



FEDERAL ELECTION COMMISSION
Washington, DC 20463

December 17, 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2007-27

Jonathan Zucker, Esq.
COO and Counsel
ActBlue
P.O Box 382110
Cambridge, MA 02138

Dear Mr. Zucker:

We are responding to your advisory opinion request on behalf of ActBlue concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act"), and Commission regulations to ActBlue's proposal to solicit, receive, and forward contributions designated for specific separate segregated funds ("SSFs"), under two proposed fundraising programs. Under the first program ("Program 1"), ActBlue will solicit the general public on behalf of specific SSFs, for contributions designated for those SSFs. Under the second program ("Program 2"), ActBlue will work directly with specific SSFs to solicit their connected organizations' restricted classes for contributions designated for the SSFs.

The Commission concludes that ActBlue's proposed Program 1 is not permissible because ActBlue would be acting on behalf of recipient SSFs and their connected organizations when soliciting contributions designated for them, and as such would be prohibited from soliciting contributions to the SSFs from beyond the restricted classes of the SSFs' connected organizations. The Commission concludes that proposed Program 2 is permissible so long as ActBlue limits its solicitations to the restricted classes of the SSFs' connected organizations, and all costs associated with its activities under Program 2, aggregated with any contributions it makes to recipient SSFs, do not exceed the contribution amount limitations in the Act and Commission regulations.

Background

The facts presented in this advisory opinion are based on your letter received on October 19, 2007, information on ActBlue's website,¹ and conversations you had with Commission staff.

ActBlue is a nonconnected political committee registered with the Commission that was formed to enable individuals, local groups, and national organizations to raise funds for Democratic candidates of their choice. Currently, ActBlue serves primarily as a conduit for contributions earmarked for Democratic candidates and political party committees. *See* 2 U.S.C. 441a(a)(8), 432(b)(1) and (2); 11 CFR 110.6 and 102.8. ActBlue lists Democratic candidates' authorized committees and Democratic party committees on its website, and it solicits contributions designated for those political committees on its website's blog and fundraising pages. Viewers may make a contribution designated for a listed political committee through ActBlue's website. Viewers may also make their own solicitations for any listed political committee by creating their own fundraising page on ActBlue's website.

ActBlue wishes to expand its fundraising offerings by providing viewers with the choice to contribute to political committees that support political principles similar to those promoted by Democratic candidates and party committees. Specifically, ActBlue proposes two fundraising programs to solicit and receive contributions designated for approximately forty SSFs of certain corporations, labor organizations, membership organizations, cooperatives, and trade associations. ActBlue intends to include the same SSFs in both programs, if permissible.

Under Program 1, ActBlue intends to solicit the general public for contributions that are designated for the SSFs. ActBlue plans to make these solicitations without having any contact with the SSFs or their connected organizations regarding the solicitations, and ActBlue would not be paid for its fundraising.

ActBlue will solicit contributions under Program 1 exclusively via its website, including its blog and fundraising pages, and electronic mail to its own electronic mail list. Solicitations under Program 1 will inform prospective contributors that: (1) contributions must not exceed the contribution limitation in 11 CFR 110.1(d) at the time the contribution is made, and (2) all contributions designated to an SSF through ActBlue will be aggregated with the contributor's other contributions to that SSF, and that aggregate amount must not exceed the contribution limitation in 11 CFR 110.1(d). The solicitations will also include any disclaimer required under 11 CFR 110.11. ActBlue's website already contains a disclaimer stating that the website is paid for by ActBlue and is not authorized by any candidate or candidate's committee.

Under Program 2, ActBlue intends to solicit the restricted classes of the SSFs' connected organizations for contributions that are designated for the SSFs, and will work

¹ www.actblue.com (last viewed on Dec. 4, 2007).

directly with the SSFs in making solicitations under Program 2. ActBlue would not be paid for its fundraising.

Under Program 2, each solicitation made by ActBlue will be on a separate password-protected webpage of ActBlue's website. Each SSF will choose the password for that password-protected webpage and distribute the password to members of its connected organization's restricted class only. ActBlue anticipates that each SSF will make its own solicitation to members of its connected organization's restricted class directing them to the password-protected webpage on ActBlue's website.

The solicitations on the password-protected webpages will inform prospective contributors that: (1) contributions may not exceed the contribution limitation in 11 CFR 110.1(d) at the time the contribution is made, and (2) all contributions designated to an SSF through ActBlue will be aggregated with the contributor's other contributions to that SSF and that aggregate amount must not exceed the contribution limitation in 11 CFR 110.1(d). The solicitations will also notify prospective contributors of the SSF's political purposes and that their decision to contribute or not contribute is purely voluntary and without reprisal, in accordance with 11 CFR 114.5(a). The solicitations under Program 2 will include any disclaimer required under 11 CFR 110.11.

ActBlue will pay all costs associated with its solicitations under Programs 1 and 2. ActBlue anticipates, however, that SSFs participating in Program 2 will also make their own solicitations to members of their connected organizations' restricted class, and will direct the members to ActBlue's website. The SSFs will pay for their own solicitations.

