

# Federal Register

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Part VII

## Federal Election Commission

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11 CFR Parts 100 and 114  
Definition of "Member" of a Membership  
Association; Rule

**FEDERAL ELECTION COMMISSION****11 CFR Parts 100 and 114**

[Notice 1993-20]

**Definition of "Member" of a Membership Association****AGENCY:** Federal Election Commission.**ACTION:** Final rule; transmittal of regulations to Congress.

**SUMMARY:** The Commission has revised its regulations to more specifically define who may qualify as a "member" of a membership association. The Federal Election Campaign Act of 1971 as amended ("FECA" or "the Act") permits membership associations to solicit contributions from their members for a separate segregated fund ("SSF"), which contributions can be used for Federal political purposes. The Act also allows membership associations to communicate with their members on any subject, including communications involving express electoral advocacy. The new requirements apply to all persons seeking to become members, including individuals and corporations.

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the *Federal Register*.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of revisions to its regulations at 11 CFR 100.8(b)(4)(iv), 114.1(e) and 114.7, defining who is a "member" of a membership association.

The current regulations were adopted in 1977. Since that time, the United States Supreme Court has addressed this issue, and the Commission has issued numerous advisory opinions interpreting the regulatory language.

The Commission is now articulating a general rule that will reflect the Supreme Court's ruling and subsequent advisory opinions. The new rule should greatly reduce the need for individual membership associations to seek advisory opinions, based on each association's unique set of circumstances.

A Notice of Proposed Rulemaking ("NPRM") for this purpose was published in the *Federal Register* on October 8, 1992. 57 FR 46348. Under the

proposed definition, for a person to qualify as a member of a membership association for this purpose, the association's articles and by-laws would have to specifically provide for members. In addition, the association would have to expressly solicit that person as a member; the person would have to actively accept the solicitation; and the association would have to acknowledge the membership. Finally, each member would have to have a significant financial interest in and/or be authorized to vote for some or all of the officers or directors of the membership association. The revised definition would apply to individuals, corporations, and all other persons seeking to become members. In the case of corporate members, however, these rules apply for the purpose of determining to whom the association may communicate for partisan communications under 11 CFR 114.8(h) and to which corporations a trade association may direct a request for PAC solicitation approval under 11 CFR 114.8(d).

The Commission received 36 comments in response to this Notice. In addition, a public hearing was held on December 9, 1992, at which representatives of 11 organizations and one individual testified.

After considering the comments and testimony, as well as the pertinent case law and Commission precedents, the Commission has decided that the rule as proposed in the NPRM should be modified in two ways. First, the voting requirement has been modified so that the ability to vote for at least one member with full participatory and voting rights on the association's highest governing body, coupled with a regular dues obligation, is sufficient to confer membership.

Second, farm cooperatives and entities eligible to participate in programs administered by the Rural Electric Administration ("REA") may solicit members of the cooperative's regional, State or local affiliates. However, all of the political committees established, financed, maintained or controlled by the cooperative and its regional, State or local affiliates are considered affiliated committees subject to the contribution limits set forth at 11 CFR 110.1 and 110.2.

Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These

regulations were transmitted to Congress on August 25, 1993.

**Explanation and Justification**

Under 2 U.S.C. 441b(b)(4)(C) and 441(b)(2)(A), an incorporated membership organization, cooperative, or corporation without capital stock, or a separate segregated fund ("SSF") established by such an entity, may solicit contributions to the SSF from, and make partisan communications to, its "members." Prior to these revisions, the rules defined "members" to include all persons currently satisfying the requirements for membership in any such association.

In 1982, the Supreme Court construed this language as it applied to a nonprofit, noncapital stock corporation whose articles of incorporation stated that it had no members. *Federal Election Commission v. National Right to Work Committee* ("NRWC"), 459 U.S. 196. The NRWC had argued that it should be able to treat as members, and thus solicit funds to its SSF from, individuals who had at one time responded, not necessarily financially, to an NRWC advertisement, mailing, or personal contact. The Supreme Court rejected this definition of "member," stating that to accept it "would virtually excise from the statute the restriction of solicitation to 'members.'" *Id.* at 203.

