

cited regulations because corporations and labor organizations are permitted to contribute funds and in-kind contributions in connection with a nominating convention. Similarly, according to the petition, 2 U.S.C. 441i of BCRA is violated by 11 CFR 9008.52(c) because it allows national party committees to receive in-kind contributions paid for with corporate and labor organization funds. In support of its position, the petition puts forth a statutory and regulatory analysis, and it cites and attaches many articles from various media outlets that purport to describe convention financing practices. The petition is available on the Commission's website.

The petition's conclusion that the cited host committee regulations violate FECA and BCRA obviously contradicts the Commission's treatment of host committees since 1977. The proposed rules that follow are consistent with the Commission's historical treatment of host committees and do not reflect the position advanced by the petitioners. Nonetheless, the Commission seeks comment on whether corporate or labor organization donations to host committees under the conditions prescribed in current 11 CFR 9008.52(c) are contrary to FECA or BCRA. If the approach sought by the petition were adopted, the Commission also seeks comment on whether the exemption from the convention committee expenditure limit for host committee expenses, 11 CFR 9008.8(b)(1), should also be repealed. Similarly, the Commission also seeks comment on whether corresponding changes would be required for the municipal fund regulations, 11 CFR 9008.8(b)(2) and 9008.53.

IV. Application of BCRA's Non-Federal Funds Provisions to Convention Committees, Host Committees and Municipal Funds

Under BCRA, "[a] national committee of a political party * * * may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of [FECA]." 2 U.S.C. 441i(a)(1). BCRA also prohibits officers and agents of the national party committees and entities that are "directly or indirectly established, financed, maintained, or controlled" by national party committees from soliciting, receiving, directing, or spending such non-Federal funds. 2 U.S.C. 441i(a)(2); *see also* 11 CFR 300.10(c)(1) and 300.10(c)(2). BCRA also prohibits Federal candidates and

officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more Federal candidate or officeholder from soliciting, receiving, directing, transferring, or spending non-Federal funds in connection with an election for Federal office. 2 U.S.C. 441i(e)(1)(A); *see also* 11 CFR 300.61.⁴

The Commission has promulgated rules implementing BCRA's new restrictions and prohibitions on the receipt, solicitation, direction, and use of certain types of non-Federal funds by political party committees, candidates, and officeholders. *See Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49064 (July 29, 2002) (hereinafter "Non-Federal Funds Final Rules"). In this rulemaking, the Commission considers the impact of these new restrictions and prohibitions in BCRA and the Non-Federal Funds Final Rules on national nominating conventions. Specifically, the Commission considers the roles filled by national political party committees, their convention committees, host committees, and municipal funds, as well as the involvement of Federal candidates and officeholders.

A. Are Host Committees and Municipal Funds "Agents" of National Party Committees Under 2 U.S.C. 441i(a) and (e) and 11 CFR 300.2(b)?

One issue that arises from BCRA's ban on national parties soliciting, receiving, directing, and using non-Federal funds is whether host committees and municipal funds are "agents" of national party committees. In the Non-Federal Funds Final Rules, the Commission defined an "agent," for purposes of 11 CFR part 300, as "any person who has actual authority, either express or implied * * * to solicit, direct, or receive any contribution, donation, or transfer of funds" on behalf of a national committee of a political party. 11 CFR 300.2(b). The Commission seeks comment on whether host committees and municipal funds satisfy the definition of "agents" in 11 CFR 300.2(b) with respect to the national political party committees or their convention committees. If host committees and municipal funds are "agents" of national party committees, then they, like the national party

committees themselves, would be prohibited from soliciting, receiving, directing, or spending non-Federal funds by operation of 2 U.S.C. 441i(a)(1) and (2) and 11 CFR 300.10(a) and (c)(1).

The Commission does not propose regulatory text that would presume that host committees or municipal funds would necessarily qualify as "agents" of the national political parties. This approach, if adopted, would not preclude the Commission from determining that in a particular case a host committee or municipal fund does, in fact, meet the definition of "agent" in 11 CFR 300.2(b) with respect to the pertinent national party committee. The Commission also seeks comment on whether host committees and municipal funds should be treated *per se* as not agents of national party committees and, therefore, as not subject as a matter of law to 2 U.S.C. 441i(a)(2) or 11 CFR 300.10(c)(1) as agents acting on behalf of a national party committee, no matter how such host committees and municipal funds operate or interact with the national party committees.

The Commission is also considering an alternative approach, whereby host committees and municipal funds would be treated as *per se* agents of national party committees. Such an approach would limit permissible funds for a host committee or municipal fund to funds subject to FECA's limitations, prohibitions, and reporting requirements, regardless of how the host committees and municipal funds functioned and related to the national party committees. If the Commission were to consider host committees and municipal funds as *per se* agents of convention committees, how should it restructure the rules relating to national nominating conventions in 11 CFR part 9008? Would host committees or municipal funds be Federal political committees? Would all their transactions with convention committees amount to in-kind contributions? If host committees and municipal funds are limited to funds subject to FECA's limitations, prohibitions, and reporting requirements, should any uses of such funds be exempt from the convention committee's expenditure limit? The Commission recognizes that host committees and municipal funds supplement the funds that are otherwise capped by the expenditure limit and therefore removing the exemption from the expenditure limit for host committees and municipal funds would have a profound impact on convention financing. The Commission seeks comment on whether such a result is mandated by BCRA.

⁴ In connection with any election other than an election for Federal office, BCRA also prohibits the same persons from soliciting, receiving, directing, transferring, spending, or disbursing funds in excess of the amounts permitted under 2 U.S.C. 441a(a) or funds from sources prohibited by FECA. 2 U.S.C. 441i(e)(1)(B).