Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 1021

Request for Information Regarding Categorical Exclusions

AGENCY: Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) intends to update its National Environmental Policy Act (NEPA) categorical exclusions, and seeks input from interested parties to help identify activities that should be considered for new or revised categorical exclusions.

DATES: Responses should be e-mailed or postmarked by January 25, 2010. Late responses will be considered to the extent practicable.

ADDRESSES: E-mail submissions are encouraged due to the delivery time required for mail, and should be sent to *yardena.mansoor@hq.doe.gov.* Alternatively, submissions may be faxed to 202–586–7031 or mailed to Yardena Mansoor; Office of NEPA Policy and Compliance (GC–54); U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585.

Additional information on this Request for Information, including what information should be submitted and how to submit responses, may be found at *http://www.gc.energy.gov/nepa/.*

FOR FURTHER INFORMATION CONTACT: Yardena Mansoor, Office of NEPA Policy and Compliance (GC–54), 202–586–9326, *yardena.mansoor@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Categorical exclusions are classes of actions that DOE has by regulation determined do not individually or cumulatively have a significant effect on the human environment and, therefore, normally require neither an environmental impact statement nor an environmental assessment. DOE's categorical exclusions are listed at 10 CFR part 1021, appendices A and B to subpart D.

Issued in Washington, DC on December 23, 2009.

Scott Blake Harris,

General Counsel.

[FR Doc. E9–30829 Filed 12–28–09; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 106

[Notice 2009–31]

Funds Received in Response to Solicitations; Allocation of Expenses by Separate Segregated Funds and Nonconnected Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission (''Commission'') proposes removing its rules regarding funds received in response to solicitations. The Commission also proposes removing two additional rules regarding the allocation of certain expenses by separate segregated funds and nonconnected committees. The United States District Court for the District of Columbia ordered that these rules are vacated, in accordance with a Court of Appeals decision. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before January 28, 2010.

ADDRESSES: All comments must be in writing, must be addressed to Mr. Robert M. Knop, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to *emilyslistrepeal@fec.gov.* If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post all comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On September 18, 2009, the United States Court of Appeals for the D.C. Circuit (''D.C. Circuit Court'') ruled that 11 CFR 100.57, 106.6(c), and 106.6(f) violated the First Amendment of the United States Constitution. *See EMILY's List* v. *FEC,* 581 F.3d 1 (D.C. Cir. 2009). The court also ruled that 11 CFR 100.57 and 106.6(f), as well as one provision of 106.6(c), exceeded the Commission's authority under the Federal Election Campaign Act (''Act''). *See id.* At the direction of the D.C. Circuit Court, the United States District Court for the District of Columbia ordered that these rules are vacated. *See Final Order, EMILY's List* v. *FEC,* No. 05–0049 (D.D.C. Nov. 30, 2009). The Commission now proposes to remove these rules from its regulations.

I. Proposed Deletion of 11 CFR 100.57—Funds Received in Response to Solicitations

The Commission regulation at 11 CFR 100.57 went into effect on January 1, 2005. *See* Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 FR 68056 (Nov. 23, 2004). Under paragraph (a) of section 100.57, funds provided in response to a communication are treated as contributions if the communication indicates that any portion of the funds received would be used to support or oppose the election of a clearly identified Federal candidate. Paragraph (b)(1) of section 100.57 provides that all funds received in response to a solicitation described in section 100.57(a) that refers to both a clearly identified Federal candidate and a political party, but not to any non-Federal candidates, have to be treated as contributions. Paragraph (b)(2) states that if a solicitation described in section 100.57 refers to at least one clearly identified Federal candidate and one or more clearly identified non-Federal candidate, then at least fifty percent of the funds received in response to the

solicitation has to be treated as contributions. Paragraph (c) of section 100.57 provides an exception for certain solicitations for joint fundraisers conducted between or among authorized committees of Federal candidates and the campaign organizations of non-Federal candidates.

The Commission proposes removing section 100.57 from its regulations because the D.C. Circuit Court held that this rule is unconstitutional and that it exceeded the Commission's statutory authority under the Act. *See EMILY's List* v. *FEC,* 581 F.3d 1 (D.C. Cir. 2009). Moreover, as explained above, the D.C. District Court has ordered that 11 CFR 100.57 is vacated. *See Final Order, EMILY's List* v. *FEC,* No. 05–0049 (D.D.C. Nov. 30, 2009).

