Fires means wild fires that occurred in forests, brush, etc., and, as a result, livestock was killed when it was caught in these fires or in structures that burned in these fires. It does not include structure fires that were not the result of a wild fire.

Livestock means beef and dairy cattle, sheep, goats, swine, poultry (including egg-producing poultry), equine animals used for food or in the production of food, and buffalo and beefalo when maintained on the same basis and in the same manner as beef cattle maintained for commercial slaughter.

Livestock owner means a person who has legal ownership of the livestock and is a citizen of, or legal resident alien in, the United States. A farm cooperative, private domestic corporation, partnership, or joint operation in which a majority interest is held by members, stockholders, or partners who are citizens of, or legal resident aliens in, the United States, if such cooperative, corporation, partnership, or joint operation owns or jointly owns eligible livestock or poultry, will be considered livestock owners. Any Native American tribe (as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (Public Law 93–638, 88 Stat. 2203)); any Native American organization or entity chartered under the Indian Reorganization Act; any tribal organization under the Indian Self-Determination and Education Assistance Act; and any economic enterprise under the Indian Financing Act of 1974 will be considered livestock owners so long as they meet the terms of the definition.

§ 1439.204 Sign-up period.

A request for benefits under this subpart must be submitted to the CCC at the FSA county office serving the county where the livestock loss occurred. All applications must be filed in the FSA county office prior to the close of business on such date as determined and announced by the Deputy Administrator.

§ 1439.205 Proof of loss.

(a) In the case of fires or natural disasters, livestock owners must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the death of the eligible livestock occurred during the recognized natural disaster period, as provided in § 1439.201(b); or was reasonably related to the disaster.

(b) The livestock owner shall provide any available supporting documents that will assist the county committee, or is requested by the county committee, in verifying:

(1) The quantity of eligible livestock that perished in the natural disaster including, but not limited to, purchase records, veterinarian receipts, bank loan papers, rendering truck certificates, Federal Emergency Management Agency and National Guard records, auction barn receipts, and any other documents available to confirm the presence of the livestock and subsequent losses; and

(2) That the loss was reasonably related to the recognized disaster in the declaration or designation, including, but not limited to, newspaper articles or other media reports, photographs of disaster damage, veterinarian records, and any other documents available to confirm that the disaster occurred and was responsible for the livestock losses.

(c) Livestock owners requesting benefits for losses due to anthrax shall provide documentation verifying the quantity of livestock deaths that was caused by anthrax.

(d) Certifications by third parties or the owner and other such documentation as the county committee determines to be necessary in order to verify the information provided by the owner must also be submitted. Third-party verifications may be accepted only if the owner certifies in writing that there is no other documentation available. Third-party verification must be signed by the party that is verifying the information. Failure to provide documentation that is satisfactory to the county committee will result in the disapproval of the application by the county committee.

(e) Livestock owners shall certify the accuracy of the information provided. All information provided is subject to verification and spot checks by the CCC. A failure to provide information requested by the county committee or by agency officials is cause for denial of any application filed under this part.

§ 1439.206 Indemnity benefits.

(a) Livestock indemnity payments for losses of eligible livestock as determined by CCC are authorized to be made to livestock owners, based on the owner's share of the livestock, who file an application for the specific livestock category in accordance with instructions issued by the Deputy Administrator, if:

(1) The livestock owner submits an approved proof of loss in accordance with § 1439.205; and

(2) The FSA county or State committee determines that because of an eligible disaster condition the livestock owner had a loss in the specific livestock category in excess of the normal mortality rate established by CCC, based on the number of animals in the livestock category that were in the owner's inventory at the time of the disaster.

(b) If the number of losses in the animal category exceeds the normal mortality rate established by CCC for such category, the loss of livestock that shall be used in making a payment shall be the number of animal losses in the animal category that exceed the normal mortality threshold established by CCC.

(c) Payments shall be calculated by multiplying the national payment rate for the livestock category as determined by CCC, by the number of qualifying animals determined under paragraph (b) of this section. Adjustments, if necessary, shall apply in accordance with § 1439.207.

§ 1439.207 Availability of funds.

(a) In the event that the total amount of eligible claims submitted under this subpart exceeds $10 million allocated by the Act, then each payment shall be reduced by a uniform national percentage.

(b) Such payment reductions shall be applied after the imposition of applicable per-person payment limitation provisions.

§ 1439.208 Limitations on payments.

(a) The provisions of §§ 1439.10 and 1439.11 apply to LIP–2000.

(b) Payments earned under other programs contained in this part shall not reduce the amount payable under this subpart.

(c) Disaster benefits under this part are not subject to administrative offset. See § 842 of Pub. L. 106–387.

(d) No interest will be paid or accrue on disaster benefits under this part that are delayed or are otherwise not timely issued unless otherwise mandated by law.

Dated: March 1, 2001.

James R. Little,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–5493 Filed 3–5–01; 1:12 pm]

BILLING CODE 3410–05–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2001–3]

Definition of Political Committee

AGENCY: Federal Election Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Election Campaign Act, with certain exceptions,

defines ''political committee'' as any group of persons that receives more than $1,000 in contributions or makes more than $1,000 in expenditures during a calendar year. The Commission is seeking comments on whether to revise the definition of ''political committee'' contained in its regulations to include more explicit descriptions of activities that will result in those funds being considered contributions or expenditures. The Commission is also examining whether and how to incorporate the concept of ''major purpose'' into the definition of ''political committee.'' The Supreme Court has stated that the term ''political committee'' need only encompass organizations that are under the control of candidates or the major purpose of which is the nomination or election of a candidate. Please note that the Commission has not yet decided what, if any, revisions it will make to its rules in this area. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before May 7, 2001. The Commission will determine at a later date whether to hold a public hearing on this Notice. If a hearing is held, its date and time will be published in the **Federal Register**.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to *polcomms@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is publishing this Advance Notice of Proposed Rulemaking (''ANPRM'') seeking comments on whether to revise the Commission's rules at 11 CFR 100.5 that define the term ''political committee.''

