Dated: April 29, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–8861 Filed 5–3–05; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2005–13]

Definition of Federal Election Activity

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on proposed changes to its rules defining ''Federal election activity'' under the Federal Election Campaign Act of 1971, as amended (''FECA''). The proposed changes would retain the existing definition of ''voter registration activity'' and modify the existing definitions of ''get-out-the-vote activity'' and ''voter identification'' consistent with the ruling of the U.S. District Court for the District of Columbia in *Shays* v. *FEC*. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before June 3, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Anyone wishing to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, addressed to Ms. Mai T. Dinh, Assistant General Counsel, and submitted in either electronic, facsimile or hard copy form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic comments must be sent to either *FEAdef@fec.gov* or submitted through the Federal eRegulations Portal at *http://www.regulations.gov*. If the electronic comments include an attachment, the attachment must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with hard copy follow-up. Hard copy comments and hard copy follow-up of faxed comments should 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 comments on its Web site after the comment period ends. If the Commission decides a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Public Law No. 107–155, 116 Stat. 81 (2002), amended FECA by adding a new term, ''Federal election activity'' (''FEA''), that describes certain activities that State, district, and local party committees must pay for with either Federal funds [1] or a combination of Federal and Levin funds.[2] 2 U.S.C. 431(20) and 441i(b)(1); *see also* 2 U.S.C. 441i(d)(1) (prohibiting national, State, district or local party committees from soliciting or directing non-Federal funds to 501(c) tax-exempt organizations which engage in FEA); 2 U.S.C. 441i(e)(4) (limiting Federal candidate and officeholder solicitations for funds on behalf of 501(c) tax-exempt organizations whose principal purpose is to conduct certain types of FEA). The Commission further defined FEA in 11 CFR 100.24. In *Shays* v. *FEC*, 337 F. Supp.2d 28, 101, 106–07 (D.D.C. 2004), *appeal docketed*, No. 04–5352 (D.C. Cir. Sept. 28, 2004) (''*Shays*''), the district court held that certain parts of the definitions of ''voter registration activity'' and ''get-out-the-vote activity'' (''GOTV'') in 11 CFR 100.24(a)(2) and (3), respectively, had not been promulgated with adequate notice and opportunity for comment. In addition, the district court held that certain aspects of the definitions of ''get-out-the-vote activity'' and ''voter identification'' in 11 CFR 100.24(a)(3) and (4), respectively, were inconsistent with Congressional intent. *Shays* at 104, 107 n.83, and 108.[3] The district court remanded the case for further action consistent with the court's decision. The Commission has initiated this rulemaking to comply with the district court order.

1. 11 CFR 100.24(a)(2)—Definition of ''Voter Registration Activity''

BCRA does not define ''voter registration activity'' other than to specify that it is only FEA when it is conducted 120 days or fewer before a regularly scheduled Federal election. *See* 2 U.S.C. 431(20)(A)(i). Current section 100.24(a)(2) defines voter registration activity to mean ''contacting individuals by telephone, in person, or by *other individualized means to assist them in registering to vote.*'' (Emphasis added). The definition also includes a non-exhaustive list of examples of costs that are included, such as printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.

In *Shays,* the plaintiffs argued that the requirement that voter registration activity ''assist'' in the registration of voters impermissibly narrowed the definition because it excludes from its reach encouragement that does not constitute actual assistance. *See Shays* at 98. The district court found that the Commission's interpretation of section 431(20)(A) does not conflict with the expressed intent of Congress. *Shays* at 99–100. ''[T]he Court note[d] that it is possible to read the term 'voter registration activity' to encompass those activities that actually register persons to vote, as opposed to those that only encourage persons to do so without more. [citation omitted]. Moreover, the Court [did not] find based on the record presented that the 'common usage' of the term 'voter registration activity' necessarily includes the latter type of activities.'' *Id.* at 99.[4]

The court also held that the question of whether the regulation satisfies step two of the *Chevron* test—whether the Commission's interpretation of the statute is a permissible one—was not ripe for review. While the court found that the regulation is not an impermissible construction of BCRA,

[1] ''Federal funds'' are funds subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g).

[2] ''Levin funds'' are funds that are raised by State, district or local party committees pursuant to the restrictions in 11 CFR 300.31 and disbursed subject to the restrictions in 11 CFR 300.32. *See* 11 CFR 300.2(i).