II. Proposed Deletion of 11 CFR 106.6(c) and 106.6(f)—Allocation of Expenses Between Federal and Non-Federal Activities by Separate Segregated Funds and Nonconnected Committees

At the same time that the Commission adopted 11 CFR 100.57, the Commission substantially revised its allocation rules at 11 CFR 106.6. *See* Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 FR 68056 (Nov. 23, 2004). The revised rule at 11 CFR 106.6(c) requires nonconnected committees and separate segregated funds (SSFs) to use at least fifty percent Federal funds to pay for administrative expenses, generic voter drives, and public communications that refer to a political party, but not to any Federal or non-Federal candidates.[1] The Commission also added a new paragraph (f) to section 106.6, which specifies that nonconnected committees and SSFs must pay for public communications and voter drives that refer to both Federal and non-Federal candidates using a percentage of Federal funds proportionate to the amount of the communication that is devoted to the Federal candidates. *Id.*

The Commission proposes removing paragraphs (c) and (f) from section 106.6 because the DC Circuit Court held that these provisions are unconstitutional. *See EMILY's List* v. *FEC,* 581 F.3d 1 (D.C. Cir. 2009). Moreover, as explained above, the DC District Court ordered that paragraphs (c) and (f) of section 106.6 are vacated. *See Final Order, EMILY's List* v. *FEC,* No. 05–0049 (D.D.C. Nov. 30, 2009).

In an abundance of caution with respect to the notice and comment requirements under the Administrative Procedure Act, 5 U.S.C. 552 *et seq.,* the Commission seeks public comments on how best to effectuate the courts' opinion and order in *EMILY'S List.* The Commission invites comment on whether the DC Circuit Court's opinion is subject to a reading that the ruling, as well as the District Court's order that the rules are vacated, is limited only to non-profit, non-connected entities.

Thus, the Commission invites public comment on whether the DC Circuit Court's decision extends to SSFs as well as to nonconnected committees. The section 106.6 allocation rules, including paragraphs (c) and (f), apply to nonconnected committees and to SSFs. EMILY's List is a non-profit non-connected political committee, not an SSF. The *EMILY's List* decision stated that ''this case concerns the FEC's regulation of *non-profit entities* that are not connected to a * * * for-profit corporation.'' (Emphasis in original). *See EMILY's List,* 581 F.3d at 8. Moreover, in footnote 7 of the decision, the court stated: ''In referring to non-profit entities, we mean non-connected non-profit corporations * * * as well as unincorporated non-profit groups. 'Non-connected' means that the non-profit is not a * * * committee established by a corporation or labor union.'' *Id., n.7.* Does the *EMILY's List* analysis provide any basis for treating SSFs differently from the non-connected committee at issue in the *EMILY's List* case?

Alternatively, the Commission seeks comment on whether the DC Circuit Court's statutory analysis should be read as not depending on the type of entity involved, but rather on the nature of the expenses that the entity incurs. *See e.g., EMILY's List,* 581 F.3d at 21–22. Moreover, even under the constitutional analysis, could the DC Circuit Court's rationale reasonably be read to apply to SSFs as well as nonconnected committees? For example, the DC Circuit Court's opinion seems to rely more on the distinction between parties and other entities than the corporate status of those other entities.

The Commission invites comments on the merits of these two alternative readings. In short, the Commission seeks comment as to whether the allocation provisions in paragraphs (c) and (f) of section 106.6 should be removed in their entirety, or revised so as not to apply to nonconnected committees but to continue to apply to SSFs. Alternatively, is the court's order vacating 11 CFR 106.6(c) and (f) so clear that the Commission has no discretion to do anything but repeal those provisions in their entirety?

Please note that the Commission intends to initiate a separate rulemaking regarding other potential changes to its regulations, such as conforming changes to the remaining portions of 11 CFR 106.6 and other changes to 11 CFR 102.5. The Commission invites comment regarding what other changes to its regulations it should consider implementing in order to conform to the DC Circuit Court's ruling.

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

The Commission certifies that the attached proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by this rulemaking. The Commission is proposing to remove regulations that a Federal court ordered vacated. Accordingly, removing these regulations would not have a significant impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 106

Campaign Funds, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the *Code of Federal Regulations* is proposed to be amended as follows:

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

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

§ 100.57 [Removed and Reserved]

2. Section 100.57 is removed and reserved.

[1] Section 106.6(a) defines a non-connected committee as ''any committee which conducts activities in connection with an election but which is not a party committee, an authorized committee of any candidate for Federal election, or a separate segregated fund.'' A separate segregated fund is a political committee established, administered, or financially supported by a corporation or labor organization. 2 U.S.C. 441b(b)(2)(C); 11 CFR 114.1(a)(2)(iii). A generic voter drive includes voter identification, voter registration, and get-out-the-vote drives, or any other activities that urge the general public to register, vote or support candidates of a particular party or associated with a particular issue, without mentioning a specific candidate. 11 CFR 106.6(b)(1)(iii).