Section 431(4) of the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.*, (''FECA'' or ''the Act''), which contains the statutory definition of ''political committee,'' is divided into three parts. Paragraph (A) states that a political committee is ''any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year.'' Paragraphs (B) and (C) state that separate segregated funds established under section 441b(b) of the FECA are political committees, and that local committees of a political party are also political committees for FECA purposes under certain circumstances. This statutory definition is incorporated into section 100.5 of the Commission's regulations.

The Act defines ''contribution'' as ''any 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.'' 2 U.S.C. 431(8)(a)(i). An ''expenditure'' is defined as ''any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for federal office.'' 2 U.S.C. 431(9)(a)(i).

The Commission is seeking comment on the scope and meaning of the ''major purpose'' test, which first appeared in the Supreme Court's discussion of the definition of ''political committee'' in *Buckley* v. *Valeo,* 424 U.S. 1 (1976) (''*Buckley*''). In *Buckley,* the Supreme Court noted that section 431(4)(A) as written could be construed to define ''political committee'' solely in terms of the amount of annual contributions received and expenditures made, and thus ''could be interpreted to reach groups engaged purely in issue discussion.'' 424 U.S. at 79. In *dicta,* the Court set forth criteria to prevent a potentially overbroad interpretation of ''political committee'': ''To fulfill the purpose of the Act [the term 'political committee''] need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.'' *Id.*

The Supreme Court returned to the *Buckley* Court's ''major purpose'' concept in *FEC* v. *Massachusetts Citizens for Life, Inc.,* 479 U.S. 238 (1986) (''*MCFL*''). In *MCFL,* the Court concluded, *inter alia,* that the prohibition on expenditures by corporations contained in another provision of the FECA, section 441b, had to be construed narrowly to avoid overbreadth problems and could not constitutionally be applied to independent expenditures made by incorporated issue advocacy organizations with certain essential features. Id. at 263–64. However, the *MCFL* Court also said that ''should [such an organization's] independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee.'' *Id.* at 262.

While the Supreme Court has yet to revisit the ''major purpose'' test, there have been lower court decisions that have done so. These decisions will be addressed in the ''major purpose'' portion of this document. There may be further judicial developments in this area of the law during the course of this rulemaking. Any such developments will obviously have an impact on any regulations to be promulgated by the Commission. Ways in which a ''major purpose'' test could be incorporated into the regulations defining ''political committee'' are discussed infra in Part II.

The Commission is also seeking comment on the extent to which the ''express advocacy'' requirement for independent expenditures should be incorporated into the ''political committee'' definition. In limiting the reach of the FECA's corporate independent expenditure ban at 2 U.S.C. 441b, the *MCFL* Court reiterated and expanded in application what it had held in *Buckley,* that the ''term 'expenditure' encompassed 'only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate.' '' *Id.* at 248–49, quoting *Buckley,* 424 U.S. at 80. Ways in which the ''express advocacy'' requirement could be incorporated into the regulations defining ''political committee'' are discussed infra in Part II.

Becoming a political committee as defined in the FECA has recordkeeping and reporting consequences. Generally, groups that are not political committees, such as partnerships and other unincorporated associations, are treated as other persons under the Act, and are subject to minimal reporting obligations. *See* 2 U.S.C. 434(c), 11 CFR 109.2. In contrast, political committees are subject to a more extensive set of recordkeeping and reporting requirements. *See* 2 U.S.C. 432, 434 11 CFR parts 102, 104. In addition, political committees are subject to contribution limits and prohibitions. *See* 2 U.S.C. 441a(a), (f) and (h).

I. Definitions of ''Political Committee,'' ''Contribution'' and ''Expenditure''

Paragraph (a) of section 100.5 follows the statutory definition of ''political committee'' by providing that any committee, club, association, or other group of persons that receives contributions aggregating in excess of $1000 during a calendar year is a political committee, except as set out in 11 CFR 100.5(b), (c), and (d). Paragraph (b) indicates that any separate segregated fund established under 2 U.S.C. 441b(b)(2)(C) is a political committee without any dollar thresholds. Paragraph (c) indicates that local committees of a political party are themselves political committees if they exceed either of the $1,000 thresholds or if they engage in $5,000 in exempt activity during a calendar year. *See* 11 CFR 100.7(b)(9), (15), (17); 11 CFR 100.8(b)(10), (16), (18). Paragraph (d) indicates that an individual's principal campaign committee or authorized committee becomes a political committee when that individual becomes a candidate under 11 CFR 100.3.

Comments are sought on several proposed amendments to the definitions of ''contribution'' and ''expenditure'' that the Commission is considering incorporating into the definition of ''political committee'' at 11 CFR 100.5. One approach would be to establish more objective criteria, even bright line rules, for activities that fall within the regulatory definitions of ''contribution'' and ''expenditure,'' respectively. Possible criteria are described below. This would alert organizations planning to spend more than the statutory thresholds on these activities that they will have to become, or establish, a political committee in compliance with the FECA. Please note that, if these objective criteria are included in the rules, money spent on these activities will count against the FECA's contribution limits and, if sufficient amounts are contributed or expended, they will also trigger the FECA's reporting requirements.

A. Contribution Definition

The Commission seeks comments on revising paragraph 100.5(a) by adding six new descriptions to the definition of ''contribution.'' These new descriptions may include:

(1) *Money, services or any other thing of value received as the result of a solicitation, the express purpose of which was to raise money to influence federal elections.* This provision would codify Commission precedents. Under this provision, a solicitation that in express terms states that money given as a result of the solicitation will be used to support or defeat one or more candidates for federal office would make moneys received as a result ''contributions.'' Political committee status would follow regardless of how the money received was ultimately spent if total contributions or expenditures exceed $1,000.

