



## FEDERAL ELECTION COMMISSION

### 11 CFR Part 110

#### [NOTICE 2014–16]

#### Aggregate Biennial Contribution Limits

**AGENCY:** Federal Election Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting as a final rule, without change, an interim rule that removed regulatory limits on the aggregate amounts that an individual may contribute to federal candidates and political committees in each two-year election cycle. The Commission is taking this action in light of the Supreme Court’s recent decision in McCutcheon v. FEC, which held that the aggregate contribution limits are unconstitutional.

**DATES:** Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy L. Rothstein, Assistant General Counsel, or Mr. Theodore M. Lutz, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530. Documents relating to the rulemaking record are available on the Commission’s website at <http://www.fec.gov/fosers> (REG 2014-07 Removal of Aggregate Contribution Limits (McCutcheon)).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Federal Election Campaign Act, 52 U.S.C. 30101-45 (formerly 2 U.S.C. 431-55) (“FECA”), imposes limits on the aggregate amounts that an individual may contribute to federal candidates, political parties, and other political committees during a two-year election cycle. 52

U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)). The Commission had 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 limits are unconstitutional. McCutcheon v. FEC, 572 U.S. \_\_\_, 134 S. Ct. 1434 (2014) (plurality op.). On October 17, 2014, the Commission published an interim rule to conform its regulations to the McCutcheon decision. See Aggregate Biennial Contribution Limits, 79 FR 62335 (Oct. 17, 2014). In its interim rule, the Commission deleted 11 CFR 110.5 and made technical and conforming changes to 11 CFR 110.1(c), 110.14(d) and (g), 110.17(b), and 110.19.<sup>1</sup> Id. The Commission sought comments on these changes.

The Commission published the interim rule without advance notice and comment because it fell under the "good cause" exception of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b)(B). The revisions were necessary to conform the Commission's regulations to the Supreme Court's holding that the statutory aggregate limits are unconstitutional. See McCutcheon, 134 S. Ct. at 1442. Because this action did not involve any Commission discretion or policy judgments, notice and comment were unnecessary. 5 U.S.C 553(b)(B), (d)(3). A pre-publication notice and comment period would also have been contrary to the public interest because the 2014 election campaigns for federal office were ongoing, and so the delay that would have resulted from such a period might have caused confusion among the public as to the enforceability of the regulations addressed in the interim rule.

For the same reasons, the revisions fell within the "good cause" exception to the APA's delayed effective date provision and the requirements of the Congressional Review Act.

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<sup>1</sup> In an Advance Notice of Proposed Rulemaking published on the same day, the Commission requested comment on whether to begin a rulemaking to revise other regulations in light of certain language from the McCutcheon decision. See Aggregate Biennial Contribution Limits, 79 FR 62361 (Oct. 17, 2014). That notice will remain open for comment until January 15, 2015. Id.

5 U.S.C. 553(d)(3), 808(2). Moreover, because the interim rule was exempt from the APA’s notice and comment procedure under 5 U.S.C. 553(b), the Commission was 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 was the Commission required to submit these revisions for congressional review under FECA. See 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, the revisions were effective upon publication in the Federal Register — that is, on October 17, 2014.

### **Explanation and Justification**

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 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 committees, and other political committees in each two-year election cycle. See 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 party committees. See Price Index Adjustments for Contribution and Expenditure Limitations 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 52 U.S.C. 30116(a)(3) (formerly 2 U.S.C. 441a(a)(3)) are unconstitutional. See McCutcheon, 134 S. Ct. at 1442, 1450-59. The Court’s decision did not affect the base limits. See id. at 1442.

Accordingly, in the interim rule, the Commission removed the regulation at 11 CFR 110.5 that implemented FECA's aggregate contribution limits. The Commission also made technical and conforming amendments to 11 CFR 110.1(c)(3) (contributions to party committees), 110.14(d)(1) (contributions to delegates), 110.14(g)(2) (contributions to delegate committees), 110.17(b) (price index increases), and 110.19 (contributions by minors).

The Commission received three comments on the interim rule. One commenter argued in favor of "limiting contributions that can be made by one person/corporation" and by non-profit organizations. A second commenter urged the Commission to evaluate "anti-corruption and small donation/public financing proposals," including those at the state and local levels, and to "petition the Congress and the Administration for a change." In response, the Commission notes that, as explained above, the revisions made in the interim rule were necessary to conform the Commission's regulations to the Supreme Court's holding in McCutcheon, see 134 S. Ct. at 1442, and did not involve any Commission discretion or policy judgments. The Commission is considering whether to commence a separate rulemaking to address other issues related to the McCutcheon decision. See *supra* n.1.

A third comment, filed by a national party committee, supported the revisions made in the interim rule. The commenter agreed that the changes made in the interim rule were necessary to conform Commission regulations to the McCutcheon decision, and the commenter stated that the interim rule "completely implements the McCutcheon decision."<sup>2</sup>

Accordingly, after consideration of the comments, and for the reasons set forth above and in the interim rule, the Commission is adopting, as a final rule and without change, the revisions made to Commission regulations by the interim rule.

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<sup>2</sup> Additionally, the comment asked the Commission to take action in several other rulemakings that are unrelated to the final rule addressed here and to refrain from further revising its regulations in light of the McCutcheon decision.

**List of Subjects in**

**11 CFR Part 110**

Campaign funds, Political committees and parties.

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

Accordingly, the interim rule amending 11 CFR part 110, which was published at 79 FR 62335 on October 17, 2014, is adopted as a final rule without change.

On behalf of the Commission,

Lee E. Goodman,  
Chairman,  
Federal Election Commission.

DATED: December 18, 2014\_  
BILLING CODE: 6715-01-P

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