

under §§ 5501.104(b) or 5501.110(e) or permitted under paragraphs (d)(i) through (d)(iii) of § 5501.110 of this chapter.

(3) *Public filer* means an employee who meets the criteria in 5 CFR 2634.202 and who has not been excluded from the requirement of filing a public financial disclosure report under the procedures in 5 CFR 2634.203.

(4) *Remainder of HHS* has the meaning set forth in § 5501.102(b)(2) of this chapter.

(5) *Separate agency component* has the meaning set forth in § 5501.102(a) of this chapter.

(c) *Report of prohibited financial interests.*—(1) *New entrant employees.* A new entrant employee, other than a public filer or a confidential filer, shall report in writing within 30 days after entering on duty with the FDA or the NIH any prohibited financial interest held upon commencement of employment with the agency.

(2) *Reassigned employees.* An employee of a separate agency component, other than the FDA or the NIH, or of the remainder of HHS who is reassigned to a position at the FDA or the NIH shall report in writing within 30 days of entering on duty with the FDA or the NIH any prohibited financial interest held on the effective date of the reassignment to the agency.

(3) *Incumbent employees.* An incumbent employee of the FDA or the NIH who acquires any prohibited financial interest shall report such interest in writing within 30 days after acquiring the financial interest. An employee on duty at the NIH who is subject to § 5501.110(c) of this chapter as of February 3, 2005, the effective date of this rule, shall report in writing within 60 days after the effective date any prohibited financial interest held on the effective date.

[FR Doc. 05–2029 Filed 2–1–05; 2:00 pm]

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FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2005–4]

Contributions and Donations by Minors

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of rules to Congress.

SUMMARY: The Federal Election Commission is amending its rules regarding contributions and donations

by individuals aged 17 years or younger (“Minors”). These final rules conform to the decision of the United States Supreme Court in *McConnell v. Federal Election Commission*. In *McConnell*, the Supreme Court held unconstitutional section 318 of the Bipartisan Campaign Reform Act of 2002, which prohibited Minors from contributing to candidates and from contributing or donating to political party committees. Accordingly, this final rule amends the Commission’s regulations to reflect the Supreme Court’s decision by removing the regulatory prohibitions on contributions by Minors to candidates, and on contributions and donations by Minors to political party committees. Additional information appears in the **SUPPLEMENTARY INFORMATION** section.

DATES: *Effective Date:* The effective date for the revisions to 11 CFR part 110 is March 7, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Amy L. Rothstein, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 318 of the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (Mar. 27, 2002) (“BCRA”), amended the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the “Act”), to prohibit individuals aged 17 years or younger (“Minors”) from contributing to candidates, and from contributing or donating to political party committees.¹ See 2 U.S.C. 441k. The Commission promulgated regulations to implement the new statutory prohibitions in late 2002. See Final Rules and Transmittal of Regulations to Congress, 67 FR 69928 (Nov. 19, 2002). The 2002 rules amended the regulations governing contributions by Minors previously found at 11 CFR 110.1 and redesignated the regulations as 11 CFR 110.19. The 2002 rules also made conforming amendments to 11 CFR 110.1, regarding contributions by persons other than multi-candidate political committees, and 11 CFR 110.5, regarding aggregate bi-annual contribution limits for individuals, to exclude from their scope contributions by Minors prohibited

¹ Before BCRA, the Commission’s regulations had addressed only *contributions*, not *donations*, by Minors. A *contribution* includes a gift, subscription, loan, advance, or deposit of money or anything of value by any person for the purpose of influencing any election for Federal office. See, e.g., 11 CFR 100.52(a). A *donation* is a payment, gift, subscription, loan, advance, deposit or anything of value given to a person, other than a contribution. See, e.g., 11 CFR 300.2(e).

under new 11 CFR 110.19. See 11 CFR 110.1(a) and 11 CFR 110.5(a) (2002).

The United States Supreme Court held BCRA section 318 to be unconstitutional in *McConnell v. Federal Election Commission*, 540 U.S. 93 (2003) (“*McConnell*”). Accordingly, the Commission is amending its regulations at 11 CFR 110.19 to reflect the Supreme Court’s decision by removing the prohibitions on contributions by Minors to candidates, and on contributions and donations by Minors to political party committees. This rulemaking also makes conforming amendments to 11 CFR 110.1, regarding contributions by persons other than multi-candidate political committees, and 11 CFR 110.5, regarding aggregate bi-annual contribution limits for individuals, to reflect that these regulations apply to contributions made by Minors.