(2) *Money, services or anything of value received from a political committee organized pursuant to 11 CFR 100.5(b), (c), or (d), except money, services or anything of value received by an organization qualifying for tax exempt status pursuant to 26 U.S.C. 501(c)(3).*[1] This new provision would, for example, prevent national party committees from funneling money into groups that may not report their disbursements and receipts. Again, an examination of how the money was ultimately spent would be unnecessary to determine political committee status.

(3) *Money, services or anything of value received by an organization that is expressly authorized by its charter, constitution, bylaws, articles of incorporation or other organizational document(s) to engage in activities for the purpose of influencing federal elections.* This paragraph would allow for an objective inquiry into the purposes of an organization. Under this element, if an organization wanted to influence federal elections, it would have to register as a separate political committee to do so.

This paragraph would be limited to groups that specifically state in their organizational documents that they may influence federal elections. Thus, groups whose enabling documents authorize them to engage in ''any lawful purpose'' or similarly broad language would not become political committees solely on the basis of this provision in the absence of a specific election-influencing proviso.

(4) *Money, services or anything of value received by an organization that is controlled by a federal candidate, his or her principal campaign committee, or any other committee authorized by a federal candidate pursuant to 11 CFR 100.5(f)(1),*[2] *other than as an organization qualifying for tax exempt status pursuant to 26 U.S.C. 501(c)(3) or (c)(4)*[3] *or an organization whose exclusive purpose is the election or nomination of that candidate for state or local office.* This provision would remove the guise of independence from groups set up by candidates, or by their campaign staff or their agents, to assist the candidates' aims, and would focus the Commission's inquiry into the issue of ''control'' by the candidate.

This proposal is intended to clarify when the relationship between a candidate or candidate's committee and another organization becomes so close that funds given to the organization become ''for the purpose of influencing'' an election. However, it would exclude organizations that have a merely incidental relationship to a candidate, e.g., that share a common vendor or a staffer, and organizations that are *bona fide* charities or social welfare groups. For purposes of this paragraph, ''controlled'' would mean substantial participation in the organization's decision-making regarding the organization's activities or disbursements.

(5) *Money, services, or anything of value received by an organization that claims tax exempt status pursuant to 26 U.S.C. 527 and does not restrict its activities to influencing or attempting to influence elections to state or local public office or office in a political organization.* If an organization claims 527 status and does not confine its activities to state, local or intra-party elections, it is acknowledging that it is an organization that is ''influencing or attempting to influence the selection * * * of any individual to any Federal * * * office.'' 26 U.S.C. 527(e)(2). This proposal would complement Public Law (''P.L.'') 106–230 and would subject 527 organizations that influence federal elections to FECA's reporting requirements for political committees, rather than the reporting requirements of Public Law 106–230. *See* 26 U.S.C. 527(a)(i)(6), and discussion of 527 organizations, *infra.*

(6) *Payments or costs deemed to be in-kind contributions for general public political communications, pursuant to 11 CFR 100.23.* This provision would incorporate the Commission's recently-promulgated coordination rules. 65 FR 76138 (Dec. 6, 2000).

[1] 26 U.S.C. 501(c)(3) provides federal tax exemption to a charitable organization, so long as it ''does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.''

[2] Paragraph 100.5(f)(1) defines ''authorized committee'' as the principal campaign committee or any other political committee authorized by a candidate to receive contributions or make expenditures on behalf of such candidate, which has not been disavowed under 11 CFR 100.3(a)(3).

[3] Social welfare organizations registered with the IRS under 26 U.S.C. 501(c)(4) may work in political candidate elections, but only as long as that activity remains secondary to their primary, non-political work. They may also establish separate segregated funds (''SSF'') that engage in political activity; and qualify as political committees for FECA purposes under 2 U.S.C. 441b(b)(2)(C) and 11 CFR 100.5(b).

B. Expenditure Definition

The Commission also seeks comments on revising paragraph (a) of section 100.5 by adding five new elements to the definition of ''expenditure.'' These new elements would include:

(1) *Payments or costs associated with the organization's solicitation of money or any other thing of value, where the solicitation appeals to donors by stating that donations will be used to influence a federal election.* This proposal would follow the first additional element of the revised definition of ''contribution,'' *supra.*

(2) *Payments or costs deemed to be coordinated expenditures for general public political communications, pursuant to 11 CFR 100.23.* This provision would incorporate the Commission's recently-promulgated coordination rules. 65 FR 76138 (Dec. 6, 2000).

(3) *Payments or costs associated with any general public political communication that refers to a candidate for federal office and has been tested to determine its probable impact on the candidate preference of voters.* This proposal would provide an objective basis for determining if an otherwise independent ''issue ad'' was in reality undertaken for the purpose of influencing voters' preferences with respect to one or more federal candidates. The term ''general public political communication'' would have the same meaning as in 11 CFR 100.23: it will include communication ''made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a web site, with an intended audience of over one hundred people.'' 11 CFR 100.23(e)(1).

(4) *Payments or costs associated with any general public political communication that refers to a candidate for federal office, where the intended audience has been selected based on its voting behavior.* Like the previous element, this would provide an objective basis for determining that a communication to a targeted group of people, such as those residing in a specific area, had the purpose of influencing voters' preferences with respect to a particular candidate. Under this scenario, a link would have been established between the communication and the selection of the intended audience.

(5) *Payments made to a commercial vendor for a service or product with the express understanding that the service or product be designed to influence one or more federal elections.* This provision would rely on an organization's objective representations of purpose in the acquisition of goods or services to establish political committee status.

