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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
3: 58
For Meeting of: 12-14-07

December 5, 2007

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *TPD*
General Counsel

Rosemary C. Smith *ACS*
Associate General Counsel

Amy L. Rothstein *ALR*
Assistant General Counsel

Esa L. Sferra *ELS*
Attorney

Subject: Draft AO 2007-27

Attached are two alternative proposed drafts of the subject advisory opinion. We request that these drafts be placed on the agenda for December 14, 2007.

Attachment

1 ADVISORY OPINION 2007-27

2 Jonathan Zucker, Esq.
3 COO and Counsel
4 ActBlue
5 P.O Box 382110
6 Cambridge, MA 02138

DRAFT A

7 Dear Mr. Zucker:

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

16 The Commission concludes that proposed Program 1 and Program 2 are
17 permissible because ActBlue will comply with the Act's requirements regarding the
18 solicitation, receipt, and forwarding by one political committee of contributions that are
19 designated for another political committee, and because ActBlue will limit its
20 solicitations under Program 2 to the restricted classes of the SSFs' connected
21 organizations.

22 ***Background***

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

¹ www.actblue.com (last viewed on Nov. 9, 2007).

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

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

19 Under Program 1, ActBlue intends to solicit the general public for contributions
20 that are designated for the SSFs. ActBlue plans to make solicitations under Program 1
21 entirely independently of the SSFs and to have "no contact" with the SSFs or their
22 connected organizations regarding the solicitations. ActBlue will not be paid for its
23 fundraising.

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

11 Under Program 2, ActBlue intends to solicit the restricted classes of the SSFs'
12 connected organizations for contributions that are designated for the SSFs, and would act
13 on behalf of the SSFs in making solicitations under Program 2. ActBlue will not be paid
14 for its fundraising.

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

21 The solicitations on the password-protected webpages will inform prospective
22 contributors that: (1) contributions may not exceed the contribution limitation in 11 CFR
23 110.1(d) at the time the contribution is made, and (2) all contributions designated to an

1 SSF through ActBlue will be aggregated with the contributor's other contributions to that
2 SSF and that aggregate amount must not exceed the contribution limitation in 11 CFR
3 110.1(d). The solicitations will also notify prospective contributors of the SSF's political
4 purposes and that their decision to contribute or not contribute is purely voluntary and
5 without reprisal, in accordance with 11 CFR 114.5(a). The solicitations under Program 2
6 will include any disclaimer required under 11 CFR 110.11.

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

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

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).

1 developed and continuously maintains its website for its ongoing fundraising for these
2 3,000 entities.

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

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

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

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

1 ***Questions Presented***

- 2 1. *May ActBlue solicit, receive, and forward contributions designated for SSFs from*
3 *the general public under Program 1?*
4
5 2. *May ActBlue solicit, receive, and forward contributions designated for SSFs from*
6 *the restricted classes of the SSFs' connected organizations under Program 2?*
7

8 ***Legal Analysis and Conclusions***

9 *Question 1: May ActBlue solicit, receive, and forward contributions designated for SSFs*
10 *from the general public under Program 1?*
11

12 Yes, ActBlue may do so because it will solicit contributions that comply with the
13 source prohibitions and contribution amount limitations, will forward all contributions
14 and necessary information to the recipient SSFs within the required timeframe under
15 Program 1.

16 *Solicitation*

17 Under the Act and Commission regulations, an SSF and its connected
18 organization may solicit contributions to the SSF from the connected organization's
19 restricted class, which consists of the corporation's executive and administrative
20 personnel, its stockholders, and their families. 2 U.S.C. 441b(b)(4); 11 CFR 114.1(c) and
21 114.5(g). Solicitations by an SSF or its connected organization beyond the restricted
22 class are generally prohibited.³ 2 U.S.C. 441b(b)(4)(A). ActBlue, however, is a
23 nonconnected political committee that will solicit contributions designated for the SSFs
24 independently of both those SSFs and their connected organizations. Accordingly,

³ A corporation or its SSF may make up to 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.