Relying on 2 U.S.C. 441(b)(4)(C)'s brief legislative history, the Court determined that "members" of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. As stated by the Court, viewing the question from this perspective meant that "some relatively enduring and independently significant financial or organizational attachment is required to be a 'member'" under that section. *Id.* at 204. In holding that the NRWC's purported "members" did not meet this test, the Court noted, "Members play no part in the operation or administration of the corporation; they elect no corporate officials \* \* \*. There is no indication that NRWC's asserted members exercise any control over the expenditure of their contributions." *Id.* at 206.

Following the NRWC decision, the Commission issued a number of Advisory Opinions on this point. In these opinions, the Commission generally required both a financial attachment, usually the regular payment of dues, and a meaningful organizational attachment, usually the right to vote for at least some members of the membership association's governing board, before a person was considered a member for 2 U.S.C.

441b(b)(4)(C) purposes. E.g., Advisory Opinions 1984-33, 1985-11, 1987-13, 1987-31, 1992-41. These requirements applied not only to individual members, but to corporate and other members as well. E.g., Advisory Opinions 1986-13, 1990-18, 1991-24.

#### Section 100.8 and Section 114.1

Revised paragraph 100.8(b)(4)(iv) involves an association's right to make partisan communications to its members, while revised paragraph 114.1(e) involves solicitation of funds by a membership association from its members. The two sections are identical, and are therefore discussed together.

Some commenters thought the proposed amendments should apply only to the solicitation of members, and not to the right to make partisan communications. One person also argued that the Commission had failed to give proper notice in the NPRM of this impending change.

The NPRM mainly focused on solicitation, consistent with the *NRWC* decision and the Commission's subsequent advisory opinions. However, the Notice cited both CFR sections in the first paragraph of its "SUPPLEMENTARY INFORMATION" section, noted that the requirements of these two sections are identical, and contained the text of the proposed amendments to both sections. This is more than sufficient to meet the Administrative Procedure Act's ("APA") requirement that an NPRM include "either the terms or substance of the proposed rule or a description of the subjects and issues involved." 5 U.S.C. 553(b)(3).

The concepts addressed in 11 CFR 114.1(e) and 100.8(b)(4)(iv) are parallel, and have always been treated as such. The Commission believes the definition of restricted class should continue to be the same, whether in the context of solicitations or of partisan communications. The final rules so provide.

New paragraphs 100.8(b)(4)(iv)(A) and 114.1(e)(1) define "membership association" as a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that expressly provides for "members" in its articles and by-laws; expressly solicits members; and expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list.

The Commission intends that the term "articles and by-laws" be read broadly, to cover governing documents which are

not called precisely by that name. For example, if an association has a "constitution," instead of articles of incorporation, it would meet this requirement if the constitution specifically provides for members.

The Commission notes that certain states require that either the articles of incorporation or the by-laws, but not both, of a membership association specifically provide for members. Membership associations in those states may have drafted their governing instruments accordingly. The Commission intends that an organization meeting these state requirements be deemed a membership association for purposes of these rules. However, the fact that a State does not require such organizations to state in their articles and by-laws that they have members does not absolve associations organized under the laws of that State from compliance with this requirement.

Paragraphs 100.8(b)(4)(iv)(B) and 114.1(e)(2) define "members" as all persons who are currently satisfying the requirements for membership in a membership association, following former 11 CFR 100.8(b)(4)(iv) and 114.1(e), but add additional requirements consistent with Commission precedents and its reading of the *NRWC* decision. The first such requirement is that the member affirmatively accept the membership association's invitation to become a member.

A question was raised as to whether sending a check to an association would be sufficient to meet this requirement. The Commission believes that in most instances it would not, because the check might be a contribution, or intended to pay for merchandise ordered from the association. However, a check with the notation "dues" or some similar indication, either on the check or an accompanying written document, would be sufficient.