[3] The district court described the first step of the *Chevron* analysis, which courts use to review an agency's regulations: ''a court firsts asks 'whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.''' *See Shays* at 51 (quoting *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council*, 467 U.S. 837, 842–43 (1984)).

[4] The Court also noted an apparent discrepancy between 11 CFR 100.133 and 11 CFR 106.5(a)(2)(iv) with regard to the definition of voter registration and get-out-the-vote activity. *See Shays* at 99 n.71, 103 n.77. However, any such comparison is no longer relevant since the latter regulation sunsetted on December 31, 2002.

the court concluded that it lacked sufficient guidance on the scope of the regulation to determine whether it ''unduly compromises the Act's purposes.'' *Shays* at 100 *(citing Orloski* v. *FEC*, 795 F.2d 156, 164 (D.C. Cir. 1986)). In this regard, the court noted that ''[w]hile it is clear that mere encouragement does not fall within the scope of the regulation, it is possible that encouragement coupled with a direction of how one might register could constitute 'assist[ance]' under the provision.'' *Shays* at 100.

The district court also determined that the promulgation of this regulation did not satisfy the APA's notice requirement because the notice of proposed rulemaking did not indicate that the Commission would seek to limit the term ''voter registration activity'' to those activities that assist the registration of voters. *See Shays* at 100–01. The Commission has, therefore, initiated this rulemaking to cure what the court concluded was a notice problem and to consider the comments it receives on the current rule.

The Commission is concerned that a definition of ''voter registration activity'' that includes merely ''encouraging'' people to register to vote may sweep too broadly. The current regulations seek to balance the need to cover the core voter registration activity targeted by the statute with the public policy interest of encouraging the civic act of voting. Also, the Commission's experience indicates that exhortations to register and vote are so frequent in political party communications (and often spontaneous) that attaching any campaign finance significance to every ''don't forget to vote'' uttered by speakers at political party events or written in a political party flyer may be unduly burdensome to the political party committees and could overwhelm the administrative and enforcement capacity of the Commission. As the Commission noted when it promulgated the regulation, ''[a] more expansive definition would run the risk that thousands of political committees and grassroots organizations that merely encouraged voting as a civic duty, who have never been subject to Federal regulation for such conduct, would be swept into the extensive reporting and filing requirements mandated under Federal law.'' *See Explanation and Justification for Regulations on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money,* 67 FR 49064, 49067 (July 29, 2002) (''*Soft Money E&J*''). Consequently, the proposed regulation, which is identical to the current rule, would rely on the individual contact and ''assist'' requirements to narrow the scope of ''voter registration activity'' to a standard that is enforceable, and yet is otherwise as broad as possible.

Although the Commission is not proposing any changes to current 11 CFR 100.24(a)(2), it seeks comment on whether it should address the concerns raised by the district court by amending the regulation, expanding the explanation and justification for the final rules, or providing guidance through a case-by-case application of the rules in advisory opinions and the enforcement process. Substantively, the Commission seeks comment on the following questions. Should the Commission define ''assist'' to include encouragement coupled with a direction as to how one might register? Does the ''assist'' limitation or the ''individualized means'' requirement exclude any activities that should be included in the definition of ''voter registration activity?'' Are there other specific activities that the Commission should include or exclude from the definition of ''voter registration activity?''

2. Proposed 11 CFR 100.24(a)(3)—Definition of ''Get-Out-the-Vote Activity''

In BCRA, Congress also included GOTV within the definition of FEA without further defining the term. *See* 2 U.S.C. 431(20)(A)(ii). Current section 100.24(a)(3) defines GOTV as ''contacting registered voters by telephone, in person, or by *other individualized means to assist them in engaging in the act of voting.*'' *See* 11 CFR 100.24(a)(3) (emphasis added). For the reasons stated above, the current definition of GOTV does not encompass merely encouraging voters to go to the polls. Section 100.24(a)(3) includes an exception to the definition of GOTV for communications by ''an association or similar group of candidates for State or local office or of individuals holding State or local office'' where those communications refer only to State or local candidates. *See* 11 CFR 100.24(a)(3). In addition, the current rule provides a non-exhaustive list of examples of GOTV activity such as providing information to individual voters regarding the date, time and location of polling places within 72 hours of an election, and offering to transport, or actually transporting, voters to the polls. *See* 11 CFR 100.24(a)(3)(i)–(ii).