1 ActBlue would not be subject to the prohibition on SSFs soliciting contributions from the
2 general public when it solicits contributions under Program 1.⁴

3 Generally, a nonconnected political committee may engage in fundraising for
4 another political committee, but such solicitations must comply with the source
5 prohibitions and the contribution amount limitations in the Act and Commission
6 regulations. *See* Advisory Opinions 2006-30 (ActBlue) (nonconnected committee
7 soliciting contributions for potential candidates and party committee) and 2003-23 (WE
8 LEAD) (nonconnected committee soliciting contributions for presumptive presidential
9 nominee and party committee). For example, nonconnected committees may not solicit
10 or receive contributions from foreign nationals, corporations, or labor organizations, or in
11 amounts in excess of the recipient political committee's contribution limits. *See* 2 U.S.C.
12 441b and 441e; 11 CFR 110.20 and 114.2.

13 ActBlue is a nonconnected political committee that will solicit contributions
14 designated for SSFs, which also are political committees. ActBlue will accept
15 contributions from individuals made by personal credit card only, and its solicitations
16 will notify potential contributors that all contributions must be within the dollar amount
17 limitations of the Act and Commission regulations. Accordingly, ActBlue's solicitations
18 under Program 1 will comply with the source prohibitions and contribution amount
19 limitations of the Act and Commission regulations. Thus, it may solicit contributions

⁴ In reaching this conclusion, the Commission relies on ActBlue's assertion that it will have "no contact regarding the solicitation with the SSF benefiting from the solicitation or [the SSF's] connected organization." The Commission understands this "no contact" statement to encompass both ActBlue's solicitation activity or conduct in general, and the content of any given solicitation.

1 designated for SSFs under Program 1.⁵

2 *Receipt and Forwarding*

3 The receipt and forwarding of contributions designated for an unauthorized
4 committee are subject to 2 U.S.C. 432(b)(2)(B) and 11 CFR 102.8(b), which concern the
5 receipt by any person of contributions for a political committee. *Id.* Under 2 U.S.C.
6 432(b)(2)(B) and 11 CFR 102.8(b), any person, including any political committee, that
7 receives a contribution in excess of \$50 designated for an unauthorized committee must
8 forward the contribution, as well as the contributor's name, address, and receipt date, to
9 the treasurer of the recipient political committee no later than ten days after receipt. *See*
10 2 U.S.C. 432(b)(2)(B); 11 CFR 102.8(b)(2); *see also* Advisory Opinions 1983-18 (Stop
11 and Shop) and 1981-57 (COMPAC). If the contribution exceeds \$200, information about
12 the contributor's employer and occupation must also be forwarded. *See* 11 CFR
13 102.8(b)(2). Contributions of \$50 or less to unauthorized committees must be forwarded
14 within 30 days. *See* 2 U.S.C. 432(b)(2)(A); 11 CFR 102.8(b)(1).

15 Here, ActBlue plans to forward all contributions and the information required by
16 the Act and Commission regulations to the intended SSF recipients within ten days of
17 receipt of each contribution. The recipient SSFs will pay all processing and transmittal
18 costs because ActBlue's service provider will deduct those costs from each contribution
19 before transmitting it to the recipient SSF. Accordingly, the Commission concludes that

⁵ ActBlue must include a disclaimer on all solicitations under Program 1 because ActBlue is a political committee and its solicitations under Program 1 will be made exclusively via its website and electronic mail. Although all solicitations made in a "public communication" require a disclaimer, communications over the Internet are not public communications, except for communications placed for a fee on another person's website; however, political committees must include a disclaimer on all electronic mail of more than 500 substantially similar communications, and on their websites available to the general public. *See* 11 CFR 100.26 and 110.11(a)(1) and (3).

1 this aspect of ActBlue's proposed Program 1 is consistent with the Act and Commission
2 regulations.

3 *Question 2: May ActBlue solicit, receive, and forward contributions designated for SSFs*
4 *from the restricted classes of the SSFs' connected organizations under Program 2?*
5

6 Yes, ActBlue may do so, provided that ActBlue solicits only the restricted classes
7 of the SSFs' connected organizations and its solicitations to the restricted classes appear
8 only on password-protected webpages of its website.