The Commission also seeks comments on adding new paragraph (a)(3) to section 100.5. This paragraph would provide that, notwithstanding any other provision of 11 CFR 100.5, a business organized for profit that provides goods or services to others at their usual and normal charge would not be considered a political committee. This savings clause would prevent political consultants and commercial vendors operating at the direction of their clients from becoming political committees if, for example, a vendor or consultant provides money up front to another vendor as an agent of a political committee with the express instruction that the service provided be for the purpose of influencing a federal election. Also, since vendors receive money from political committees organized under 11 CFR 100.5(b), (c), and (d) and are for-profit organizations, without this exemption they would be considered political committees under proposed paragraph 100.5(a)(1)(ii).

If these new descriptions of ''contribution'' and ''expenditure'' are adopted, the Commission could add cross references in 11 CFR 100.7 and 100.8 to the new language in 11 CFR 100.5(a), to alert readers that they need to also consult section 100.5. Alternatively, the Commission could limit the impact of the proposed amendments to 11 CFR 100.5 to political committees, thus leaving the current definitions of ''contribution'' and ''expenditure'' in 11 CFR 100.7 and 100.8 unchanged.

An alternative approach would be to locate the proposed new objective criteria in the generally applicable definitions of ''contribution'' and ''expenditure'' found at 11 CFR 100.7 and 100.8, respectively. The Commission invites comments on which of these approaches is appropriate, as well as whether they comport with constitutional safeguards and the Commission's statutory authority. No decision on whether to proceed further will be made until after the comment period has concluded.

II. The ''Major Purpose'' Test

A. Case Law

As explained above, the *Buckley* Court stated that the overbreadth of the general definition of ''political committee'' at 2 U.S.C. 431(4)(A) could be avoided if the definition were limited to ''those organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate.'' 424 U.S. at 79. Similarly, in *MCFL,* the Supreme Court noted that an organization that would otherwise be exempt from FECA's requirements would be classified as a political committee if its ''independent spending becomes so extensive that the organization's major purpose may be regarded as campaign activity.'' 479 U.S. at 262. Several lower court decisions have also addressed the ''major purpose'' test.

In *FEC* v. *GOPAC,* 917 F.Supp. 851, 859, 862 (D.D.C. 1996), a federal district court interpreted the FECA to reach only groups that ''received and/or expended $1,000 or more and had as their major purpose the election of a particular candidate or candidates for federal office.'' The court held that an ''organization's purpose may be evidenced by its public statements of its purpose or by other means, such as its expenditures in cash or in kind to or for the benefit of a particular candidate or candidates.'' The Commission did not appeal the district court's opinion. Other courts have endorsed a different approach.

In *Akins* v. *FEC,* 101 F.3d 731 (D.C. Cir. 1997) (*en banc*) (''*Akins*''), a group of former ambassadors, congressmen, and government officials argued that the American Israel Public Affairs Committee (''AIPAC''), an organization they considered to be a political committee, had failed to register with the Commission or file campaign disclosure reports. In 1989, the year in which the challenged activity took place, AIPAC had a budget of about $10 million. The Commission determined that AIPAC likely had made campaign contributions exceeding the $1,000 FECA threshold, but concluded that there was not probable cause to believe AIPAC was a political committee because its campaign-related activities were only a small portion of its overall activities and, therefore, not its major purpose.

The Court of Appeals for the District of Columbia Circuit concluded that an organization should be considered a political committee once it exceeds the $1,000 contribution level, even though its major purpose is not campaign-related activity. *Id.* at 741–42. The court reasoned that the major purpose test becomes relevant only where independent expenditures are involved.

While the Supreme Court granted *certiorari* in the *Akins* case, it avoided ruling on this issue. Finding that ''a considered determination of the scope of the statutory exemption that Congress enacted to address membership

communication would helpfully inform our consideration of the 'major purpose' test,'' the Court declined to rule on the test's scope or meaning. 524 U.S. 1, 29 (1998). The Court suggested that a broader interpretation of the ''membership exception'' could affect its evaluation of whether *Buckley's* narrowing interpretation of what constitutes a political committee is necessary in all contexts. *Id.* at 28. In light of the Commission adopting membership communication regulations that substantially expanded the number of organizations that could take advantage of the membership exception without triggering political committee status, *see* 11 CFR 100.8(b)(4)(iv), 114.1(e), the Commission seeks comments on whether a less restrictive reading of *Buckley* is appropriate and necessary to promote fuller disclosure of campaign activity.

In declaring North Carolina's ''political committee'' definition unconstitutional, the Fourth Circuit in *North Carolina Right to Life, Inc.* v. *Bartlett,* 168 F.3d 705, 712 (4th Cir. 1999) read *Buckley* to limit narrowly the FECA's definition of ''political committee'' to ''includ[e] only those entities that have as a major purpose engaging in express advocacy in support of a candidate * * * by using words such as 'vote for,' 'elect,' 'support,' 'vote against,' 'defeat,' or 'reject.' '' Consequently, North Carolina's definition of ''political committee,'' [4] which, like the FECA definition, included organizations that ''influence or attempt to influence the result of an election'' (a ''classic form of issue advocacy''), was ''unconstitutionally vague and overbroad.'' *Id.* at 713.

In *North Carolina Right to Life, Inc.* v. *Leake,* 108 F.Supp.2d 498 (E.D. N.C. 2000) (''*NCRL*''), a federal district court upheld a North Carolina statute revised in light of *Bartlett* that, in contrast to the FECA, defines ''political committee'' as, *inter alia,* a group that has ''a major purpose to support or oppose the nomination or election of one or more candidates.'' N.C.G.S. § 163–278.6(14)(d). The state law further provides that a group is presumed to have a ''major purpose'' of supporting or opposing one or more candidates if its contributions and expenditures total over $3,000 during an election cycle. However, the state statute further provides that the presumption can be rebutted ''by showing that the contributions and expenditures giving rise to the presumption were not a major part of activities of the organization during the election cycle.'' *Id.*[5] The Commission is seeking comments on whether a similar approach should be employed at the federal level. Should the Commission amend the definition of ''political committee'' at 11 CFR 100.5 to contain a rebuttable presumption that groups that have a major purpose of supporting or opposing one or more federal candidates are presumed to be political committees for purposes of these rules?