The district court found that the term ''get-out-the-vote activity'' in section 431(20)(A)(ii) was not defined by Congress and can be read in different ways, and concluded that excluding mere encouragement of people to vote in section 100.24(a)(3) reflected a permissible reading under *Chevron* step one. *See Shays* at 101–05. The court also upheld the 72-hour provision, noting that current section 100.24(a)(3) makes clear that the list of examples is non-exhaustive. However, the court expressed uncertainty regarding ''what, if any, activity conducted outside the 72-hour window [in 11 CFR 100.24(a)(3)(i)] would be considered GOTV activity,'' and therefore, as with the ''assist'' requirement in section 100.24(a)(2), could not reach a decision as to *Chevron* step two. *See Shays* at 103 (emphasis in original). With respect to the exception for State and local candidate and officeholder associations in the current GOTV definition, the court found that it ''runs contrary to Congress's clearly expressed intent'' as enacted in BCRA and fails step one of *Chevron. See Shays* at 104.

To conform to the district court's opinion, proposed section 100.24(a)(3) would remove the exception for communications by associations or similar groups of candidates for State or local office, or of State or local officeholders, that refer only to State or local candidates. This exception was included in the 2002 rules because the Commission was concerned that the underlying provision would require Federal registration and reporting for a broad swath of State and local election activity, ''sweep[ing] within Federal regulation candidates for city council, or the local school board, who join together to identify potential voters for their own candidacies. * * *'' *See Soft Money E&J,* 67 FR at 49070. The Commission seeks public comment on whether there are other alternatives to address the Commission's concerns while still satisfying Congressional intent as determined by the *Shays* court.

Further, what impact would there be from removing the exception for groups of non-Federal candidates? Would such groups of non-Federal candidates have to pay for the full amount of FEA with Federal funds? *Compare* 2 U.S.C. 441i(b)(1) with (b)(2); *see also* 11 CFR 300.32(a)(1). Could groups of non-Federal candidates that are political committees be permitted to allocate under current 11 CFR 106.6 even though the FEA allocation regulations at 11 CFR 300.33 do not apply to groups of non-Federal candidates? *See also* 2 U.S.C. 441i(b)(2). In addition, would groups of non-Federal candidates that are not political committees be able to allocate their FEA given that they are not covered by 11 CFR 106.6?

The district court also held that the promulgated regulation defining GOTV

did not meet the APA's notice requirement for the same reasons it articulated with regard to the definition of ''voter registration activity.'' *See Shays* at 106–07. The proposed rules do not include any amendments to the ''assist'' requirement in section 100.24(a)(3), or the non-exhaustive list of activities that constitute GOTV activities in current 11 CFR 100.24(a)(3)(i) and (ii). The Commission included these two examples of GOTV to assist in applying the regulation to particular factual situations. The *Shays* court found that ''[t]he regulation makes clear that the examples it provides are non-exhaustive.'' *Shays* at 103. The Commission seeks comment on the examples of GOTV activity identified in section 100.24(a)(3). Should this non-exclusive list be changed in any way? Should the specific reference to activity within 72 hours of an election be changed in any way? Is 72 hours an appropriate period within which to specify activity included as GOTV? Would some other time frame be appropriate? Should the Commission provide more specificity as to when it will consider activity taking place more than 72 hours before an election to be GOTV?

3. Proposed 11 CFR 100.24(a)(4)—Definition of ''Voter Identification''

''Voter identification'' is another term used in the BCRA definition of FEA that is not defined by the statute. *See* 2 U.S.C. 431(20)(A)(ii). Current section 100.24(a)(4) defines voter identification as ''creating or enhancing voter lists by verifying or adding information about the voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates.'' 11 CFR 100.24(a)(4). The current definition does not include voter list acquisition because the Commission concluded that political party committees may acquire voter lists for a number of reasons other than for voter identification in connection with an election in which a Federal candidate appears on the ballot. Such reasons include fundraising and off-year party building activities. *See Soft Money E&J,* 67 FR at 49069. Section 100.24(a)(4) also contains an exception for associations of State or local candidates and/or officeholders identical to the exception to the definition of GOTV in section 100.24(a)(3).

