

funds or make in-kind donations to a host committee to be used for the purposes listed in 11 CFR 9008.52(c)(1). A review of this list reveals that many of the contemplated transactions could not be characterized as in-kind donations to the convention committee, but instead relate to the provision of services primarily used by convention attendees. For example, the permitted expenses' purposes include: Welcoming convention attendees; facilitating commerce by distributing guides to attendees; providing bus transportation; and providing law enforcement services. See 11 CFR 9008.52(c)(1). In order to conclude that the convention committee received "a contribution, donation, or transfer of funds or any other thing of value * * * that are not subject to the limitations, prohibitions, and reporting requirements of [FECA]," the Commission would need to determine that the convention committee itself received something of value. In many of the transactions contemplated by 11 CFR 9008.52(c)(1), host committees are providing something of value to convention delegates, other attendees, press, local businesses, and the local community; in these transactions the convention committee is a bystander, not a recipient of something of value. When a host committee provides, for example, a shopping/dining guide, to convention attendees, it is difficult to conclude that the convention committee received anything of value. The Commission seeks comment on whether BCRA requires that permissible host committee and municipal fund expenses must be limited to such activities.

Other permissible host committee and municipal fund expenses certainly provide something of value to the convention committee. For example, host committees and municipal funds are permitted to provide an auditorium or convention center and construction services for that location. 11 CFR 9008.52(c)(1)(v). The Commission seeks comment on whether BCRA permits host committees and municipal funds to provide things of value to convention committees. Assuming that it does, in order to ensure that non-Federal funds raised by host committees and municipal funds are not spent on behalf of convention expenses beyond the "very narrow" host committee/municipal fund exception to the convention committee's expenditure limit, however, the Commission is also considering revising its regulations to more precisely circumscribe the permitted purposes for host committee and municipal fund expenses as

discussed below. See *Explanation and Justification for Regulations on Federal Financing of Presidential Nominating Conventions and the Presidential Election Campaign Fund*, 44 FR 63036, 63038 (Nov. 1, 1979) (stating: "Defrayal of convention expenses by a host committee is intended to be a very narrow exception to the statutory limitation on convention expenses.").

D. Solicitation of Funds for Host Committees and Municipal Funds Under BCRA

1. 2 U.S.C. 441i(a) and (e)(1)

As explained above, BCRA prohibits national party committees, as well as their agents and entities they directly or indirectly establish, finance, maintain, or control from soliciting or directing non-Federal funds on behalf of, or to, others. 2 U.S.C. 441i(a). BCRA also prohibits Federal candidates and individuals holding Federal office from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(e)(1)(A). BCRA extends these prohibitions to the agents of Federal candidates acting on their behalf and individuals holding Federal office and entities directly or indirectly established, financed, maintained, or controlled by either. 2 U.S.C. 441i(e)(1).

The foregoing restrictions on Federal candidates and officeholders under 2 U.S.C. 441i(e)(1), in contrast to the restrictions on national party committees under 2 U.S.C. 441i(a), only apply to funds "in connection with an election for Federal office" or any other election. 2 U.S.C. 441i(e)(1)(A) and (B). The Commission seeks comment on what impact this statutory distinction has on any of the issues addressed in this rulemaking.

Are *all* host committee and municipal fund activities "in connection with an election for Federal office" or any other election within the meaning of 2 U.S.C. 441i(e)? If not, are *any* such activities "in connection with an election for Federal office"? If none satisfy that statutory phrase, do the prohibitions and limitations of section 441i(e) not apply as a matter of law to the funds solicited, raised, and spent by host committees and municipal funds on that basis alone? In the alternative, are host committee and municipal fund activities subject to this provision of 2 U.S.C. 441i(e) only if they are *not* for the purpose of promoting the convention city and its commerce? As described above, the Commission's past treatment

of host committee and municipal fund expenses viewed those expenses as a permissible exception to the prohibition on corporate or labor organization funds because they lacked an election-influencing purpose. FECA's definitions of "contribution" and "expenditure" both require that such be made "for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i) and 431(9)(A)(i). Does the Commission's determination that certain permissible host committee and municipal fund expenses are not "contributions" or "expenditures" also require that the Commission determine those expenses are not "in connection with an election for Federal office" under 2 U.S.C. 441i(e)(1)(A)?

Are any of the costs of conducting a convention "in connection with an election for Federal office"? FECA clearly defines "election" to include "a convention or caucus of a political party which has the authority to nominate a candidate." 2 U.S.C. 431(1)(B). However, other election administering expenses, whether incurred by States or privately funded in those States that require political parties to pay the costs of certain primary elections, are not considered FECA-regulated expenses. See, e.g., AO 1991-33 (noting that the parties act as agents of the State in performing the ministerial functions of administering the primaries). Are the costs of conducting a convention, whether incurred by a convention committee, host committee, or municipal fund, regulated by FECA, other than those provisions that expressly mention convention activities? Although the Fund Act provides for grants of public funds to pay these expenses and imposes an expenditure limitation in exchange for accepting such a grant, should the Commission conclude that some or all of the expenses of conducting a nominating convention are not subject to FECA as amended by BCRA? If the Commission determines that these expenses are *not* in connection with a Federal election, what changes should it make to its regulations?

The Commission carefully considered the scope of BCRA's prohibition on solicitation and direction of non-Federal funds by national party committees, Federal candidates, Federal officeholders, and their agents in the Non-Federal Funds Final Rules. See 67 FR at 49087-93, 49106-09, 49122-23, and 49131-32. The Commission seeks comment on whether the new rules implementing BCRA's ban on the solicitation of non-Federal funds are sufficient to resolve the question of whether national party committees,