In *Florida Right to Life, Inc.* v. *Mortham,* No. 98–770–CIV–ORL–19A, 1999 WL 33204523, at *4, 5 (M.D. Fla., Dec. 15, 1999), a federal district court declared Florida's ''political committee'' definition [6] ''unconstitutionally overbroad'' because its reach was not limited to ''organizations whose *major* purpose is engaging in 'express advocacy,' as that term is defined in *Buckley* v. *Valeo,* 424 U.S. 1, 42–44 (1976).'' The Eleventh Circuit affirmed the district court, holding the definition to be ''unconstitutionally overbroad under the First Amendment,'' in *Florida Right to Life, Inc.* v. *Lamar,* 238 F.3d 1288 (11th Cir. 2001).

In *South Carolina Citizens for Life, Inc.* v. *Davis,* C.A. No. 3:00–124–19 (D. S.C. Sept. 11, 2000), the federal district court in South Carolina declared (without analysis) South Carolina's ''political committee'' definition (i.e., group of persons that spends more than $500 to ''influence the outcome of an elective office'') unconstitutional as applied to the plaintiff and permanently enjoined the defendants from enforcing it against the plaintiff's ''issue and express advocacy activities.'' The court's order preliminarily enjoining the statute at issue did so because of its application to issue advocacy and because of the seriousness of the plaintiff's claim that its proposed express advocacy was so insignificant (less than 20 percent of its disbursements) that the ''major purpose'' test would exempt it from the requirements of the statute.

[4] Prior to *Bartlett,* North Carolina defined ''political committee'' as ''a combination of two or more individuals, or any person, committee, association, or organization, the primary purpose of which is to support or oppose any candidate or political party or to influence or to attempt to influence the result of an election.''

[5] It should be noted that the court also held that an ''express advocacy'' component was not constitutionally required of North Carolina's ''political committee'' definition.

[6] Florida Stat. section 106.11(1) defined ''political committee'' as a ''combination of two or more individual, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate, issue or political party, which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of $500.''

B. Alternatives That Would Incorporate ''Major Purpose'' Into the Text of the Rules

Comments are sought as to several ways, which are described below, the major purpose test for political committee status could be applied to these entities. Please note that specific regulatory language that could be used to implement the various alternatives is not attached.

Alternative 1: Percentage of Disbursements

One way to define ''major purpose'' would consider an organization to be a political committee if at least 50% of that organization's disbursements are made for the purpose of influencing federal and non-federal elections. Comments are sought on whether a higher or lower percentage might be more appropriate in particular circumstances. For example, an organization may spend 30% or 40% of its total disbursements on election-related activity, while its other disbursements are used for a wide range of purposes. Under these circumstances, election-related activity could still be considered that organization's major purpose, even though most of its spending went for other purposes. This could also be true if, for example, an organization made 30% of its disbursements for electoral activity, and no more than 25% for any other purpose.

Alternative 2: Percentage of Time and Disbursements

Another approach would evaluate not only an organization's receipts and disbursements, but also the amount of time spent by its paid and unpaid staff. Both time and money would be divided among certain broad groupings, such as electoral, lobbying and educational activity. The organization's possible status as a political committee could be determined in several different ways. For example, a determination could be made as to whether the group devoted over 50% of either its time or its monetary resources to electoral activity and thus became a political committee. Alternatively, once these ratios are determined, if the combined share of time and money spent on elections is larger than that for either lobbying or education, the organization's major purpose could be considered to influence elections. The Commission seeks comments on these alternatives, as well.

1. Volunteer Activity. Under Alternative 2, the Commission also seeks comments on how, if at all,

organizations should value volunteer activity in making this calculation. Volunteer activity may become significant in situations where, for example, an organization spends only a small amount of money on election-related activity, but uses the money to recruit and train groups of volunteers to canvass neighborhoods, run phone banks, or sponsor other volunteer activity that has a substantial impact on the campaign. On the other hand, volunteer activity is exempt from the FECA's definition of ''contribution.'' 2 U.S.C. 431(8)(B)(i), 11 CFR 100.7(b)(3); *but see* 11 CFR 100.7(a) for qualifications and exceptions. Thus, it can be argued that the value of such activity should not be included in any ''major purpose'' computation.

2. Time for the Computation. A related issue is, what period of time should be used in assessing major purpose? Should it be an election cycle, a calendar year, a calendar quarter, or some other period?

Using a quarterly basis would cover those situations where an organization engaged in substantial lobbying and educational efforts and only nominal campaign activity during the first three quarters of an election year, but put massive resources into a campaign during the last quarter in which the election was held. However, the statutory framework of the Act is such that it may be necessary to use a calendar year in computing this activity. Please note that once an organization qualifies as a political committee, it retains that status until it terminates. *See* 11 CFR 102.3 (termination of registration) and 11 CFR 102.4 (administrative termination).

Alternative 3: Percentage of Disbursements Spent on Communications Containing Express Advocacy

In contrast to Alternatives 1 and 2, the Commission is considering a substantially narrower approach to determining an organization's major purpose. Under Alternative 3, the organization would compare its total disbursements to only the amount it spends on general public political communications that expressly advocate the election or defeat of clearly identified candidates (i.e., ''independent expenditures,'' 2 USC 431(17)) and any contributions, 2 USC 431(8). This approach is consistent with *MCFL,* which reiterated and expanded the scope of the express advocacy requirement to section 441b of the Act: ''[In *Buckley*], the Court held that the term 'expenditure' encompassed 'only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate.' * * * We therefore hold that an expenditure must constitute 'express advocacy' in order to be subject to the prohibition of § 441b.'' 479 U.S. at 248–49, quoting *Buckley,* 424 U.S. at 80.

