

Federal candidates, Federal officeholders, or their agents may solicit funds for host committees and municipal funds. *See* 11 CFR part 300, subparts A and D. Alternatively, should the Commission promulgate an additional regulation in its Federal Financing of Presidential Nominating Conventions regulations (11 CFR part 9008) that would specifically apply BCRA and the Non-Federal Funds Final Rules to the financing of national nominating conventions and explain how the Commission's regulations in 11 CFR part 300 work in this context?

2. 2 U.S.C. 441i(d)

BCRA prohibits national party committees, their officers and agents acting on their behalf, and entities directly or indirectly established, financed, maintained, or controlled by them from soliciting any funds for, or making or directing any donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d). BCRA's prohibition on this type of donor and fundraising activity extends only to tax-exempt organizations with a political purpose or that conduct activities in connection with a Federal election. Specifically, this prohibition extends to tax-exempt organizations described in 26 U.S.C. 501(c) that make "expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity)" and organizations described in 26 U.S.C. 527. *Id.* In considering how to implement these BCRA provisions, the Commission concluded that a safe harbor is an appropriate way to help ensure that party committees, and others to whom 11 CFR 300.11 and 300.37 apply, comply with the Act.

Commission regulations at 11 CFR 300.11 and 300.50 implement this safe harbor and set forth a process by which a section 501(c) organization can certify that it does not make expenditures or disbursements in connection with an election for Federal office. Under 11 CFR 300.11(c) and 300.50(c), national party committees, their agents, and entities they directly or indirectly establish, finance, maintain, or control may obtain and rely upon a certification that the organization has not and does not intend to make expenditures or disbursements in connection with an election for Federal office as specified in 11 CFR 300.11(d).

The Commission seeks comment on whether, as a matter of law, host committees and municipal funds make "disbursements" in connection with an election for Federal office, even as they adhere to the requirements in current 11

CFR 9008.52, which arguably would leave host committees and municipal funds outside the certification safe harbor set out in 11 CFR 300.11. A "disbursement" is defined, in 11 CFR 300.2(d), as "any purchase or payment made by: (1) a political committee; or (2) any other person, including an organization that is not a political committee, that is subject to [FECA]." The Commission has historically treated host committees and municipal funds as organizations that are subject to FECA that make purchases or payments in connection with a Federal election because FECA defines presidential nominating conventions as Federal elections. 2 U.S.C. 431(1)(B). As is noted above, the Commission is seeking comment on whether this historical treatment of host committees and municipal funds is appropriate. The Commission's past treatment of permissible host committee and municipal fund disbursements has been that they are not expenditures for the purpose of influencing an election and, therefore, are not subject to the corporate and labor organization prohibition in 2 U.S.C. 441b. However, BCRA reaches far beyond expenditures and requires only "disbursements in connection with an election" to make a 501(c) organization subject to the prohibition in 2 U.S.C. 441i(d)(1). The Commission seeks comment on what impact this BCRA statutory provision has, if any, on the Commission's treatment of host committees and municipal funds.

The Commission proposes a new regulation, 11 CFR 9008.55, in order to apply 11 CFR part 300 to the solicitation of funds for those host committees or municipal funds that have 26 U.S.C. 501(c) status. Paragraph (a) would state the general proposition that all host committee and municipal fund payments in compliance with 11 CFR part 9008 are disbursements in connection with a Federal election for purposes of 11 CFR part 300. Paragraph (b) would state that host committees and municipal funds would not be eligible to make the certification pursuant to 11 CFR 300.11(d). The Commission seeks comment on the proposed new regulation and the approach embodied in it.

In the alternative, the Commission seeks comment on whether host committees and municipal funds should be eligible to make the certification pursuant to 11 CFR 300.11(d) and, if so, under what circumstances? The Commission also seeks comment on whether Congress, in enacting BCRA, in any way intended to restrict convention financing practices that were legal

before BCRA became law, including the activities of host committees and municipal funds (and any involvement therein by national party committees, Federal candidates, Federal officeholders, and their agents.) Specifically, comment is sought on whether permissible host committee and municipal fund expenses do not constitute disbursements in connection with an election.

3. 2 U.S.C. 441i(e)(4)

In 2 U.S.C. 441i(e)(1), BCRA prohibits Federal candidates and officeholders⁵ from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal or non-Federal office unless the funds meet the source and amount restrictions of the Act. *See also* 11 CFR 300.61 and 11 CFR 300.62. BCRA creates two exceptions from that general rule in 2 U.S.C. 441i(e)(4). First, BCRA allows Federal candidates, individuals holding Federal office, and individuals who are agents acting on behalf of either to make general solicitations, without source or amount restrictions, for a 501(c) organization, other than organizations whose "principal purpose" is to conduct certain Federal election activity, specifically voter registration, voter identification, GOTV activities, or generic campaign activity, so long as the solicitation does not specify how the funds will be spent. Second, BCRA permits Federal candidates and Federal officeholders, and individuals who are agents acting on their behalf, to make a solicitation explicitly to obtain funds for a 501(c) organization whose principal purpose is to conduct Federal election activity as described above or for a 501(c) organization to conduct these activities, provided that only individuals are solicited for no more than \$20,000 per calendar year. The final rule at 11 CFR 300.65 implements these exceptions for Federal candidate and officeholder solicitations for 501(c) organizations.

As noted above in connection with national party committee solicitations of non-Federal funds, host committees and municipal funds operating in compliance with 11 CFR part 9008

⁵ An "individual holding Federal office" is defined as "an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States." 11 CFR 300.2(o). It does not include those "who are appointed to positions such as the secretaries of departments in the executive branch, or other positions that are not filled by election." Non-Federal Funds Final Rules, 67 FR at 49,087. This definition is identical to the definition of "Federal officeholder" in 11 CFR 113.2(c).