The rules then set out the dues obligations and voting rights required to qualify as a member. They provide three situations where persons qualify as members "per se," by meeting particular requirements. In most instances the payment of regular dues, coupled with specified voting rights, is required to confer membership. However, a significant financial attachment, not merely the payment of dues, or the right to vote for all members of the association's highest governing body, can also be sufficient by itself to confer membership.

Some commenters urged the Commission to consider the "significant financial or organizational" tie requirement as disjunctive—that is,

either a significant financial tie or a significant organizational tie should be sufficient to meet this requirement. In fact, while the proposed (and final) rules provide that, in certain instances, a financial or an organizational tie can be so strong as to in and of itself confer membership status, the Commission's experience has been that most organizations do not meet the "significant" test for either tie. That is why the rules also provide that a person may become a member through a combination of the two requirements.

On the other hand, some commenters opposed the concept of looking only to financial ties to satisfy the requirements for membership, characterizing it as allowing "big money" interests to "buy memberships" in membership associations. However, these rules cover not only issue-oriented membership organizations (the focus of most of the comments), but also such entities as stock and commodity exchanges. Members of stock exchanges, for example, may pay tens of thousands of dollars to acquire and retain their seats, even though no voting rights accrue to their membership. The Commission therefore affirms its view that a financial attachment alone may serve as a sufficient attachment of holders of these seats, and those in comparable situations, to qualify as members for this purpose.

Under paragraphs 100.8(b)(4)(iv)(B)(1) and 114.1(e)(2)(1) only those persons who have a significant financial attachment to the association, such as a significant investment or ownership stake, but not merely the payment of dues, qualify as members irrespective of whether they have any concurrent voting rights.

The Commission anticipates that most members will qualify as such pursuant to paragraphs 100.8(b)(4)(iv)(B)(2) and 114.1(e)(2)(ii). Under these provisions, members are required to pay, on a regular basis, a specific amount of dues that is predetermined by the association; and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member who has such rights. The Commission stresses that so-called "governance" voting is required, as opposed to voting for the association's policies or positions.

The NPRM took this same general approach but proposed that, if dues were required, the governance right would be met only if the member was entitled to vote directly either for a majority of those on the highest governing body of the membership

association, or for those who select the majority of those on the highest governing body.

This particular proposal generated a wide range of comments. Some supported this requirement, and one suggested that it be strengthened to include not only the right to vote for, but also the right to nominate, a majority or totality of the board. Others asked that the proposal be modified so that the right to vote for a substantial percentage of the board, but not a majority, would also be sufficient to confer membership. Still others felt that even less restrictive voting requirements, or no voting requirements, should be sufficient if other organizational attachments were present.

After reviewing these comments and testimony presented in this rulemaking, the Commission has amended the proposed rule to require that dues-paying members be required to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member who has such rights. This approach is consistent with past Commission advisory opinions and enforcement actions, and meets many of the objections from commenters who felt the proposed rules were overly-restrictive in this area.

The Commission considers the *NRWC* decision to have overruled prior advisory opinions that were inconsistent with its holding. However, several advisory opinions issued following that decision, including Advisory Opinions 1991-24, 1990-18, 1989-18, 1988-38, 1988-39, 1987-13, 1986-13, 1984-63, 1984-33, and 1984-22, have explicitly or implicitly required more substantial voting rights than those required by these revised rules. Any such advisory opinion is overruled to the extent it requires more extensive voting rights than those contained in paragraphs 100.8(b)(4)(iv)(B) and 114.1(e)(2).

As already noted, some commenters argued that no governance rights should be required. They expressed the view that other organizational attachments, such as placement on a mailing list, receipt of a membership card, or the ability to vote on policy statements, should be a sufficient organizational tie for purposes of the *NRWC* decision. However, the Commission does not believe the alternative ties recommended as sufficient by these commenters, independent of any governance rights, are in fact sufficient to meet the *NRWC* decision's test, as

applied in subsequent advisory opinions and enforcement actions.

The Commission notes that the rules require some further organizational ties, in addition to voting: e.g., the requirements that members affirmatively accept the association's invitation to become a member, and that the association expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list.