The practical effect of these changes is to return the substance of the regulations to its pre-BCRA state, with a single exception. The Commission has amended the requirement that a Minor *exclusively* own or control the funds, goods, or services contributed. Further information appears in the Explanation and Justification, below.

These final rules are based on proposed rules that the Commission published for comment in the **Federal Register** in April 2004. See Notice of Proposed Rulemaking, 69 FR 18841 (Apr. 9, 2004) (“NPRM”). The comment period closed on May 10, 2004. The Commission received two comments in response to the NPRM.²

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on January 28, 2005.

Explanation and Justification

11 CFR 110.1—Contributions by Persons Other Than Multicandidate Political Committees (2 U.S.C. 441a(a)(1))

This rulemaking amends 11 CFR 110.1(a) by deleting the reference to 11 CFR 110.19. Section 110.1 concerns contributions to candidates and political party committees by persons other than multi-candidate political committees.

² The Commission received written comments from The National Youth Rights Association and from the Oakland County (Michigan) Democratic Party.

After BCRA section 318 prohibited Minors from making contributions to candidates and political committees, the Commission amended 11 CFR 110.1(a) to exclude individuals prohibited from making contributions under 11 CFR 110.19 (*i.e.*, Minors). *See* 11 CFR 110.1(a) (2002).

The Commission is returning 11 CFR 110.1(a) to its pre-BCRA state because the statutory prohibition on contributions by Minors no longer exists. As revised, contributions by Minors are once again subject to the provisions of 11 CFR 110.1.

11 CFR 110.5—Aggregate Biennial Contributions Limitation for Individuals (2 U.S.C. 441a(a)(3))

This rulemaking amends 11 CFR 110.5(a) by deleting the reference to 11 CFR 110.19. Section 110.5 sets out aggregate biennial contribution limits for individuals. After BCRA section 318 prohibited Minors from making contributions to candidates and political committees, the Commission amended 11 CFR 110.5(a) to exclude individuals prohibited from making contributions under 11 CFR 110.19 (*i.e.*, Minors). *See* 11 CFR 110.5(a) (2002).

The Commission is returning 11 CFR 110.5(a) to its pre-BCRA state, because the statutory prohibition on contributions by Minors no longer exists. As revised, contributions by Minors are once again subject to the aggregate biennial limitations of 11 CFR 110.5.

11 CFR 110.19—Contributions by Minors

1. Deleted Paragraphs

Consistent with *McConnell*, § 110.19 is being revised by deleting the following paragraphs found in the former rule: Paragraph (a), which prohibited Minors from contributing to Federal candidates; paragraph (b), which prohibited Minors from contributing or donating to political party committees; and paragraph (c)(4), which prohibited Minors from making certain earmarked contributions. The following provisions in former 11 CFR 110.19 are also being deleted because they are no longer necessary: Paragraph (d), which specified that Minors may provide volunteer services to Federal candidates and political committees and paragraph (e), which defined the phrase “directly or indirectly establish, finance, maintain, or control.”

2. Redesignated and Revised Paragraphs

The Supreme Court’s decision in *McConnell* invalidated BCRA’s prohibition on donations by Minors.

Accordingly, the Commission is revising the heading of 11 CFR 110.19 by deleting the reference to donations by Minors.

Although it no longer regulates donations by Minors, revised 11 CFR 110.19 continues to regulate contributions by Minors. Specifically, revised 11 CFR 110.19 permits Minors to contribute to Federal candidates and political committees in an amount that does not exceed the contribution limits that apply to individuals generally, so long as three conditions are met. These conditions are virtually identical to those currently in 11 CFR 110.19(c)(1) through (c)(3), which themselves were taken from the Commission’s pre-BCRA rule governing contributions by Minors.³ *See* 11 CFR 110.1(i) (2001).

Accordingly, the Commission is redesignating former 11 CFR 110.19(c) as revised 11 CFR 110.19. It is redesignating former paragraph (c)(1) as revised 11 CFR 110.19(a); revising and redesignating former paragraph (c)(2) as revised 11 CFR 110.19(b); and redesignating former paragraph (c)(3) as revised 11 CFR 110.19(c). As redesignated, the conditions in revised 11 CFR 110.19 will apply to all contributions by Minors.