The district court in *Shays* ''agree[d] that one may obtain a voter list and not be engaged in an activity aimed at identifying voters. But whatever the intent, inherent in the acquisition of such a list is the identification of voters.'' *Shays* at 108. Because the court saw ''no evidence that *Congress intended* to exclude certain forms of activities that identify voters when it used the term 'voter identification' '' the court held that the Commission's decision not to include acquisition of voter lists in the definition of ''voter identification'' failed *Chevron* step one. *Shays* at 108 (emphasis in original). The court held that the exception for State and local candidate and officeholder associations violated *Chevron* step one for the same reasons discussed above regarding the same exclusion in the GOTV regulation. *Shays* at 107 n.83.

To comport with this ruling, proposed section 100.24(a)(4) would include acquisition of voter lists in the definition of ''voter identification.'' Thus, the acquisition of voter lists would be considered FEA if it occurs after the earliest filing deadline for the ballot in an even-numbered year and after the date is set for a special election in which a candidate for Federal office appears on the ballot. *See* 11 CFR 100.24(a)(1) and 100.24(b)(2). The Commission would use the date the information was purchased to determine whether the acquisition of a voter list falls within the FEA timeframes and would therefore be a Federal election activity. This interpretation would have the advantage of being a bright-line rule for the Commission and political parties. In addition, this interpretation would be consistent with the reporting requirements, as a political party would report the disbursement for a voter list at the time of purchase. The Commission seeks comment on whether this application of the rule would encourage State party committees to purchase voter lists outside the FEA window so that they would be able to allocate their purchases under 11 CFR 106.7(d)(3) (using a mix of Federal and non-Federal funds) rather than being required to allocate under 11 CFR 300.33 (using a mix of Federal and Levin funds). Do voter lists lose sufficient value over time so that the benefit of being able to use a mix of Federal and non-Federal funds would be outweighed by having an up-to-date voter list closer to an election? Would the use of the purchase date raise other concerns?

Alternatively, the Commission also seeks comment on an alternative application of the rule that would use the date the voter list was used to determine whether the acquisition of a voter list falls with the FEA timeframes and would therefore be a Federal election activity. Under this alternative, a voter list that was purchased before the FEA period would nonetheless be subject, at least in part, to Federal and Levin funds requirements whenever it was used within the FEA period. Triggering the FEA provisions based on the use of a voter list would discourage any attempts to avoid those requirements by purchasing a list early for intended use during the FEA period. However, this approach could raise allocation and valuation issues if the voter list is purchased outside the FEA window and used by the political party committee both inside and outside the window.

The Commission is concerned about how this proposed rule may affect a State party committee's ability to acquire a voter list in preparation for a general election in an odd-numbered year in which a special election to fill a Federal office is called contemporaneously with its acquisition of a voter list. The purpose of the definition of ''in connection with an election in which a candidate for Federal office appears on the ballot'' in 11 CFR 100.24(a)(1) is to ensure that the regulation would not affect activities that are purely non-Federal in nature. *See Soft Money E&J*, 67 FR at 49066. In the situation described above, requiring a State party committee to use Federal funds to acquire a voter list that it will use only for a general election where no candidate for Federal office is on the ballot may be beyond the purpose of the regulations relating to Federal election activity. The Commission seeks comment on whether the regulation should include a limited exception to the definition of ''voter identification'' for acquisition of voter lists if the State, or local party committee does not actually use the voter list in connection with any election where a Federal candidate appears on the ballot.

Proposed section 100.24(a)(4) also would remove the exception for associations or groups of candidates for State or local office, and associations of State and local officeholders, that engage in voter identification activity that refers only to State or local candidates. Is there another approach that would address the Commission's concerns while still comporting with Congressional intent, as determined by the *Shays* court? As discussed above, the Commission is also seeking public comment regarding the impact of removing this exception for groups of non-Federal candidates, and the ability of those groups to pay for FEA by allocating between Federal and non-Federal funds under existing regulations at 11 CFR 106.6.