The focus of the voting requirement, however, is on more active participation by members in the conduct of the association. The Commission does not believe that the alternative ties recommended by these commenters are in and of themselves sufficient to meet the applicable standard, and has therefore adopted the voting requirements discussed above.

Some of these commenters argued that, since not all owners of one share of a corporation's stock are allowed to vote on corporate matters, by analogy, members of membership associations should not be required to have the voting rights proposed in the Notice. In response, the Commission first notes that the FECA expressly authorizes corporations to solicit contributions of their PAC's from their shareholders. 2 U.S.C. 441b(b)(4)(B). In addition, stock ownership differs significantly from the interests involved in this rulemaking. The ownership of even one share of stock provides a direct financial stake and continuous equity interest in the company. This is substantially different from the type of relationship most membership associations have with their members.

Under paragraphs 100.8(b)(4)(iv)(B)(3) and 114.1(e)(2)(iii), a person who is entitled to vote directly for all of those on the highest governing body of a membership association is considered a member. This corresponds to paragraphs 100.8(b)(4)(iv)(B)(1) and 114.1(e)(2)(i), *supra*, which confer membership on those with a significant financial attachment to the association.

A number of commenters expressed concern that the rule as published in the NPRM would significantly tighten current membership requirements, thereby reducing the number of people from whom membership associations could solicit contributions. However, the proposed rules were not only consistent with pertinent Commission advisory opinions, they were even less restrictive in some instances.

For example, in Advisory Opinion 1992-41, which was issued after the NPRM was published and the public hearing held, the Commission ruled that

certain individuals were not "members" of a non-profit corporation for purposes of 2 U.S.C. 441b(b)(4)(C), even though they had the right to vote for all members of the corporation's Board of Directors. The fact that these individuals paid only a one-time \$25 membership fee was held insufficient to meet the "financial" tie the Commission had consistently found to be required under the *NRWC* decision. However, under both the proposed and the final rules, these individuals are considered "members" for their voting rights alone, irrespective of any financial contribution. Advisory Opinion 1992-41 is thus overruled to the extent it requires the payment of dues in addition to the right to vote for the entire governing body to be considered a member of purposes of these rules.

Paragraphs 100.8(b)(4)(iv)(C) and 114.1(e)(3) state that the Commission may consider, on a case by case basis, whether persons who have a significant financial and organizational attachment to the association that does not precisely fit any of the circumstances set forth in paragraphs 100.8(b)(4)(iv)(B) and 114.1(e)(2) may nevertheless qualify as members under these rules.

For example, some commenters requested that the dues requirement be waived for retired members, both in recognition of the reduced circumstances sometimes faced by retirees and in appreciation for the long-time support provided by these members. Also, some organizations confer "lifetime" status, either upon a one-time payment of a substantial sum, or after payment of regular dues for a specified period of time.

Advisory Opinion 1987-5 allowed a membership organization to continue to solicit from "life members," a class of persons composed of individuals who had paid regular dues for at least 10 consecutive years immediately preceding the year they reached age 65 or older. "Life members" were no longer required to pay annual dues, but they retained all the privileges of regular members, including the "right to full voting participation." The Commission concluded that these individuals had "made a substantial financial commitment to the Association, effectively prepaying a lifetime dues obligation by the payments" made in the qualifying period.

One organization testified at the hearing on these rules that it confers voting rights on "lifetime members," defined by the organization as those who make a substantial "up front" contribution equal to at least five years of annual dues. Others gain these rights only after five consecutive years of

paying dues. Paragraphs 100.8(b)(4)(iv)(C) and 114.1(e)(3) state that the Commission may consider on a case by case basis whether such persons, or those in comparable situations, have such significant financial and/or organizational attachments to the association as to qualify as members under this rule.

Even though the "life members" involved in Advisory Opinion 1987-5 retained the full voting rights of other members, paragraphs 100.8(b)(4)(iv)(C) and 114.1(e)(3) require only that those considered for membership under this provision "retain voting rights in the association." The Commission intends, however, that this provision incorporate the requirement set forth in paragraphs 100.8(b)(4)(iv)(B)(2) and 114.1(e)(2)(ii) that members be required to vote for "at least one member who has full participatory and voting rights" on the association's highest governing body, or for those who select one such member.