9 *Solicitation*

10 As explained above, under the Act and Commission regulations, an SSF and its
11 connected organization may solicit contributions to the SSF from the connected
12 organization's restricted class only, and solicitations beyond the restricted class are
13 generally prohibited. *See* 2 U.S.C. 441b(b)(4); 11 CFR 114.1(c) and 114.5(g). Where an
14 SSF or its connected organization arranges for another entity to act on its behalf in
15 making these solicitation, that entity is similarly limited in terms of whom it may solicit
16 for contributions to the SSF and the conditions under which it may make these
17 solicitations.

18 Thus, under the Act and Commission regulations, any person soliciting
19 contributions to an SSF must inform prospective contributors of (1) the political purposes
20 of the SSF at the time of the solicitation, and (2) the prospective contributor's right to
21 refuse to contribute without any reprisal. *See* 2 U.S.C. 441b(b)(3); 11 CFR 114.5(a)(3)
22 and (4). Any written solicitation for a contribution to an SSF must include a written
23 statement containing this information. *See* 2 U.S.C. 441b(b)(3); 11 CFR 114.5(a)(5).
24 Additionally, an SSF is prohibited from utilizing money secured by physical force, job

1 discrimination, financial reprisal, or the threat of any of the foregoing. *See* 2 U.S.C.
2 441b(b)(3)(A); 11 CFR 114.5(a)(1).

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

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

1 solicit contributions designated for the SSFs under Program 2.⁶ ActBlue must treat any
2 costs it incurs for the solicitations under Program 2 as in-kind contributions to the
3 recipient SSFs. *See* 2 U.S.C. 431(8)(A)(i); 11 CFR 100.52(a) and 100.52(d)(1).

4 *Receipt and Forwarding*

5 ActBlue may receive and forward contributions designated for SSFs under
6 Program 2 for the same reasons stated in the answer to *Question 1*.

7 Although the Commission concludes that proposed Programs 1 and 2 are
8 permissible under the Act and Commission regulations, if ActBlue chooses to solicit
9 contributions for the same SSF in both programs, ActBlue must implement and maintain
10 effective policies to ensure and preserve the independence of its solicitations under
11 Program 1. Steps that ActBlue could take to achieve this include (1) assigning different
12 staff to work on Program 1 and Program 2, and (2) preventing staff working on either
13 program from conveying information about that program or about any SSF enrolled in
14 that program to staff working on the other program. *See e.g.*, MUR 5506 (EMILY'S
15 List), First General Counsel's Report (discussing the organization's firewall)."

16 This response constitutes an advisory opinion concerning the application of the
17 Act and Commission regulations to the specific transaction or activity set forth in your
18 request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any
19 of the facts or assumptions presented and such facts or assumptions are material to a
20 conclusion presented in this advisory opinion, then the requester may not rely on that

⁶ 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* note 5 *supra*; *see also* 11 CFR 11 CFR 100.26 and 110.11(a)(1) and (3).

1 conclusion as support for its proposed activity. All cited advisory opinions are available
2 on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

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Sincerely,

Robert D. Lenhard
Chairman

1 ADVISORY OPINION 2007-27

2 Jonathan Zucker, Esq.
3 COO and Counsel
4 ActBlue
5 P.O Box 382110
6 Cambridge, MA 02138

DRAFT B

7 Dear Mr. Zucker:

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

17 The Commission concludes that ActBlue’s proposed Program 1 is not permissible
18 because ActBlue would be acting on behalf of recipient SSFs and their connected
19 organizations when soliciting contributions designated for them, and as such would be
20 prohibited from soliciting contributions to the SSFs from beyond the restricted classes of
21 the SSFs’ connected organizations. The Commission concludes that proposed Program 2
22 is permissible so long as ActBlue limits its solicitations to the restricted classes of the
23 SSFs’ connected organizations, and all costs associated with its activities under Program
24 2, aggregated with any contributions it makes to recipient SSFs, do not exceed the
25 contribution amount limitations in the Act and Commission regulations.

1 **Background**

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

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

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

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

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

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

15 Under Program 2, ActBlue intends to solicit the restricted classes of the SSFs'
16 connected organizations for contributions that are designated for the SSFs, and will work
17 directly with the SSFs in making solicitations under Program 2. ActBlue would not be
18 paid for its fundraising.

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

1 make its own solicitation to members of its connected organization's restricted class
2 directing them to the password-protected webpage on ActBlue's website.