The Commission’s regulations have imposed special conditions on contributions by Minors since 1977. *See* 11 CFR 110.1(i)(2) (1977). Historically, the regulations permitted Minors to contribute to any candidate or political committee, including political party committees, within the limits that applied to contributions by individuals generally, so long as (1) the Minor made the decision to contribute knowingly and voluntarily; (2) the Minor had exclusive ownership or control of the funds, goods or services contributed; and (3) the contribution was not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, and was not controlled in any other way by another individual. The purpose of the conditions was “to assure that minors are not conduits for contributions which should be attributed to others, *e.g.* parents, guardians or other adults.” Advisory Opinion 1983–13.

³ Consistent with the nomenclature of the pre-BCRA rule governing contributions by Minors, the Commission is substituting the term “the Minor”—defined as an individual who is 17 years old or younger—for “that individual” in the revised 11 CFR 110.19. Because the substitution occurs throughout the revised rule and is for the convenience of the reader, rather than substantive, this Explanation and Justification does not identify it separately each time it appears.

Revised 11 CFR 110.19(a)—Knowing and Voluntary

Revised paragraph (a) of 11 CFR 110.19 requires the decision to contribute to a Federal candidate or political committee to be made knowingly and voluntarily by the Minor. This condition is identical to the proposed rule in the NPRM and former 11 CFR 110.19(c)(1).

Consistent with the Supreme Court’s decision in *McConnell* that Congress could not establish 18 years as the minimum age for making contributions and donations, in the NPRM the Commission invited comments on whether there was any age below which it should prohibit individuals from making contributions, “recognizing that those individuals lack the capacity to manage their finances and dispose of property and therefore could not knowingly and voluntarily contribute on their own behalf.” 69 FR at 18842. Both of the commenters strongly recommended against establishing a minimum age for making contributions, unless the Commission were to establish an extremely low minimum age.

The Commission has decided not to establish a minimum age for the making of contributions. In rejecting BCRA’s minimum age of 18 years in *McConnell*, the Supreme Court confirmed that Minors “enjoy the protection of the First Amendment,” which includes the right to make political contributions. *McConnell*, 540 U.S. at 231. While there may be a lower minimum age that the Supreme Court would uphold, an inflexible rule would run the risk of not being able to accommodate cases involving Minors below that age who desire to exercise their First Amendment rights.

In the NPRM, the Commission also invited comments on whether it should establish a rebuttable presumption that individuals below a certain age cannot “knowingly and voluntarily” decide to make a contribution, or whether it should combine a categorical prohibition with a rebuttable presumption similar to the approach adopted by some jurisdictions with regard to the tort liability of children. One commenter rejected the analogy to tort law, arguing that the age at which a child should be held responsible for negligence is not a valid indicator of when a child can make a knowing decision to give away money. The other commenter embraced the analogy to tort law and recommended that the Commission establish a three-tiered approach, with any child below seven years of age rebuttably presumed not to have knowingly and voluntarily decided

to make a contribution; any child between seven and 14 years of age rebuttably presumed to have knowingly and voluntarily decided to make a contribution; and any child above the age of 14 years being treated as an adult.

The Commission considers the approach advocated by the commenter to be unnecessarily complicated and unwieldy. It also concludes that a rebuttable presumption is not a sufficiently flexible means of ensuring that contributions by others are not made in the names of Minors. Accordingly, the Commission has decided not to adopt any presumptions in the revised rule.

In light of the fact that the Commission is returning the “knowing and voluntary” standard in revised 11 CFR 110.19(a) to its pre-BCRA state, the Commission takes this opportunity to provide general guidance on the types of factors that it has considered in past enforcement actions to determine whether a Minor made a contribution “knowingly and voluntarily.” The Commission emphasizes, however, that it determines the outcome of each enforcement action involving contributions by Minors in light of all relevant and available facts. In any given case, the Commission may consider factors in addition to those listed here, and need not consider all of the factors listed.

One factor that the Commission typically considers is the age of the Minor at the time the contribution was made. *See, e.g.*, MUR 4252, MUR 4254 and MUR 4255. The younger the Minor, the closer the Commission will scrutinize the contribution to determine whether the Minor knowingly and voluntarily decided to provide something of value “for the purpose of influencing” a federal election. 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52 (a contribution is “a gift, subscription, loan * * * advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office”).