Some comments were received from associations that have "student," "apprentice," or other membership categories with no or nominal dues, based on such members' perceived inability to pay higher dues. Paragraphs 100.8(b)(4)(iv)(C) and 114.1(e)(3) state that those in this situation may also be considered members for purposes of these rules on a case by case basis. For example, student members who pay a lower amount of dues while in school may be considered members as long as they hold some voting rights in the association.

Some associations confer "honorary membership" status on individual non-members who have provided some service to the association, performed public service of a type supported by the association, or undertaken some comparable activity. Often honorary members need not pay dues, and do not participate in the governance of the association. Nevertheless, some commenters asked that they be considered part of the membership class.

The Commission believes that the same requirements that apply to solicitation of an association's general membership should also apply to its solicitation of honorary members. That is, unless such members meet the same financial and organizational attachment standards as do other members, they should not be considered members for solicitation purposes.

Some commenters urged that the proposed rules be amended, or interpreted, so as to overturn the results in Advisory Opinions 1987-31, 1988-38 and 1988-39. These opinions held that, since only one membership exists for

each seat on a stock exchange or comparable organization, only one person per seat should be considered a member for section 441b(b)(4)(C) purposes. In those opinions, the Commission held that, in most instances, the owner of the seat (rather than the lessee) should be considered the member of the organization. The only situation in which the lessee would be considered the member would occur if the lessee acquired all of the lessor's voting rights and obligations to pay dues, fees, and other charges assessed during the term of the lease.

Some commenters read the NPRM as conferring membership status on both owners and lessees of such seats. These commenters argued that both classes have sufficiently strong financial and organizational attachments to qualify as solicitable members, and urged the Commission to so state in adopting the final rule. However, the Commission believes that Advisory Opinions 1987-31, 1988-38 and 1988-39 should remain controlling in this situation. As long as there is only one membership involved, it is inappropriate to allow more than one person to be considered a member.

Paragraphs 100.8(b)(iv)(4)(iv)(D) and 114.1(e)(4) state that members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. This language follows that of the former rules.

#### *Section 114.7 Membership Organizations, Cooperatives, or Corporations Without Capital Stock*

The provisions of paragraphs 100.8(b)(4)(iv)(B) and 114.1(e)(2) that require both a financial and an organizational attachment for members of most membership associations clearly include two-tiered associations, such as those in which members vote for delegates to a convention, and those delegates elect those who serve on the association's highest governing body.

The NPRM sought comments on whether this approach should be expanded to three- or more-tiered associations, such as those with national, state, and local affiliates. Several multi-tiered associations responded, all arguing that the approach should be expanded at least through three-tiered associations.

The Commission believes the same criteria that govern solicitation by two-tiered associations should govern that of three- or more-tiered associations. That is, if members of the local level of an association with national, state and local tiers have the requisite ties to both

the state and the national tiers, all levels can cross-solicit across all three tiers.

For example, one membership organization stated in its comments that members of each of its local societies elect a delegate to the state society, and the state society elects a delegate to the national governing body. In addition, members of local and state societies pay dues to those societies, which in turn forward a portion of those funds as dues to the national society. These ties between the national and local societies of this association are such that the national may solicit from members of the locals.

The Commission has consistently held that, absent such attachments, multi-tiered organizations cannot solicit across all tiers. E.g., Advisory Opinions 1981-23, 1991-24, 1992-9. However, based on comments and testimony received in connection with this rulemaking, the Commission believes that an exception to this general rule is justified in the case of farm cooperatives, as defined in the Agricultural Marketing Act of 1929, 12 U.S.C. 1141j, as well as to those entities eligible for assistance under the Rural Electrification Act of 1936 as amended, 7 U.S.C. 901-950aa-1.