ActBlue's solicitation costs under Programs 1 and 2 will include the portion of staff salaries and expenses for website development and maintenance related to listing SSFs on its website under Program 1 and creating password-protected webpages for SSFs under Program 2. Under Programs 1 and 2, ActBlue will add approximately 40 additional political committees to its website, which already lists more than 3,000 Federal and non-Federal candidates, political committees, other political organizations, and other groups to which viewers may make a contribution or donation.² You indicate that the actual solicitation costs incurred by ActBlue under Programs 1 and 2 would be extremely difficult to calculate and would be insubstantial considering that ActBlue has already developed and continuously maintains its website for its ongoing fundraising for these 3,000 entities.

All contributions under Programs 1 and 2 will be made by personal credit card. ActBlue's service provider, which processes and transmits all contributions made through ActBlue, will deduct credit card processing and transmittal fees from each contribution before transmitting it to the recipient SSF.

² Examples of such organizations include John Edwards for President, Blue America PAC, Steve Beshear for Governor, and California Draft Gore Ballot Campaign. See www.actblue.com (November 9, 2007).

ActBlue maintains a separate account for all contributions designated for an entity listed on its website, to keep the contributions separate from ActBlue's operating funds. ActBlue plans to hold contributions designated for the SSFs in this separate account, but will create an additional separate account for these contributions only, if necessary.

Within ten days of receipt of a contribution designated for an SSF, ActBlue will forward each contribution to the intended SSF recipient along with a report containing all information required under 2 U.S.C. 441a(a)(8) and 11 CFR 110.6(c)(1). ActBlue currently transmits earmarked contributions on a weekly basis to candidates' authorized committees and party committees via paper check mailed to the committees, and plans to transmit contributions designated for the SSFs in the same manner.

ActBlue will include each contribution designated for an SSF on its report for the reporting period in which the contribution was received. ActBlue will also report the disbursement of the contribution to the intended SSF recipient on the report covering the period in which the disbursement was made.

Questions Presented

1. *May ActBlue solicit, receive, and forward contributions designated for SSFs from the general public under Program 1?*
2. *May ActBlue solicit, receive, and forward contributions designated for SSFs from the restricted classes of the SSFs' connected organizations under Program 2?*

Legal Analysis and Conclusions

Question 1: May ActBlue solicit, receive, and forward contributions designated for SSFs from the general public under Program 1?

No, ActBlue may not do so, because it would be acting on behalf of the recipient SSFs and their connected organizations when soliciting contributions designated for the SSFs. As such, ActBlue would not be permitted to solicit contributions for the SSFs from beyond the restricted classes of the SSFs' connected organizations.

Solicitation

Under the Act and Commission regulations, an SSF and its connected organization may solicit contributions to the SSF from the connected organization's restricted class, which consists of the corporation's executive and administrative personnel, its stockholders, and their families. *See* 2 U.S.C. 441b(b)(4); 11 CFR 114.1(c) and 114.5(g). Solicitations by an SSF or its connected organization beyond the restricted class are generally prohibited.³ *See* 2 U.S.C. 441b(b)(4)(A). An entity acting on behalf

³ A corporation or its SSF may, however, make two written solicitations per year to non-executive employees, subject to certain restrictions. *See* 2 U.S.C. 441b(b)(4)(B) and 11 CFR 114.6.

of an SSF or its connected organization is similarly limited in terms of whom it may solicit for contributions to the SSF, because an SSF and its connected organization may not do through another what the SSF and its connected organization could not do directly.

Here, ActBlue would solicit the general public for contributions designated for specific SSFs on behalf of those SSFs and their connected organizations. ActBlue would represent to the public that contributing to an SSF through ActBlue is the functional equivalent of contributing directly to the SSF. The recipient SSF would regularly receive checks of designated contributions and contributor information from ActBlue. An SSF that continually accepts these checks and information from ActBlue, a well-known conduit of earmarked contributions,⁴ would be hard-pressed to disclaim knowing that ActBlue is soliciting contributions on its behalf. Accordingly, ActBlue may not solicit the general public for contributions designated for an SSF under Program 1, because it would be an impermissible solicitation beyond the restricted class of the SSF's connected organization.

Receipt and Forwarding

Because ActBlue may not solicit contributions under Program 1, it may not receive or forward contributions under Program 1.

Question 2: May ActBlue solicit, receive, and forward contributions designated for the SSFs from the restricted classes of the SSFs' connected organizations under Program 2?

Yes, ActBlue may do so, provided that ActBlue solicits only the restricted classes of the recipient SSFs' connected organizations, its solicitations to the restricted classes appear only on password-protected webpages of its website, and all costs associated with its activities under Program 2, aggregated with any contributions it makes to recipient SSFs, do not exceed the contribution amount limitations in the Act and Commission regulations.