The Commission has also considered whether the value of the Minor’s contribution, if attributed to an adult member of the Minor’s immediate family (such as a parent, legal guardian, or sibling), would cause that family member to exceed the contribution limitations of the Act and Commission regulations. *See, e.g.*, MUR 4255. A contribution that would not put any adult family member over the legal limit is less likely to be a disguised contribution by an adult family member.

Another potential consideration is whether the Minor has a history of

making routine financial decisions. Minors with a history of making routine decisions about their personal finances, such as how to earn money, how to manage and invest their money, and how to spend their money, may be more likely to make a knowing and voluntary decision to spend their money on political contributions than Minors without such a history.

Other potentially relevant factors include the Minor’s history of donating funds and the source of the funds contributed. A Minor with a history of donating funds to social, political, or cultural groups or causes may be more likely to make a knowing and voluntary decision to contribute than would a Minor whose giving pattern does not demonstrate a personal and substantial interest in social, political or cultural issues. By the same token, a Minor who makes a contribution from funds that the Minor earned through, for example, an after-school job, may have a greater personal interest in how those funds are spent, and thus be more likely to make a knowing and voluntary decision to contribute, than would a Minor who makes a contribution from passive income that the Minor received from, for example, a family trust.

Revised 11 CFR 110.19(b)—Ownership or Control of the Funds Contributed

Revised paragraph (b) of 11 CFR 110.19 requires the funds, goods or services contributed to be owned or controlled by the Minor. As examples of the types of funds that could meet the requirement, the regulation lists income earned by the Minor, the proceeds from a trust for which the Minor is the beneficiary, or funds withdrawn by the Minor from a financial account opened and maintained in the Minor’s name.

Revised paragraph (b) is the same as the proposed rule in the NPRM and former 11 CFR 110.19(c)(2), with two exceptions. The first exception concerns the requirement in the proposed rule and former 11 CFR 110.19(c)(2) that the funds, goods or services contributed be owed or controlled “exclusively” by the Minor. NPRM, 69 FR at 18842; 11 CFR 110.19(c)(2) (2004). The revised rule continues to require a Minor to own or control the funds, goods or services contributed, but it no longer requires the Minor to exercise exclusive ownership or control.

In the NPRM, the Commission invited comments on whether the exclusivity requirement in former 11 CFR 110.19(c)(2) was permissible in light of the Supreme Court’s decision in *McConnell*. The Commission asked whether it should maintain the exclusivity requirement, “considering

that in many jurisdictions a minor may not be able, for example, to open a bank account without a parent’s or guardian’s signature or manage an investment account without adult direction[.]” NPRM, 69 FR at 18842.

The commenters opined that the exclusivity requirement was not narrowly tailored, and that it created a potential conflict with state laws governing a Minor’s ability to control assets without parental consent. One commenter suggested that the Commission remove the word “exclusively” from the regulation. The other commenter suggested that the Commission amend the regulation to focus on whether a Minor has unlimited control over or access to the funds contributed, by prohibiting contributions from accounts over which the Minor has no control, such as accounts established under the Uniform Gifts to Minors Act and the Uniform Transfers to Minors Act, and by permitting contributions from accounts to which the Minor has complete access through checks issued in only the Minor’s name or an ATM card issued to the Minor, even if a parent or legal guardian co-signed for the account.

The Commission is deleting the requirement that the ownership or control that a Minor must exercise over the funds, goods or services contributed be exclusive. The Supreme Court reaffirmed in *McConnell* that Minors have a constitutional right to make contributions to Federal candidates and political committees. Retaining the exclusivity requirement in 11 CFR 110.19 would run the risk of effectively precluding some Minors from making contributions from their personal financial accounts for no other reason than because the Minor maintains an account in a jurisdiction or in a financial institution that requires an adult co-signatory on such accounts. The exclusivity requirement could also disadvantage some Minors vis-à-vis their similarly situated peers merely on the basis of where the Minors happen to bank. That is not the Commission’s intention.

Removing the exclusivity requirement will help to focus future inquiries on the substance of a Minor’s contribution, rather than on the form of a Minor’s bank account.⁴ The Commission does not intend, however, for removal of the exclusivity requirement to signal a loosening of the standards for conduit contributions through Minors. To the contrary, conduit contributions through

⁴ The Commission has long permitted adults to make contributions from joint accounts. *See* 11 CFR 110.1(k).