This approach also follows Fourth Circuit's reading of *Buckley* in *Bartlett, Mortham* and *Davis, supra,* and other cases.

In *Colorado Right to Life, Inc.* v. *Davidson,* No. 99–1414, 2000 WL 1902427, at *14 (10th Cir., Dec. 26, 2000), the Tenth Circuit declared a state statute defining ''political committee'' unconstitutional as applied to plaintiffs. The definition encompassed groups that ''associated themselves for the purpose of making independent expenditures,'' *i.e.,* on communications unambiguously referring to candidates. The court read *Buckley* and its progeny for the rule that ''communications that do not contain express words advocating the election or defeat of a particular candidate are deemed issue advocacy, which the First Amendment shields from regulation.'' Id. at *7.

In *Iowa Right to Life Committee, Inc.* v . *Williams,* No. 4–98–CV–10399, slip op. at 17 (S.D. Iowa, Oct. 23, 1998), a federal district court preliminarily enjoined Iowa's definition of ''political committee,'' which encompassed committees that spend in excess of $500 for the ''purpose of supporting or opposing a candidate for public office,'' because the ''plain meaning of the phrase can be interpreted to include issue advocacy.'' The court had read *Buckley* as holding that the ''government may not regulate funds spent to publish communications that contain what is generally referred to as 'issue advocacy.' '' Id. at 8 n.3.

In *Virginia Soc'y for Human Life, Inc.* v. *Caldwell,* 152 F.3d 268 (4th Cir. 1998), the Fourth Circuit held that a constitutionally narrow construction of Virginia's ''political committee'' definition was not readily apparent because the statutory language encompassed groups that spend money ''for the purpose of influencing the outcome of any election'' and thus necessarily applied to ''materials which simply describe a candidate's voting record in the hopes of influencing people's votes, that is, issue discussion.'' [7]

The Commission invites comment on other possible content standards that could be used for communications.

Alternative 4: Dollar Amount of Campaign Activity

As discussed above, the *Akins* case illustrated that it is possible for a group to spend millions of dollars in direct candidate support that nevertheless represents only a small percentage of its overall financial activity. Thus, under any of the alternatives set out above, its ''major purpose'' might not be the election of candidates and it would therefore not be a political committee. Consequently, the Commission seeks comments on establishing a $50,000 threshold for political committee status. If an organization exceeds this amount in election activity, or alternatively in express advocacy communications, it will automatically be deemed to have a major purpose of influencing federal elections. Thus, it will be a political committee, even if $50,000 represents a small percentage of its total disbursements for all activities. Comments are also sought on a higher or lower threshold amount than $50,000.

III. Section 527 Organizations and Recent Statutory Changes

Section 527 of the Internal Revenue Code (''I.R.C.'') grants beneficial tax treatment to political organizations, commonly called ''527 organizations,'' that meet the qualifications set forth

[7] Numerous other courts, while not addressing the constitutionality of ''poltical committee'' definitions, have addressed the application of the express advocacy requirement. *See Perry* v. *Bartlett,* 231 F.3d 155, 160 (4th Cir. 2000); *Vermont Right to Life, Inc.* v. *Sorrell,* 221 F.3d 376, 386 (2nd Cir. 2000); *Iowa Right to Life Comm., Inc.* v. *Williams,* 187 F.3d 963, 968–70 (8th Cir. 1999); *FEC* v. *Christian Action Network, Inc.,* 110 F.3d 1049, 1051 (4th Cir. 1997); *Maine Right To Life Comm., Inc.* v. *FEC,* 98 F.3d 1 (1st Cir. 1996); *Faucher* v. *FEC,* 928 F.2d 468, 472 (1st Cir. 1991); *FEC* v. *Central Long Island Tax Reform Immediately Comm.,* 616 F.2d 45, 53 (2d Cir. 1980) (*en banc*); *Kansans for Life, Inc.* v. *Gaede,* 38 F. Supp.2d 928 (D. Kan. 1999); *Right to Life of Mich., Inc.* v. *Miller,* 23 F. Supp.2d 766 (W.D. Mich. 1998); *Planned Parenthood Affiliates of Mich., Inc.* v. *Miller,* 21 F. Supp.2d 740 (E.D. Mich. 1998); *Right To Life of Dutchess County, Inc.* v. *FEC,* 6 F. Supp.2d 248 (S.D. N.Y. 1998); *Clifton* v. *FEC,* 927 F. Supp. 493, 496 (D. Me. 1996), *aff'd on other grounds,* 114 F.3d 1309 (1st Cir. 1997); *FEC* v. *Survival Educ. Fund, Inc.,* 1994 WL 9658, at *3 (S.D. N.Y. Jan. 12, 1994), *aff'd in part and rev'd in part on other grounds,* 65 F.3d 285 (2d Cir. 1995); *FEC* v. *Colorado Republican Fed. Campaign Comm.,* 839 F.Supp. 1448, 1456 (D. Colo. 1993), *rev'd on other grounds,* 59 F.3d 1015 (10th Cir. 1995), *vacated on other grounds,* 519 U.S. 604 (1996); *West Virginians For Life, Inc.* v. *Smith,* 919 F.Supp. 954, 959 (S.D. W.Va. 1996); *FEC* v. *NOW,* 713 F.Supp. 428 (1989); *FEC* v. *AFSCME,* 471 F. Supp. 315, 317 (D. D.C. 1969); *Washington State Republican Party* v. *State Public Disclosure Comm'n,* 141 Wash.2d 245, 4 P.3d 888 (2000); *Elections Bd. Of Wisconsin* v. *Wisconsin Mfrs. & Commerce,* 227 Wis.2d 650, 597 N.W.3d 721 (1999); *Osterberg* v. *Peca,* 12 S.W.3d 31, 50–52 (Tex. 2000); *Brownsburg Area Patrons Affecting Change* v. *Baldwin,* 714 N.E.2d 135 (Ind. 1999); *State* v. *Proto,* 526 A.2d 1297, 1310–11 (Conn. 1987); *Richey* v. *Tyson,* 120 F.Supp.2d 1298, 1310–12 (S.D. Ala. 2000); *Chamber of Commerce of the United States* v. *Moore,* No. 00–228ws (S.D. Miss. Nov. 2, 2000).

