

arguably make disbursements in connection with the national nominating convention, which is an election under FECA. Under 11 CFR 300.52(a)(1) and 300.65(a)(1), Federal candidates, individuals holding Federal office, and agents acting on their behalf are prohibited from making general solicitations of non-Federal funds for 501(c) organizations that "engage in activities in connection with an election." Accordingly, the exception permitting Federal candidates, Federal officeholders, and their agents to make general solicitations on behalf of 501(c) organizations would arguably not, as a matter of law, apply to host committees and municipal funds. In addition, the exception permitting Federal candidates, Federal officeholders, and their agents to make specific solicitations for certain 501(c) organizations may not, as a matter of law, apply to host committees and municipal funds because it is not their principal purpose to engage in certain types of Federal election activity described in 2 U.S.C. 431(20)(A)(i) and (ii).

To make clear that the above-described exceptions to the general ban on solicitation do not apply to solicitation of non-Federal funds by Federal candidates, Federal officeholders, and their agents on behalf of host committees and municipal funds, the Commission is considering adding a new provision to part 9008. See new 11 CFR 9008.55. Paragraph (c) of this section would state that host committees and municipal funds are ineligible for the exceptions in 11 CFR 300.65. The Commission seeks comment on this approach.

E. Effect of BCRA on Offsets

The Commission has permitted convention committees to "offset" in-kind contributions received from host committees that are deemed impermissible in post-convention audits. Rather than require repayment of 100% of these receipts, the convention committee may offset them with convention committee expenditures that could have been paid by the host committee. The Commission seeks comment on whether BCRA requires any reevaluation of this practice.

F. Effect of BCRA on Commercial Vendor Activities Related to Nominating Conventions

The current rules at 11 CFR 9008.9 permit convention committees to receive goods and services from commercial vendors, including corporations, at reduced or discounted rates, or at no charge, under certain

circumstances. The prohibition in BCRA against the receipt of non-Federal funds, 2 U.S.C. 441a(a), may necessitate a change to this regulation.

Current 11 CFR 9008.9(a) permits commercial vendors, including businesses that are incorporated, to provide reductions or discounts in the ordinary course of business; that is, if the vendor has an established practice of providing the same reductions or discounts for the same amount of goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. The Commission believes this provision is consistent with BCRA and therefore proposes to retain it in its current location. It would be revised to combine the introductory text and to make other conforming changes based on the other proposed changes to the rule described below.

Current provisions (b) and (c) of 11 CFR 9008.9, however, address items provided for promotional consideration (which are something of value), such as complimentary, temporary use of automobiles, and items of *de minimis* value, such as tote bags for convention attendees. The rationale for the promotional consideration exception was explained in Advisory Opinion 1988-25, where the Commission considered whether it was permissible, under FECA and the Fund Act, for General Motors to provide complimentary use of automobiles to convention committees for use during the 1988 Democratic and Republican conventions in exchange for GM's ability to advertise the fact that its vehicles were the "official" vehicles of the respective conventions. The Commission concluded that GM's provision of 500 automobiles to the Democratic and Republican convention committees in exchange for advertising rights did not violate the prohibition against corporate contributions in connection with a Federal election, in 2 U.S.C. 441b(a). The Commission based its conclusion primarily on evidence that GM had a practice of providing complimentary use of automobiles to other, non-political conventions of similar size and duration in exchange for such advertising authority and on evidence that the value of GM's donation was proportionate to the commercial return GM expected to receive during the life of the convention.

The rationale for allowing commercial vendors to provide items of *de minimis* value at little or no charge to convention attendees was explained in Advisory Opinion 1980-53, where the

Commission considered whether it was permissible, under FECA and the Fund Act, for Kelly Services, Inc., to provide, at no charge, tote bags to persons attending the 1980 Democratic and Republican conventions. The Commission concluded that Kelly Services' provision of 9,200 tote bags to the Democratic convention and 7,600 tote bags to the Republican convention did not violate the prohibition against corporate contributions in connection with a Federal election, in 2 U.S.C. 441b, and did not count toward the national parties' expenditure limits, in 11 CFR 9008.7(a). The Commission based its conclusion on three factors: (1) The low cost of the tote bags (\$2.12 each); (2) evidence that the tote bags were being provided solely for bona fide advertising purposes of a local business; and (3) evidence that the tote bags were provided in the ordinary course of Kelly Services' business.

While the provision of items for promotional consideration and items of *de minimis* value were permissible under FECA and the Fund Act, these provisions may contravene BCRA's prohibition on national party committee acceptance of non-Federal funds, 2 U.S.C. 441i(a)(1), by authorizing national party committees to receive and accept something of value not paid for with Federal funds. The Commission seeks comment on whether these practices, which were legally permissible in the past, are barred by BCRA. However, as explained above, the rules proposed in this NPRM contemplate that it is still appropriate for host committees and municipal funds to accept these corporate in-kind donations, provided such donations are in accordance with 11 CFR 9008.52 and 9008.53. Accordingly, the Commission is proposing to move the provisions of current 11 CFR 9008.9(b) and (c) (convention committees) to 11 CFR 9008.52(a) (host committees), with a conforming amendment to 11 CFR 9008.53(a) (municipal funds). The introductory text would no longer reference the provision of goods or services at no charge as that reference pertained to paragraphs (b) and (c).

Under this reorganization, current paragraph (d) of 11 CFR 9008.9, which states that the value of goods or services provided under this section do not count towards the national party's expenditure limit, would be retained as redesignated paragraph (b) of 11 CFR 9008.9, but would be limited to standard industry reductions and discounts provided pursuant to 11 CFR 9008.9(a). The definition of "commercial vendor" would continue to be that set out at 11 CFR 116.1(c):