current partnership rule with a rule addressing the treatment of Corporate LLPs. Accordingly, paragraph (e) of section 110.1 would be removed and reserved.

Proposed section 110.21 would be similar in significant respects to current 11 CFR 110.1(e). Paragraph (a) of proposed 11 CFR 110.21 would provide that all partnerships except Corporate LLPs shall attribute a contribution by the partnership to both the partnership and each individual partner. Paragraph (b) of proposed 11 CFR 110.21 would contain the requirement in current 110.1(e) that the amount limitations apply to partnership contributions, except for Corporate LLPs.

Proposed paragraph (c) would set forth rules addressing Corporate LLPs. Paragraph (c)(1) would define "limited liability partnership," as "a business entity that is recognized as a limited liability partnership under the laws of the State in which it is established." Paragraph (c)(2) would state that an LLP that elects to be treated as a corporation by the Internal Revenue Service shall be considered a corporation for purposes of 11 CFR Parts 100, 113, 114, 115 116 and 9034,<sup>7</sup> except that its restricted class shall consist solely of those persons who receive stock in the association, as well as their families.

The Commission seeks comment on whether it is appropriate to promulgate these rules governing Corporate LLPs, which are modeled after the Commission's LLC rules at 11 CFR 110.1(g). Paragraph 110.1(g) treats any business entity that is recognized as an LLC under the laws of the State in which it was established and that elects to be treated

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<sup>7</sup> Through these references, a Corporate LLP would be treated consistently as a corporation with respect to all its activities that are subject to the Act and Commission regulations.

as a corporation for IRS purposes, as a corporation for purposes of the contribution prohibitions of the Act. The Commission issued that rule after receiving several advisory opinion requests over a relatively short period of time on the status of LLCs. See Advisory Opinions 1995-11 (Hawthorn) (Commission concluded that a Virginia LLC was neither a corporation nor a partnership under the Act and Commission regulations and that LLC could make contributions), 1996-13 (Townhouse Associate) (same for a DC LLC), 1997-04 (Eckert Seamans Cherin & Mellott, LLC) (same for a Pennsylvania LLC), 1997-17 (Nixon) (Commission concluded that Federal candidate principal campaign committee was generally not prohibited from accepting contributions from Missouri LLCs), 1998-11 (Patriot Holdings) (Commission concluded that California LLC with Federal contactor subsidiaries could generally still make contributions with LLC funds), and 1998-15 (Fitzgerald for Senate) (Commission concluded that Federal candidate principal campaign committee was generally not prohibited from accepting contributions from Illinois LLCs).<sup>8</sup>

## **II. Payment of LLP SSF Expenses; Soliciting Contributions from the Restricted**

### **Class**

The Commission seeks comment on two issues presented by the proposed rules. First, the Act permits corporations to pay the administrative, establishment, and solicitation costs of their SSFs without those payments being considered contributions by the corporations to the SSFs. 2 U.S.C. 441b(b)(2)(C). Would it be appropriate for a Corporate LLP to pay these costs? If so, the Commission anticipates that these payments

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<sup>8</sup> These advisory opinions were explicitly superseded by the Commission in 1999 when it promulgated the LLC rules at 11 CFR 110.1(g). See Explanation and Justification, Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 FR 37397, 98 (Jul. 12, 1999), available at [www.fec.gov/law/cfr/ej\\_compilation/1999/1999-10\\_LLCs.pdf](http://www.fec.gov/law/cfr/ej_compilation/1999/1999-10_LLCs.pdf). Advisory opinions are available on the Commission's website at [www.fec.gov/searchao](http://www.fec.gov/searchao).

would come from earned assets contributed by the partnership to the newly created association, as described above. Should these payments in turn be attributed among the individual partners, either by explicit agreement or in proportion to their partnership share? Does FECA permit partners to pay more than \$5,000 per year, which is the limit on contributions by individuals to SSFs?