⁴ ActBlue, which calls itself "the online clearinghouse for Democratic action," has been described as "seek[ing] to be to the campaign fund-raising world what PayPal is to bill paying: an Internet mechanism for making payments." Leslie Wayne, *The Caucus; Money Focus*, NY Times, Jun. 12, 2007, available at www.nytimes.com. It currently has the highest total contribution level to candidates in the 2008 election cycle for an organization supporting Democratic candidates. See Emily Cadei, *Labor Poised to Flex Money Muscles in 2008 Elections*, Congressional Quarterly, Nov. 2, 2007, available at www.cqpolitics.com. Over a recent three-week period, ActBlue collected over \$1,000,000 in contributions designated for 438 recipient campaigns and committees; the top 5 candidate recipients received contributions totaling \$22,000 to \$156,000. See Activity Report: Oct 1st-20th, 2007, <http://blog.actblue.com/blog/2007/10/activity-report.html> (last viewed on Nov. 7, 2007). See also Kenneth P. Vogel, *Liberal Eye New Cash Machine*, Politico, Nov. 7, 2007, available at www.politico.com (describing ActBlue as "among the top PACs in politics today"); Michael Luo, *Democrats Take the Lead in Raising Money Online*, NY Times, Jul. 13, 2007, available at www.nytimes.com (noting that ActBlue collected over \$3,000,000 for John Edwards' 2008 presidential campaign).

Solicitation

Similar to its proposal for Program 1, ActBlue proposes in Program 2 to solicit contributions designated for specific SSFs; under Program 2, however, ActBlue will work directly with recipient SSFs to solicit their connected organizations' restricted classes. As explained above, an entity acting on behalf of an SSF and its connected organization is limited to soliciting the connected organization's restricted class for contributions to the SSF.

The Commission has previously determined that an SSF may solicit contributions via the Internet if access to the solicitation is limited to the restricted class of the SSF's connected organization only. *See* Advisory Opinions 2006-03 (Whirlpool) and 2000-07 (Alcatel USA, Inc.). In Advisory Opinions 2006-03 and 2000-07, the Commission concluded that SSF solicitations on password-protected websites that were accessible only by members of the restricted classes of the SSFs' connected organizations through the use of usernames and passwords were permissibly limited to the restricted classes. A person soliciting contributions on behalf of an SSF or its connected organization via the Internet must similarly limit access to those solicitations to the restricted class of the SSF's connected organization.

Here, ActBlue will solicit contributions from the restricted classes of the SSFs' connected organizations only. ActBlue will solicit the restricted classes via its website, and will password-protect its webpages containing such solicitations. Each SSF will choose the password for ActBlue's password-protected webpage containing solicitations and will distribute the password to its connected organization's restricted class only. Thus, ActBlue's solicitations under Program 2 will be limited to the restricted classes of the SSFs' connected organizations. Additionally, each solicitation will inform contributors, in accordance with 2 U.S.C. 441b(b)(3) and 11 CFR 114.5(a), of the SSF's political purposes and that the contributor's decision to contribute or not contribute is purely voluntary and without reprisal. Accordingly, ActBlue may solicit contributions designated for the SSFs under Program 2.⁵

ActBlue must treat any costs it incurs for its activities under Program 2, including a portion of staff salaries and expenses for website development and maintenance, as in-kind contributions to the recipient SSFs. *See* 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a) and 100.52(d)(1). ActBlue, as a nonconnected political committee, may make no more than \$5,000 in contributions, including in-kind contributions, to an SSF per calendar year. *See* 2 U.S.C. 441a(a)(1)(C) and (a)(2)(C); 11 CFR 110.1(d) and 110.2(d).

⁵ The Commission notes that ActBlue need not include a disclaimer in its solicitations under Program 2 because its solicitations will be made exclusively via password-protected webpages on its website, which are not "public communications" and are not available to the general public. *See* 11 CFR 100.26 and 110.11(a)(1) and (3).

Receipt and Forwarding

The receipt and forwarding of contributions designated for an unauthorized committee are subject to 2 U.S.C. 432(b)(2)(B) and 11 CFR 102.8(b), which concern the receipt by any person of contributions for a political committee. *Id.* Under 2 U.S.C. 432(b)(2)(B) and 11 CFR 102.8(b), any person, including any political committee, that receives a contribution in excess of \$50 designated for an unauthorized committee must forward the contribution, as well as the contributor's name, address, and receipt date, to the treasurer of the recipient political committee no later than ten days after receipt. *See* 2 U.S.C. 432(b)(2)(B); 11 CFR 102.8(b)(2); *see also* Advisory Opinions 1983-18 (Stop and Shop) and 1981-57 (COMPAC). If the contribution exceeds \$200, information about the contributor's employer and occupation must also be forwarded. *See* 11 CFR 102.8(b)(2). Contributions of \$50 or less to unauthorized committees must be forwarded within 30 days. *See* 2 U.S.C. 432(b)(2)(A); 11 CFR 102.8(b)(1).

Here, ActBlue plans to forward all contributions and the information required by the Act and Commission regulations to the intended SSF recipients within ten days of receipt of each contribution. The recipient SSFs will pay all processing and transmittal costs because ActBlue's service provider will deduct those costs from each contribution before transmitting it to the recipient SSF. Accordingly, the Commission concludes that this aspect of ActBlue's proposed Program 2 is consistent with the Act and Commission regulations.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requester may not rely on that conclusion as support for its proposed activity. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

Sincerely,

(signed)
Robert D. Lenhard
Chairman