3 The solicitations on the password-protected webpages will inform prospective
4 contributors that: (1) contributions may not exceed the contribution limitation in 11 CFR
5 110.1(d) at the time the contribution is made, and (2) all contributions designated to an
6 SSF through ActBlue will be aggregated with the contributor's other contributions to that
7 SSF and that aggregate amount must not exceed the contribution limitation in 11 CFR
8 110.1(d). The solicitations will also notify prospective contributors of the SSF's political
9 purposes and that their decision to contribute or not contribute is purely voluntary and
10 without reprisal, in accordance with 11 CFR 114.5(a). The solicitations under Program 2
11 will include any disclaimer required under 11 CFR 110.11.

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

17 ActBlue's solicitation costs under Programs 1 and 2 will include the portion of
18 staff salaries and expenses for website development and maintenance related to listing
19 SSFs on its website under Program 1 and creating password-protected webpages for SSFs
20 under Program 2. Under Programs 1 and 2, ActBlue will add approximately 40
21 additional political committees to its website, which already lists more than 3,000 Federal
22 and non-Federal candidates, political committees, other political organizations, and other

1 groups to which viewers may make a contribution or donation.² You indicate that the
2 actual solicitation costs incurred by ActBlue under Programs 1 and 2 would be extremely
3 difficult to calculate and would be insubstantial considering that ActBlue has already
4 developed and continuously maintains its website for its ongoing fundraising for these
5 3,000 entities.

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

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

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

20 ActBlue will include each contribution designated for an SSF on its report for the
21 reporting period in which the contribution was received. ActBlue will also report the

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).

1 disbursement of the contribution to the intended SSF recipient on the report covering the
2 period in which the disbursement was made.

3 ***Question Presented***

- 4 1. *May ActBlue solicit, receive, and forward contributions designated for SSFs from*
5 *the general public under Program 1?*
6
7 2. *May ActBlue solicit, receive, and forward contributions designated for SSFs from*
8 *the restricted classes of the SSFs' connected organizations under Program 2?*
9

10 ***Legal Analysis and Conclusions***

11 *Question 1: May ActBlue solicit, receive, and forward contributions designated for SSFs*
12 *from the general public under Program 1?*
13

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

18 *Solicitation*

19 Under the Act and Commission regulations, an SSF and its connected
20 organization may solicit contributions to the SSF from the connected organization's
21 restricted class, which consists of the corporation's executive and administrative
22 personnel, its stockholders, and their families. *See* 2 U.S.C. 441b(b)(4); 11 CFR 114.1(c)
23 and 114.5(g). Solicitations by an SSF or its connected organization beyond the restricted
24 class are generally prohibited.³ *See* 2 U.S.C. 441b(b)(4)(A). An entity acting on behalf
25 of an SSF or its connected organization is similarly limited in terms of whom it may
26 solicit for contributions to the SSF, because an SSF and its connected organization may

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.

1 not do through another what the SSF and its connected organization could not do directly.

2 Here, ActBlue would solicit the general public for contributions designated for
3 specific SSFs on behalf of those SSFs and their connected organizations. ActBlue would
4 represent to the public that contributing to an SSF through ActBlue is the functional
5 equivalent of contributing directing to the SSF. The recipient SSF would regularly
6 receive checks of designated contributions and contributor information from ActBlue.

7 An SSF that continually accepts these checks and information from ActBlue, a well-
8 known conduit of earmarked contributions,⁴ would be hard-pressed to disclaim knowing
9 that ActBlue is soliciting contributions on its behalf. Accordingly, ActBlue may not
10 solicit the general public for contributions designated for an SSF under Program 1,
11 because it would be an impermissible solicitation beyond the restricted class of the SSF's
12 connected organization.

13 *Receipt and Forwarding*

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

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

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).

1
2 Yes, ActBlue may do so, provided that ActBlue solicits only the restricted classes
3 of the recipient SSFs' connected organizations, its solicitations to the restricted classes
4 appear only on password-protected webpages of its website, and all costs associated with
5 its activities under Program 2, aggregated with any contributions it makes to recipient
6 SSFs, do not exceed the contribution amount limitations in the Act and Commission
7 regulations.

8 *Solicitation*

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

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