A cooperative is a voluntary economic association organized to provide economic services, without gain, to itself, and to the members who own and control it. Two or more cooperatives may join together to form a federated cooperative, thereby increasing the types of goods and/or services provided to their members.

While members of federated farm and rural electric cooperatives do not have the precise financial and organizational ties required by these rules, they nevertheless have significant ties that cross-cut all levels of organization. The Commission believes these cooperatives' structure and organization are comparable to that of federations of trade associations, defined at 11 CFR 114.8(g)(1) as organizations representing trade associations involved in the same or an allied line of commerce. Such federations are authorized to solicit members of the federation's regional, State or local affiliates or members under certain circumstances. 11 CFR 114.8(g). In addition, a corporation or SSF established by a corporation may solicit the executive or administrative personnel of all its subsidiaries, branches, divisions and affiliates and their families. 11 CFR 114.5(g)(1).

Because the structure of those entities covered for the first time by these new rules differs from the membership associations defined at 11 CFR 100.8(b)(4)(iv) and 114.1(e), the

Commission believes that the new language authorizing this indirect solicitation should not be included in these sections. Rather, the Commission is adding a new paragraph (k) for this purpose to 11 CFR 114.7, which discusses the general solicitation rights of membership organizations, cooperatives, and corporations without capitol stock.

Paragraph (k)(1) states that a federated cooperative as defined in the Agricultural Marketing Act of 1929, 12 U.S.C. 1141j, or a rural cooperative eligible for assistance under Chapter 31 of Title 7 of the United States Code, may solicit the members of the cooperative's regional, State or local affiliates, provided that all of the political committees established, financed, maintained or controlled by the cooperative and its regional, State or local affiliates are considered one political committee for the purposes of the limitations set forth at 11 CFR 110.1 and 110.2. Under these rules, two or more affiliated committees are treated as a single committee for the purposes of the FECA's contribution limits, so that all contributions made or received by affiliated committees count against the same limits. See 11 CFR 110.3(a)(1).

The National Council of Farmer Cooperatives ("NCFC"), an association that represents more than 90% of all farm cooperatives, recommended in its comment that, to avoid overreaching, the Commission utilize the definition of "cooperative associations" set forth in the Agricultural Marketing Act of 1929, *supra*. That language, which was developed to describe associations eligible for special credit programs, defines "cooperative association" as "any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products so engaged, and also \* \* \* any association in which farmers act together in purchasing, testing, grading, processing, distribution, and/or furnishing farm supplies and/or farm business services." The statute contains various additional safeguards as to permissible lines of business, operation, and member control required of such associations.

The Commission believes that this same approach should be extended to rural utility cooperatives that are eligible for assistance under the REA. These cooperatives function much as discussed above, so the same reasoning can be used to justify this treatment. Paragraph (k)(1) thus incorporates both federated cooperatives as defined in 42 U.S.C. 1141j and cooperatives that are eligible for assistance under the REA. The affiliation requirement is consistent

with the rule governing indirect solicitation by federations of trade associations, 11 CFR 114.8(g).

Paragraph (k)(2) incorporates by reference the general requirements on disbursements for communications in connection with a Federal election to a restricted class found at 11 CFR 114.3.

As already noted, the Commission has held in the past that agricultural and rural utility cooperatives could not cross solicit between more than two tiers. See, e.g., Advisory Opinions 1980-48, 1981-23, and 1992-9. These holdings are now overruled.

**Other Concerns Raised by Commenters**

One commenter, who represents a non-profit ideological corporation that he believes to be exempt from the FECA's ban on independent corporate expenditures under the Supreme Court's decision in *FEC v. Massachusetts Citizens for Life* ("MCFL"), 479 U.S. 238 (1986), argued that that case also prohibits the application of the "member" rules to such organizations. However, the MCFL Court never addressed the question of solicitations for PAC's or partisan communications to members.

Rather, the case involved funds raised for the organization that could be used, *inter alia*, for independent expenditures. These funds are different from contributions solicited from members to be used to support a PAC. It is these latter funds that serve as the basis for this rulemaking.