Minors remain a serious violation of both the Act and the Commission's regulations, which continue to prohibit contributions in the name of another. See 2 U.S.C. 441f; 11 CFR 110.4(b). Furthermore, revised 11 CFR 110.19(b) continues to require a Minor to own or control the funds, goods or services contributed, even if the Minor no longer need exercise exclusive ownership or control.

In addition, the remaining criteria in 11 CFR 110.19 have not changed. A contribution by a Minor continues to be permissible only if "the decision to contribute is made knowingly and voluntarily by the Minor," and "the contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual."

The second way in which revised 11 CFR 110.19(b) differs from the proposed rule in the NPRM and former 11 CFR 110.19(c)(2) is in one of the examples. The proposed rule and former 11 CFR 110.19(c)(2) listed "a savings account opened and maintained exclusively in the Minor's name" as an example of the types of funds that could qualify under former 11 CFR 110.19(c)(2). 11 CFR 110.19(c)(2) (2004).

The Commission is making three changes to this example in revised 11 CFR 110.19(b), for purposes of conformity and clarification. First, the Commission is deleting the word "exclusively" from the example, in conformity with the change to the text of 11 CFR 110.19(b), as discussed above. Second, the Commission is inserting the words "funds withdrawn by the Minor from" before "a savings account" in the example. As originally worded, the example seemed to require a Minor to contribute his or her entire account, which was not the Commission's intent. Third, the Commission is substituting the term "financial account" for "savings account" in the example, in recognition of the different kinds of accounts that a Minor might maintain today with banks, credit unions, brokerage firms, and similar institutions.

Revised 11 CFR 110.19(c)—Gift Proceeds

Revised paragraph (c) in 11 CFR 110.19 provides that a permissible contribution "is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual." This requirement is identical to the proposed rule in the NPRM and former 11 CFR 110.19(c)(3).

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

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that these rules apply only to individuals 17 years of age or younger. Such individuals are not small entities under 5 U.S.C. 601. Moreover, these rules remove existing restrictions in accordance with controlling Supreme Court precedent and do not impose any additional costs on contributors, candidates, or political committees.

List of Subjects in 11 CFR Part 110

Campaign funds, Political committees and parties.

■ For the reasons set forth in the preamble, the Federal Election Commission is amending subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 1. Revise the authority citation for part 110 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.

■ 2. Amend § 110.1 by revising paragraph (a) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

(a) *Scope.* This section applies to all contributions made by any person as defined in 11 CFR 110.10, except multicandidate political committees as defined in 11 CFR 100.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.20 and 11 CFR parts 114 and 115.

* * * * *

■ 3. Amend § 110.5 by revising paragraph (a) to read as follows:

§ 110.5 Aggregate biennial contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.20 and 11 CFR part 115.

* * * * *

■ 4. Revise § 110.19 to read as follows:

§ 110.19 Contributions by minors.

An individual who is 17 years old or younger (a Minor) may make

contributions to any candidate or political committee that in the aggregate do not exceed the limitations on contributions of 11 CFR 110.1 and 110.5, if—

(a) The decision to contribute is made knowingly and voluntarily by the Minor;

(b) The funds, goods, or services contributed are owned or controlled by the Minor, such as income earned by the Minor, the proceeds of a trust for which the Minor is the beneficiary, or funds withdrawn by the Minor from a financial account opened and maintained in the Minor's name; and

(c) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

Dated: January 28, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–2003 Filed 2–2–05; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245–AF12

Small Business Government Contracting Programs; Subcontracting

AGENCY: U.S. Small Business Administration.

ACTION: Final rule; delay of effective date.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) delays the effective date of the final rule published in the **Federal Register** on December 20, 2004, which generally relates to evaluation of prime contractor's performance and authorized factors in source selection when placing orders against Federal Supply Schedules, government-wide acquisition contracts, and multi-agency contracts, as corrected by the document published in the **Federal Register** on January 10, 2005, until March 14, 2005.

DATES: The final rule published on December 20, 2004 (69 FR 75820) has been classified as a major rule subject to congressional review. The effective date, which was corrected from December 20, 2004, to February 18, 2005 on January 10, 2005 (70 FR 1655), is further delayed to March 14, 2005 (60 days after the date on which Congress received the rule). However, at the conclusion of congressional review, if the effective date has been changed, SBA will publish a document in the **Federal**