

expenses, they are in essence raising funds for the convention committee, which would make host committees agents under 11 CFR 300.2(b)(1)(i).

The Commission has decided that the regulatory definition of “agent” of a national committee of a political party in 11 CFR 300.2(b)(1) sufficiently addresses the issue of when a host committee will be considered an agent of a national committee of a political party. It provides for a fact-specific determination, rather than a *per se* rule applicable to all host committees and municipal funds. Accordingly, the Commission has decided to adopt a new provision, 11 CFR 9008.55(b), simply stating that host committees and municipal funds are not agents of national party committees, except as provided in 11 CFR 300.2(b)(1).

The Commission’s experience is that host committees typically do not have authority to solicit, direct, or receive any contribution, donation, or transfer of funds on behalf of the national committees of political parties. Thus, as long as host committees and convention committees conduct their affairs as they have in the past, host committees will not be considered agents of convention committees. National party committees, convention committees, and host committees should look to 11 CFR 300.2(b)(1) for guidance on under what circumstances a host committee would be an agent of a national party committee or convention committee. In effect, this approach amounts to a presumption that host committees and municipal funds are not agents of the national party committee. Such a presumption could be rebutted by a showing that the conditions of §300.2(b)(1)(i) or (ii) are satisfied by the relationship of a particular host committee and convention committee. If a particular host committee or municipal fund were to become an “agent” of a national party committee, then it, like the national party committee itself, 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).

11 CFR 9008.55(c)—Historically, Host Committees and Municipal Funds Are Not Entities “Directly or Indirectly Established, Financed, Maintained, or Controlled” by National Party Committees

The prohibitions on national party committees under BCRA also apply to entities that are “directly or indirectly established, financed, maintained, or controlled” by a national party committee. 2 U.S.C. 441i(a)(2); 11 CFR

300.10(c)(2). As noted above, 11 CFR 300.2(c) provides a non-exhaustive list of factors that may be considered in determining whether an entity is directly or indirectly established, financed, maintained, or controlled by a national party committee. 11 CFR 300.2(c). *See Non-Federal Funds Final Rules*, 67 FR at 49084 (“the affiliation factors laid out in 11 CFR 100.5(g) properly define ‘directly or indirectly established, financed, maintained, or controlled’ for purposes of BCRA”). The resolution of this issue requires a fact-specific evaluation of the circumstances.

The NPRM sought comment on whether host committees and municipal funds satisfy the factors listed in 11 CFR 300.2(c) and should, therefore, be considered entities that are directly or indirectly established, financed, maintained, or controlled by the national party committees holding conventions in the relevant cities. The NPRM posed the corresponding *per se* alternatives on this question as it did on the agency issue, discussed above.

The commenters divided on this issue as well. Some commenters contended that the party committees control or coordinate with host committees so closely that host committees are affiliates of the national party committees. One commenter argued that the rules should not presume the organizations affiliated, but should instead rely on the factors listed in 11 CFR 300.2(c). This commenter also noted that two of those factors nearly always exist between the host committee and the convention committee. The two factors are that the party committees provide funds in a significant amount to host committees by virtue of selecting their cities to host the conventions, 11 CFR 300.2(c)(1)(vii), and that the party committees and host committees have a similar pattern of receipts that indicate a formal or ongoing relationship under 11 CFR 300.2(c)(1)(x). Other commenters disagreed; they argued that host committees are not directly or indirectly established, financed, maintained, or controlled under 11 CFR 300.2(c)(1). Both host committees cited detailed facts about their organizations to show that their organizations’ relationship with the respective national party committees do not satisfy the factors listed in the definition of “directly or indirectly establish, finance, maintain, or control.” 11 CFR 300.2(c)(2)(i) through (x).

The Commission has decided that the regulatory definition of “directly or indirectly establish, finance, maintain or control” by a national committee of a political party in 11 CFR 300.2(c)(1)

sufficiently addresses the issue. Section 300.2(c)(1) provides for a fact-specific evaluation of particular circumstances, rather than a *per se* rule applicable to all host committees and municipal funds. The Commission has decided therefore to adopt a new provision, 11 CFR 9008.55(c), stating that host committees and municipal funds are not directly or indirectly established, financed, maintained, or controlled by a national political party, except as provided in 11 CFR 300.2(c).

The Commission’s experience is that host committees typically would not meet the affiliation test established in 11 CFR 300.2(c)(1). Thus, so long as host committees and convention committees conduct their affairs as they have in the past, host committees will not be considered directly or indirectly established, financed, maintained, or controlled by a national party committee. In effect, this approach amounts to a presumption that host committees are not directly or indirectly established, financed, maintained, or controlled by a national party committee. Such a presumption could be rebutted by a showing that the conditions of 11 CFR 300.2(c) are satisfied by the relationship of a particular host committee or municipal fund and a national party committee.

11 CFR 9008.55(d)—National Party Solicitations of Funds for Host Committees and Municipal Funds

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). These prohibitions extend to funds solicited or directed for only certain 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.*; 11 CFR 300.2(a).

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).” FECA defines “election” to include nominating conventions. 2 U.S.C. 431(1)(B). The Commission’s previous treatment of permissible host committee and municipal fund disbursements has been that they are not “contributions or expenditures”