The MCFL Court made a clear distinction between expenditures and contributions, holding that greater restrictions can apply in the case of contributions. Since contributions to the PAC's of these corporations can be limited, it logically follows that the solicitation restrictions contained in these rules apply as well.

One commenter argued that the proposed rule would violate the Regulatory Flexibility Act, 5 U.S.C. 601-612, because it would have a "significant economic impact" on a number of small entities. However, the cost of any required action, such as amending an association's articles of incorporation or by-laws, should not be significant. The comment objected, in particular, to the voting requirements proposed in the NPRM, as well as to the imposition of any voting rights as a precondition of membership. However, as discussed above, the Commission believes that some voting rights are mandated by the Supreme Court's *NRWC* decision, as interpreted in a number of advisory opinions, so any small entities affected by the rule should already have been complying

with these requirements. Moreover, the requirements have been modified so that the right to vote for only one member of the association's highest governing body, or those who select one such member, is sufficient to confer membership. This is substantially less restrictive than the standard proposed in the NPRM, and also than that applied in previous Commission advisory opinions and enforcement actions. Thus, rather than imposing a significant burden, the rules lessen a long-standing requirement.

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

The attached rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Federal Election Campaign Act in this area.

**List of Subjects**

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is 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, 438(a)(8).

2. Section 100.8 is amended by revising paragraph (b)(4)(iv) to read as follows:

**§ 100.8 Expenditure (2 U.S.C. 431(9)).**

- \* \* \* \* \*
- (b) \* \* \*
- (4) \* \* \*

(iv) (A) For purposes of paragraph (b)(4)(iv) of this section, *membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that (1) Expressly provides for "members" in its articles and by-laws;

(2) Expressly solicits members; and

(3) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(B) For purposes of paragraph (b)(4) of this section, *members* means all persons



who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(1) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but *not* merely the payment of dues);

(2) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; or

(3) Are entitled to vote directly for all of those on the highest governing body of the membership association.

(C) Notwithstanding the requirements of paragraph (b)(4)(iv)(B)(2) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members if they retain voting rights in the association.

(D) Notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(1) through (3) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

\* \* \* \* \*

**PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY**

3. The authority citation for part 114 continues to read as follows:

**Authority:** 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

4. Section 114.1 is amended by revising paragraph (e) to read as follows:

**§ 114.1 Definitions.**

\* \* \* \* \*

(e)(1) *Membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that

- (i) Expressly provides for "members" in its articles and by-laws;
- (ii) Expressly solicits members; and
- (iii) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(2) *Members* means all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

- (i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but *not* merely the payment of dues);
- (ii) Are required to pay on a regular basis a specific amount of dues that is predetermined by the association and are entitled to vote directly either for at least one member who has fully participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association;
- (iii) Are entitled to vote directly for all of those on the highest governing body of the membership association.

(3) Notwithstanding the requirements of paragraph (e)(2)(ii) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section

have a significant organizational and financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members if they retain voting rights in the association.

(4) Notwithstanding the requirements of paragraphs (e)(2) (i) through (iii) of this section, members of a local union are considered to be members of any national or international union of which the local, union is a part and of any federation with which the local, national, or a international union is affiliated.

\* \* \* \* \*

5. In section 114.7, paragraph (k) is added to read as follows:

**§ 114.7 Membership organizations, cooperatives, or corporations without capital stock.**

\* \* \* \* \*

(k)(1) A federated cooperative as defined in the Agricultural Marketing Act of 1929, 12 U.S.C. 1141j, or a rural cooperative eligible for assistance under chapter 31 or title 7 of the United States Code, may solicit the members of the cooperative's regional, state or local affiliates, provided that all of the political committees established, financed, maintained or controlled by the cooperative and its regional, State or local affiliates are considered one political committee for the purposes of the limitations in 11 CFR 110.1 and 110.2.

(2) A cooperative as described in paragraph (k)(1) of this section may make communications to its members under the provisions of 11 CFR 114.3.

Dated: August 25, 1993.

**Scott E. Thomas,**  
*Chairman, Federal Election Commission.*  
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