The second issue concerns the solicitation of contributions and, specifically, what constitutes a Corporate LLP's restricted class. Solicitations for contributions to a corporation's SSF may be made at any time only to the corporation's restricted class. The restricted class of a corporation consists of its executive and administrative personnel and their families; and the corporation's stockholders and their families. 2 U.S.C. 441b(b)(4)(A)(i); 11 CFR 114.5(g)(1). "Executive or administrative personnel" includes "individuals employed by a corporation or labor organization who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities." 2 U.S.C. 441b(b)(7); 11 CFR 114.1(c).

If Corporate LLPs are treated as corporations, and a Corporate LLP formed an SSF, then it follows that the SSF would be allowed to make solicitations at any time for contributions only to the Corporate LLP's restricted class. The Commission's proposed rule defines a Corporate LLP's restricted class solely as those persons who receive stock in the association, as described above, as well as members of their families.<sup>9</sup> Should the Commission expand the pool of persons who would be within a Corporate LLP's restricted class to include certain persons who fit within the Act's definition of "executive and administrative personnel?" Using a law firm as an example, there may be managing partners, senior partners and junior partners, associates, contract attorneys, and attorneys

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<sup>9</sup> Any contribution to the SSF could only come from permissible sources under the Act. See note 4, above.

“of counsel,” all having at least “professional responsibilities.” Should they all be included within the restricted class? What administrative personnel, if any, should be included? Again, using a law firm as an example, there may be office managers, administrative managers of practice groups, legal secretaries, paralegals, paralegal managers, human resources managers, recruiters, and other professionals.

Does the structure of a Corporate LLP lend itself to determining “executive and administrative personnel?” If it does not, is it appropriate to treat Corporate LLPs as corporations? Assuming the Commission can identify general characteristics of positions within a Corporate LLP that would qualify as part of the “executive and administrative personnel,” should the Commission issue general rules stating that persons holding positions with certain characteristics are part of the Corporate LLP’s restricted class?

The Commission seeks comment on these and other possible approaches to address, if at all, the treatment of Corporate LLPs for purposes of the Act, as well as any other aspect of this rulemaking.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

The Commission certifies that the attached proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the proposed rules modify how limited liability partnerships may operate pursuant to Federal campaign finance laws. The only economic impact attributable to these proposed rules would be the costs incurred by limited liability partnerships that wish to establish and administer separate segregated funds. This activity is entirely voluntary and any costs associated with it would fall only on entities choosing to establish and administer a separate segregated fund. Therefore, the attached

proposed rule would not have a significant impact on a substantial number of small entities.

**List of Subjects in 11 CFR Part 110**

Campaign funds, Political candidates, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter 1 of Title 11 of the Code of Federal Regulations is proposed to be amended as follows:

**PART 110 – CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS**

1. The authority citation for Part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 36 U.S.C. 510.

**§ 110.1 [Amended]**

2. In § 110.1, paragraph (e) is removed and reserved.

3. Add § 110.21 to read as follows:

**§ 110.21 Partnerships.**

(a) All partnerships, except LLPs governed by paragraph (c) of this section, shall attribute a contribution by the partnership to both the partnership and each individual partner –

(1) In direct proportion to his or her share of the partnership profits, according to instructions that the partnership shall provide to the political committee or candidate; or

- (2) By agreement of the partners, as long as—
  - (i) Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and
  - (ii) These partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them.
- (b) A contribution by a partnership made in accordance with paragraph (a) of this section shall not exceed the limitations on contributions in 11 CFR 110.1(b), (c), and (d). No portion of any such contribution may be made from the profits of a corporation that is a partner.
- (c) Contributions by limited liability partnerships (“LLP”)—
  - (1) A limited liability partnership is a business entity that is recognized as a limited liability partnership under the laws of the State in which it is established.
  - (2) An LLP that elects to be treated as a corporation by the Internal Revenue Service shall be considered a corporation for purposes of 11 CFR parts 100, 113, 114 115, 116, and 9034, except that its restricted class shall consist solely of those persons who receive stock in the association pursuant to Internal Revenue Service rules, as well as their families.

On behalf of the Commission,

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Caroline C. Hunter  
Chair  
Federal Election Commission

DATED: \_\_\_\_\_  
BILLING CODE: 6715-01-P

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