4. Proposed 11 CFR 100.24(a)(1)—Definition of ''In Connection With an Election in Which a Candidate for Federal Office Appears on the Ballot''

Voter identification, GOTV, and generic campaign activity constitute FEA when those activities are conducted ''in connection with an election in which a candidate for Federal office appears on the ballot.'' 2 U.S.C. 431(20)(A)(ii). In defining this phrase, a Commission regulation establishes the timeframe in which these activities are FEA, and are collectively ''type 2 FEA.'' 11 CFR 100.24(a)(1)(i) and (ii). The Commission is considering whether to make some limited exceptions and one change to the operation of the type 2 FEA time periods in current 11 CFR 100.24(a)(1)(i) and (ii).

Proposed revisions to section 100.24(a)(1)(ii) would change the operation of type 2 FEA time periods that are related to special elections for Federal office. Currently, this provision is limited so that it only applies in odd numbered years, and the proposed revisions would eliminate this limitation. While many special elections that occur in even numbered years will fall in time periods already covered by paragraph (a)(1)(i), the removal of the limitation could extend the type 2 FEA time period when a State schedules a special election for Federal office before the type 2 FEA time period under paragraph (a)(1)(i) has begun. The Commission seeks comment on this proposed change.

The Commission is concerned that treating State party committees' voter drives that are related to a State or local election as FEA because of an upcoming special election for Federal office would unduly federalize an election that was initially scheduled to decide State and local races. To address this issue, the Commission is considering adopting an exception to section 100.24(a)(1)(ii) so that the type 2 FEA time periods would not include the period before any special election for Federal office that is scheduled to be held on the same date as a previously scheduled State or local election. This exception does not appear in the proposed rules that follow. Is such an exception consistent with FECA, as amended by BCRA? Would an exception that is limited to voter drives that refer only to State or local candidates be too narrowly tailored to address this concern? Alternatively, should any voter drives that refer to candidates for Federal office be excluded from the exception so that the FEA rules would still apply to such voter drives?

Proposed new section 100.24(a)(1)(iii) would create an exception to type 2 FEA time periods for certain municipal elections. The municipal elections that would be subject to the exception are those that take place on a date other than Federal election dates, but still during the type 2 FEA timeframes specified in 11 CFR 100.24(a)(1)(i). The rationale for such an exception might be that municipalities have chosen an election date apart from State or Federal elections in an effort to disentangle State and Federal contests from local elections to leave the local elections nonpartisan. If that local election date is nonetheless within the type 2 FEA timeframes specified in 11 CFR 100.24(a)(1), then all of the FEA requirements of Federal law would apply, chief among them the requirement that State, district or local committees of political parties use only Federal or a combination of Federal and Levin funds to pay for type 2 FEA. 2 U.S.C. 441i(b).

The Commission seeks comment on this proposed exception, which is reflected in the proposed regulatory language that follows. Is the exception adequate to address the concerns? Is it consistent with FECA, as amended by BCRA? Do any practical considerations tend either to support or to oppose such an exception?

Alternatively, the regulation could be revised to address the same concerns more narrowly. One example of a more limited exception would be to exclude GOTV that takes place within 72 hours before an election that does not include an election for Federal office. The 72-hour standard is borrowed from the Commission's first example of the non-exhaustive list of examples of GOTV in 11 CFR 100.24(a)(3)(i). The Commission seeks comment on whether GOTV that takes place only shortly before a local election where no Federal candidates are on the ballot may merit an exception from the type 2 FEA time periods, while an exception for other forms of FEA may not be appropriate. Would any other limitations on the exception be more suitable? Please note that the proposed regulation text that follows does not reflect the more narrow alternative exceptions to the type 2 FEA time periods.

The Commission also seeks comment on whether similar exceptions would be appropriate for voter registration activity, or type 1 FEA. BCRA establishes that voter registration activity is Federal election activity ''during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election.'' 2 U.S.C. 431(20)(A)(i). Would any exceptions to this timeframe to address any of the situations described above be permissible under BCRA? If so, should any such exceptions be adopted?

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 the organizations affected by this proposed rule are State, district, and local party committees, which are not ''small entities'' under 5 U.S.C. 601. These not-for-profit committees do not meet the definition of ''small organization'' which requires that the enterprise be independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties might be considered ''small organizations,'' the number affected by this proposed rule is not substantial.

List of Subjects in 11 CFR Part 100

Elections.