below. Organizations that qualify as FECA political committees qualify as 527 organizations, and thus are able to take advantage of this beneficial tax treatment.[8] Other 527 organizations, however, are alleged to have engaged in substantial political activity that fails to trigger the FECA registration and reporting requirements, and contribution restrictions.

The I.R.C. at section 527(e)(1) defines ''political organization'' as ''a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.'' ''Exempt function'' is defined at I.R.C. section 527(e)(2) to include ''the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected or appointed.''

This definition is on its face substantially broader than the FECA definition of ''political committee.'' Moreover, beginning in 1996, the Internal Revenue Service (''IRS'') has issued a series of private revenue rulings holding that activities such as circulating voting records, voter guides, and ''issue advocacy'' communications—those that do not expressly advocate the election or defeat of a clearly identified candidate—fall within the ''exempt function'' category under I.R.C. section 527(e)(2). Private Rulings 9652026 (Oct. 1, 1996), 9808037 (Nov. 21, 1997), and 199925051 (March 29, 1999). As knowledge of these rulings became more widespread, the number of 527 organizations is thought to have increased substantially, with a concomitant increase in their spending on federal elections. *See* Hill, ''Probing the Limits of Section 527 to Design a New Campaign Finance Vehicle,'' *Tax Notes,* Jan. 17, 2000, at 387–88.

Until recently, section 527 organizations that did not qualify as political committees under the FECA filed no registration statements or informational material with the Commission or the IRS. Moreover, since section 527 taxes only investment income earned by these organizations, *see* 26 U.S.C. 527(f), and many earn no such income, they are not required to file tax returns with the IRS. Thus, unless they qualified as FECA committees, or voluntarily disclosed this information, little was known about their funding or activities.

When the Commission first considered the possibility of a rulemaking in this area, it anticipated that one of the issues such a rulemaking might address would be treatment of section 527 organizations. Since that time, however, P.L. 106–230, 114 Stat. 477, was signed into law on July 1, 2000. That law requires 527 organizations to notify the Secretary of the Treasury of their status and provide certain identifying information within 24 hours of the date on which the organization is established, 26 U.S.C. 527(a)(i)(1), or 30 days after the date of enactment of the law, for those organizations in existence on July 1, 2000. 26 U.S.C. 527(d)(2). They must also disclose information on expenditures that aggregate over $500 in a calendar year to a single person, and contributions from persons that aggregate $200 or more during a calendar year. For additional information on this new law, *see* Revenue Ruling 2000–49 (Oct. 30, 2000). Please note that these statutory requirements do not apply to organizations that qualify as political committees under the FECA. 26 U.S.C. 527(a)(6), 527(j)(5)(A).

Despite enactment of Public Law 106–230, concern remains that Commission action is needed to clarify when an organization becomes a political committee under the FECA. While many 527 organizations are complying with the new tax law and IRS requirements, others may have changed their tax status in order to avoid having to do so. The Commission is seeking comment as to how this rulemaking should address 527 organizations and organizations that are not organized under 26 U.S.C. 527.

The Commission also welcomes comments on any other aspect of the issues addressed in this Notice.

List of Subjects in 11 CFR Part 100

Elections.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of title 11 of the *Code of Federal Regulations* to read as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434(a)(11), and 438(a)(8).

2. Paragraph (a) of section 100.5 would be revised to read as follows:

11 CFR 100.5 Political committee (2 U.S.C. 431(4), (5), (6)).

* * * * *

(a) Except as provided in paragraphs (b), (c) and (d) of this section, any committee, club, association, or other group of persons that receives contributions aggregating in excess of $1,000, or that makes expenditures aggregating in excess of $1,000 during a calendar year is a political committee.

(1) The following are examples of ''contributions'' within the meaning of 11 CFR 100.7(a):

(i) Money, services or any other thing of value received as the result of a solicitation, the express purpose of which was to raise money to influence federal elections;

(ii) Money, services or anything of value received from a political committee organized pursuant to paragraphs (b), (c), or (d) of this section, except money, services or anything of value received by an organization qualifying for tax exempt status pursuant to 26 U.S.C. 501(c)(3);

(iii) Money, services or anything of value received by an organization that is expressly authorized by its charter, constitution, bylaws, articles of incorporation or other organizational document to engage in activities for the purpose of influencing federal elections;

(iv) Money, services or anything of value received by an organization that is controlled by a federal candidate, his or her principal campaign committee, or any other committee authorized by a federal candidate pursuant to paragraph (f)(1) of this section. This provision shall not encompass an organization qualifying for tax exempt status pursuant to 26 U.S.C. 501(c)(3) or (c)(4) or an organization whose exclusive purpose is the election or nomination of that candidate for state or local office;

(v) Money, services, or anything of value received by an organization that claims tax exempt status pursuant to 26 U.S.C. 527 and does not restrict its activities to influencing or attempting to influence elections to state or local public office or office in a political organization; or

(vi) Payments or costs deemed to be in-kind contributions for general public political communications, pursuant to 11 CFR 100.23.

