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October 18, 2007

Thomasenia P. Duncan, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

AOR 2007-27

Re: **ActBlue**
Committee ID: C00401224
Request for Advisory Opinion

Dear Ms. Duncan:

Pursuant to 2 U.S.C. §437f and the rules of the Federal Election Commission (the "Commission"), 11 C.F.R. §112.1, this letter requests an advisory opinion on behalf of ActBlue.

ActBlue is a non-connected political committee, formed to promote the election of Democratic candidates for federal office and registered with the Commission on May 17, 2004. ActBlue is a Massachusetts limited liability corporation, incorporated for liability purposes only and is treated as a corporation by the Internal Revenue Service for the purposes of taxation. ActBlue was not and is not established, maintained, financed or controlled by any political party committee or other political committee, or any candidate for any federal office. As a general matter, ActBlue serves primarily as a conduit within the definition of 11 C.F.R. §110.6 for earmarked contributions made to Democratic candidates and party committees. Contributions received by ActBlue that are earmarked for federal candidates and committees are solicited exclusively on the Internet at www.actblue.com.

ActBlue asks whether each of the two fundraising programs outlined below conforms to the requirements of the Federal Elections Campaign Act of 1971, as amended, ("the Act") and the Commission's Regulations.

Program 1 – Independent Solicitations of the General Public

ActBlue intends to solicit the general public and serve as a conduit for earmarked contributions to political committees registered as a Separate Segregated Fund ("SSF") of a Corporation (with or without stock), Labor Union, Membership Organization, Cooperative or Trade Association with the Commission. The program will be subject to the following restrictions and procedures:

1. ActBlue will pay all costs associated with such solicitations. These costs will include, but not be limited to, the portion of staff salaries and expenditures for website

- development and maintenance that are related to the listing of an SSF on our website. As a practical matter, this cost is extremely hard to calculate, and, in the context of the more than 3000 other entities (federal and non-federal) listed on our site, is insubstantial.
2. ActBlue will have no contact regarding the solicitation with the SSF benefiting from the solicitation or its connected organization.
 3. In general solicitations will be made only on our website, but might also be made by electronic mail to our own list and by posts to our blog.
 4. ActBlue would otherwise follow its normal policies and procedures in soliciting earmarked contributions, specifically:
 - a. In soliciting the earmarked contributions, ActBlue would inform prospective donors that:
 - i. their contributions are being earmarked within the meaning of the Commission's regulations (11 C.F.R. §110.6(b));
 - ii. any earmarked contribution must be limited to the contribution limitation established by 11 C.F.R. §110.1(d), at the time the contribution is made.
 - iii. in the event that the donor makes any contribution other than the earmarked contribution to the SSF that, when added to the earmarked contribution, causes the aggregate amount of the donor's contributions to the SSF to exceed the limit established by §110.1(d), an excessive contribution will have been made by the donor.
 - b. ActBlue will include any other disclaimers required by the Commission's regulations, including 11 C.F.R. §110.11, with respect to the solicitations of funds as described above, in all solicitations.
 - c. ActBlue will identify each earmarked contribution as being earmarked for the SSF in ActBlue's report for the reporting period in which each such earmarked contribution was received. 11 C.F.R. §110.6(c)(1)(ii).
 - d. ActBlue will forward all earmarked contributions to the intended recipient within 10 days of receipt. 11 C.F.R. §102.8.
 - e. The disbursement of the earmarked contributions will be reported on ActBlue's next report that is filed with the Commission. 11 C.F.R. §110.6(c)(1)(ii).
 - f. At the time the earmarked contributions are forwarded to the recipient SSF, ActBlue will provide to the recipient SSF a report containing all required information with respect to each earmarked contribution. 11 C.F.R. §110.6(c)(1).
 5. All contributions will be made by personal credit card and the processing fees for the transaction will be paid by the recipient SSF.

Program 2 – Solicitation of a Restricted Class in coordination with a SSF

ActBlue intends to coordinate with SSFs to solicit their restricted class for contributions to ActBlue earmarked for the SSF.¹ The program will be subject to the following restrictions and procedures:

¹In this request, "coordinate" is used to mean conduct meeting the conduct standard set forth in 11 C.F.R. §109.21(d).