For reasons set out in the preamble, subchapter A of chapter 1 of title 11 of the Code of Federal Regulations would be amended as follows:

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

1. The authority citation for 11 CFR part 100 would continue to read as follows:

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

2. In § 100.24, paragraphs (1)(i), (ii), (iii), (2), (3), and (4)(a) would be revised to read as follows:

§ 100.24 Federal Election Activity (2 U.S.C. 431(20)).

(a) * * *

(1) * * *

(i) Except as provided in paragraph (a)(1)(iii) of this section, the period of time beginning on the date of the earliest filing deadline for access to the primary election ballot for Federal candidates as determined by State law, or in those States that do not conduct primaries, on January 1 of each even-numbered year and ending on the date of the general election, up to and including the date of any general runoff.

(ii) The period beginning on the date on which the date of a special election in which a candidate for Federal office appears on the ballot is set and ending on the date of the special election.

(iii) In municipalities that elect local officials in elections that do not coincide with primary or general elections for Federal office but occur during the period described in paragraph (a)(1)(i) of this section, the following periods of time are excluded from the periods described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section:

(A) For municipalities that hold local elections before primary elections for Federal office, from the beginning of the period described in paragraph (a)(1)(i) up to and including the date of the municipal election; and

(B) For municipalities that hold primary elections for Federal office before local elections, from the day after the primary election for Federal office up to and including the date of the municipal election.

(2) *Voter registration activity* means contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote. Voter registration activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.

(3) *Get-out-the-vote activity* means contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting. Get-out-the-vote activity includes, but is not limited to:

(i) Providing to individual voters, within 72 hours of an election, information such as the date of the election, the times when polling places are open, and the location of particular polling places; and

(ii) Offering to transport or actually transporting voters to the polls.

(4) *Voter identification* means acquiring information about potential voters, including, but not limited to, obtaining voter lists and creating or enhancing voter lists by verifying or adding information about the voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates.

* * * * *

Dated: April 29, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–8864 Filed 5–3–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 106 and 300

[NOTICE 2005–12]

State, District, and Local Party Committee Payment of Certain Salaries and Wages

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comment on proposed changes to regulations regarding payments by State, district or local party committees for salaries and wages of employees who spend 25 percent or less of their compensated time in a month on Federal election activity and activity in connection with Federal elections. Currently, these committees may use funds whose only restriction is that they comply with State law. The proposed changes would require these expenses to be paid using at least some Federal funds, consistent with the ruling of the United States District Court for the District of Columbia in *Shays* v. *Federal Election Commission.* The Commission is appealing this ruling to the DC Circuit. In the interim, the Commission is initiating this rulemaking. The Commission has not made any final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before June 3, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on the proposed rules. Anyone wishing to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, addressed to Ms. Mai T. Dinh, and submitted in either electronic, facsimile, or hard copy form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic comments must be sent to either *StatePartyWages@fec.gov* or submitted through the Federal eRegulations Portal at *http://www.regulations.gov.* If the electronic comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with hard copy follow-up. Hard copy comments and hard 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 comments on its Web site after the comment period ends. If the Commission decides a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002 (''BCRA''), Pub. L. 107–155, 116 Stat. 81 (March 27, 2002), contained extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended (the ''Act''), 2 U.S.C. 431 *et seq.* Under BCRA, State, district and local party committees (''State party committees'') must pay the salaries and wages of employees who spend more than 25 percent of their compensated time per month on Federal election activity and activities in connection with a Federal election (collectively ''Federal-related activities'') entirely with Federal funds.[1] 2 U.S.C. 431(20)(A)(iv) and 441i(b)(1). However, BCRA is silent on what type of funds State party committees must use to pay the salaries and wages of employees who spend some, but not more than 25 percent, of their compensated time per month on Federal-related activities. In 2002, the Commission promulgated 11 CFR 106.7(c)(1) and (d)(1)(i), and 300.33(c)(2) to address salaries and wages for both types of employees. Under these rules, State party committees may pay the salaries or wages of employees who spend 25 percent or less of their compensated time each month on these activities

[1] ''Federal funds'' are funds that are subject to the contribution limitations, source prohibitions, and reporting requirements of the Act. 11 CFR 300.2(g).