(2) The following are examples of ''expenditures'' within the meaning of 11 CFR 100.8:

(i) Payments or costs associated with the organization's solicitation of money or any other thing of value, where the solicitation appeals to donors by stating that donations will be used to influence a federal election;

[8] Section 527 organizations are taxed only on their investment income. 26 U.S.C. 527(f).

(ii) Payments or costs deemed to be coordinated expenditures for general public political communications, pursuant to 11 CFR 100.23;

(iii) Payments or costs associated with any general public political communication that refers to a candidate for federal office and has been tested to determine its probable impact on the candidate preference of voters;

(iv) Payments or costs associated with any general public political communication that refers to a candidate for federal office, where the intended audience has been selected based on its voting behavior; or

(v) Payments made to a commercial vendor for a service or product, with the express understanding that the service or product be designed to influence one or more federal elections.

(3) Notwithstanding any other provision of this section, a business entity organized for profit that provides goods or services to others at the usual and normal charge for such goods or services shall not be considered a political committee. Discounts may be provided as set forth in 11 CFR 9008.9(a).

* * * * *

Dated: March 1, 2001.

Danny L. McDonald,

Chairman, Federal Election Commission.

[FR Doc. 01–5473 Filed 3–6–01; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 932

[No. 2001–03]

RIN 3069–AB11

Unsecured Credit Limits for Federal Home Loan Banks

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: On December 20, 2000, as part of its new capital rule, the Federal Housing Finance Board (Finance Board) approved new limits on the amounts of unsecured credit that a Federal Home Loan Bank (Bank) may extend to a single counterparty or group of affiliated counterparties. These new unsecured limits revised and codified the unsecured credit guidelines set forth in the Finance Board's Financial Management Policy (FMP). The Finance Board is, hereby, proposing amendments to the unsecured credit provisions of the capital rule to increase the limit on a Bank's unsecured credit exposure to government-sponsored enterprises (GSEs).

DATES: The Finance Board will consider written comments on the proposed rulemaking that are received on or before April 23, 2001.

ADDRESSES: Send comments to: Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov,* or by regular mail to the Board, at the Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: James L. Bothwell, Managing Director, (202) 408–2821; Scott L. Smith, Acting Director, (202) 408–2991; or Julie Paller, Senior Financial Analyst, (202) 408–2842, Office of Policy, Research and Analysis; or Thomas E. Joseph, Attorney-Advisor, (202) 408–2512, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On December 20, 2000, in accordance with the Gramm-Leach-Bliley Act, Pub. Law No. 106–102, 133 Stat. 1338 (Nov. 12, 1999) (GLB Act), the Finance Board adopted a final rule to implement the new capital structure that the GLB Act established for the Banks. *See* 66 FR 8262 (Jan. 30, 2001). As part of the final capital rule, the Finance Board adopted new limits on the permitted amounts of a Bank's unsecured credit exposures to a single counterparty or a group of affiliated counterparties. *Id.* at 8318–19 (to be codified at 12 CFR 932.9). These new limits represent a revision and codification of the unsecured credit guidelines of Section VI of the FMP, Finance Board Res. No. 96–45 (July 3, 1996), *as amended by* Finance Board Res. No. 96–90 (Dec. 6, 1996), Finance Board Res. No. 97–05 (Jan. 14, 1997), and Finance Board Res. 97–86 (Dec. 17, 1997), which will remain in effect until these new limits take effect on July 2, 2001.[1] During the comment period for the proposed capital rule, many commenters generally opposed the implementation of the unsecured credit guidelines in § 932.9, but did not comment on the specific limits set in the rule, which are designed to address safety and soundness concerns related to the risk created by credit concentrations in a single counterparty or group of affiliated counterparties. *See* 66 FR 8301–02.

The new unsecured credit limits in 12 CFR 932.9 are more restrictive than those that are applied under the FMP. They allow the Banks, however, to extend unsecured credit to lower-rated counterparties than is now allowed under the FMP and will remove maturity constraints on extensions of unsecured credit that are contained in Section VI of the FMP. Before a Bank may extend unsecured credit to any counterparty (or affiliated counterparties) to which a Bank could not previously lend because of the credit rating restrictions or maturity limits in the FMP, the Bank must obtain the Finance Board's approval for the lending activity as a new business activity pursuant to 12 CFR Part 980. The new limits do not apply to obligations backed by the full faith and credit of the United States government, which is the case under the unsecured credit guidelines of the FMP. Section 932.9 also does not require a Bank to unwind positions that do not conform to the new requirements provided the credit was extended in accordance with the FMP before the effective date of the new rule.

II. Proposed Rule

As discussed in the **SUPPLEMENTARY INFORMATION** section of the adopting release of the final capital rule, the Finance Board believes that the diversification of risk, particularly with regard to unsecured credit, promotes the safety and soundness of the Banks and that the specific limits adopted in 12 CFR 932.9 are necessary to address the increase in credit risk associated with concentrations of credit exposures. The limits are not unduly onerous[2] and generally are consistent with those applicable to commercial banks. *See* 12 CFR Part 32.

It has been suggested, however, that as applied to debt issued by the GSEs, the new limits may present problems for some Banks. Under the FMP, the Banks could maintain unsecured credit exposures with a single GSE in an amount equal to 100 percent of the Bank's capital. The new unsecured credit limits would treat GSEs like other private counterparties and base the unsecured credit limit on the long- or

[1] The Chairman of the Bank Presidents' Conference requested an extension of the March 1, 2001 effective date for complying with the new unsecured credit limits. In response, the Finance Board has waived the March 1, 2001 date by Resolution, dated February 28, 2001, and has extended the date for compliance with § 932.9 by 120 days until July 2, 2001.

[2] If extension of credit to GSEs are not included, at year-end 2000, the Banks in aggregate had only just over $4.4 billion in unsecured extensions of credit that would be in excess of the limits set forth in 12 CFR § 932.9 compared with a total unsecured extensions of credit to private counterparties of just over $84 billion.