1. All coordinated solicitations by ActBlue will be made only on our website and the costs of such solicitations, including, but not be limited to, the portion of staff salaries and expenditures for website development and maintenance that are related to the solicitation, will be borne entirely by ActBlue. As a practical matter, this cost is extremely hard to calculate, and, in the context of the more than 3000 other entities (federal and non-federal) listed on our site, is insubstantial.
 - a. ActBlue will not be paid by the SSF for its services.
 - b. We expect that the SSF will make its own solicitations, directing members of its restricted class to ActBlue's website. Such solicitations will be paid for in their entirety by the SSF.
2. In soliciting the earmarked contributions, ActBlue would inform prospective donors that:
 - a. their contributions are being earmarked within the meaning of the Commission's regulations (11 C.F.R. §110.6(b));
 - b. any earmarked contribution must be limited to the contribution limitation established by 11 C.F.R. §110.1(d), at the time the contribution is made.
 - c. in the event that the donor makes any contribution other than the earmarked contribution to the SSF that, when added to the earmarked contribution, causes the aggregate amount of the donor's contributions to the SSF to exceed the limit established by §110.1(d), an excessive contribution will have been made by the donor.
 - d. their decision to contribute or not contribute is purely voluntary in accordance with, and the solicitation will include other disclaimers required by, 11 C.F.R. §114.5(a).
3. Any page of ActBlue's website on which a coordinated solicitation for an SSF is made would be protected by a password. This password would be chosen by the SSF with which we coordinated the solicitation and made available by them to members of their restricted class.
4. ActBlue would otherwise follow its normal policies and procedures in soliciting earmarked contributions as described in Point 4 of Program 1 above.
5. All contributions will be made by personal credit card and the processing fees (assessed by a third party) for the transaction will be paid by the recipient SSF.

DISCUSSION

PROGRAM 1

The Act provides for the earmarking of contributions "made by a person, either directly or indirectly, on behalf of a particular candidate." 2 U.S.C. §441a(a)(8). All contributions by a person that are made on behalf of, or to, a candidate, including contributions that are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate. 2 U.S.C. §441a(a)(8); 11 C.F.R. §110.6(a).

While 110.6 does not speak of earmarked contributions to non-candidate committees, "the Commission has held that this omission does not bar such earmarking, but that it would be

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subject to other regulations concerning the receipt of contributions by any person on behalf of a political committee." Advisory Opinion 2003-23.

Finally, any person who can legally contribute to a political committee can contribute to a SSF. 11 C.F.R. §114.5(j)). Although a Corporation or Union may not solicit contributions outside of its restricted class, nothing would bar ActBlue as a non-connected committee from undertaking such uncoordinated solicitations for contributions to an SSF.

PROGRAM 2

An SSF is restricted from soliciting anyone but a member of its restricted class to contribute to the SSF. 11 C.F.R. §114.5(g). In Advisory Opinion 2006-3, the Commission held that a webpage including a solicitation on behalf of the SSF that was protected by a password known only to members of the restricted class met the requirement of 114.5(g) even if it was a single password known to the entire class. Although solicited funds would pass through ActBlue, the SSF will be provided with all necessary information required for each contribution by 11 C.F.R. § 110.6(c)(1). It should also be noted that all contributions would be made by credit card and no contributions will be accepted via payroll deduction.

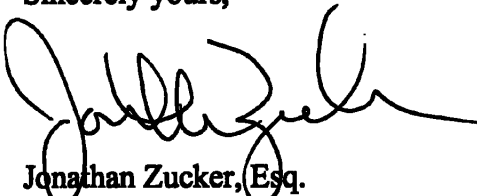
CONCLUSION

For the reasons set forth above, the Commission should issue an advisory opinion holding that ActBlue, as a non-connected committee, may solicit and accept contributions from the general public to SSFs and that ActBlue may solicit and accept contributions to the SSF from the restricted class of the SSF in coordination with the SSF or its connected organization, under the conditions described above.

If the Commission has any questions or needs any further information concerning this request, please contact the undersigned at jonathan@actblue.com or (617) 395-9506 ext 2.

Thank you for your time and attention to this matter.

Sincerely yours,



Jonathan Zucker, Esq.
COO and Counsel

Cc: Neil Reiff, Esq.
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