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

3. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

§ 106.6 [Amended]

4. In § 106.6, paragraphs (c) and (f) are removed and reserved.

Dated: December 21, 2009.

On behalf of the Commission,

Steven T. Walther,

Chairman, Federal Election Commission.

[FR Doc. E9–30768 Filed 12–28–09; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD65

Chartering and Field of Membership for Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: The NCUA Board proposes to amend its chartering and field of membership manual to update its community chartering policies. These amendments include using objective and quantifiable criteria to determine the existence of a local community and defining the term ''rural district.'' The amendments clarify NCUA's marketing plan requirements for credit unions converting to or expanding their community charters and define the term ''in danger of insolvency'' for emergency merger purposes.

DATES: Comments must be postmarked or received by March 1, 2010.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web site: http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule IRPS 09–1,'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Deputy General Counsel; John K. Ianno, Associate General Counsel; Frank Kressman, Staff Attorney, Office of General Counsel, or Robert Leonard, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540 or (703) 518–6396.

SUPPLEMENTARY INFORMATION:

A. Background and Overview

In 1998, Congress passed the Credit Union Membership Access Act (''CUMAA'') and reiterated its longstanding support for credit unions, noting that they ''have the specif[ic] mission of meeting the credit and savings needs of consumers, especially persons of modest means.'' Public Law 105–219, § 2, 112 Stat. 913 (August 7, 1998). The Federal Credit Union Act (''FCUA'') grants the NCUA Board broad general rulemaking authority over Federal credit unions. 12 U.S.C. 1766(a). In passing CUMAA, Congress amended the FCUA and specifically delegated to the Board the authority to define by regulation the meaning of a ''well-defined local community'' (WDLC) and rural district for Federal credit union charters. 12 U.S.C. 1759(g).

The Board continues to recognize two important characteristics of a WDLC. First, there is geographic certainty to the community's boundaries, which must be well-defined. Second, there is sufficient social and economic activity among enough community members to assure that a viable community exists. Since CUMAA, NCUA has expressed this latter requirement as ''interaction and/or shared common interests.'' NCUA Chartering and Field of Membership Manual (Chartering Manual), Interpretive Ruling and Policy Statement (IRPS) 08–2, Chapter 2, V.A.1.

The Board has gained broad experience in determining what constitutes a WDLC by analyzing numerous applications for community charter conversions and expansions. In this process, the Board has exercised its regulatory judgment in determining whether, in a particular case, a WDLC exists. This involves applying its expertise to the question of whether a proposed area has a sufficient level of interaction and/or shared common interests to be considered a WDLC. The Board is aware that there is considerable uncertainty among community charter applicants regarding two important issues, particularly in connection with applications involving large multi-jurisdictional areas. The first is how an applicant can best demonstrate the requisite interaction and/or shared common interests of a WDLC. The second is how much evidence is required in a particular case. The primary purpose of this proposal is to eliminate that uncertainty and conserve the economic and human resources of applicants and NCUA. To this end, the Board proposes to define WDLC in terms of objective and quantifiable criteria that, in the Board's opinion, conclusively demonstrate interaction and/or common interests.

Using objective and easy to apply criteria will replace the current, burdensome practice of requiring an applicant to demonstrate the existence of a WDLC using a narrative approach with supporting documents. This approach will enable applicants to easily, quickly, and inexpensively determine, with certainty, if the geographic area they wish to serve is a WDLC.

Under the current proposal, as discussed more fully below, a geographic area would automatically qualify as a WDLC in the following three ways:

1. As a single political jurisdiction less than an entire State, or a defined portion of that single political jurisdiction;

2. As a statistical area limited to 2.5 million or less people, so designated by the Office of Management and Budget (OMB), if it has a single core area and the core satisfies a concentration threshold for employment and population or as a portion of that statistical area provided the smaller area independently meets the same employment and population requirements; and

3. As an existing, previously approved area ''grandfathered'' for use by future applicants.

Additionally, the NCUA Board proposes to define the term ''rural district'' for chartering purposes. The Board believes this will help extend credit union services to individuals living in rural America without adequate access to reasonably priced financial services. Finally, the Board proposes to provide community charter applicants with more detailed guidance on NCUA's expectations regarding the adequacy of an applicant's business and marketing plans required as part of the charter application.