



October 23, 2007

The Honorable Robert D. Lenhard
Chairman
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

AOR 2007-31

2007 OCT 29 A 11:27

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

Re: Advisory Opinion Request on Behalf of John Edwards for President

Dear Chairman Lenhard:

John Edwards for President (JEFP) is the authorized committee of Senator John Edwards, a Presidential candidate seeking the nomination of the Democratic Party in 2008. Senator Edwards announced his intention to seek public financing under the Presidential Primary Matching Payment Account Act (2 U.S.C. § 9031 *et seq.*) on September 27, 2007. JEFP is seeking an advisory opinion regarding whether contributions processed through ActBlue are matchable under that Act.

A. Factual Background

Senator Edwards announced his candidacy on December 28, 2007 and filed his statement of candidacy with the Commission on January 3, 2007. JEFP filed its Statement of Organization on January 5, 2007.

ActBlue is registered with the Commission as a nonconnected political committee. It receives contributions earmarked for federal candidates and forwards them to the committees of those candidates in compliance with the Commission's regulations set forth at 11 C.F.R. § 110.6. In some cases, ActBlue receives contributions for prospective Presidential candidates, holding them until the candidate registers an authorized committee with the Commission.

After Senator Edwards' announcement of his candidacy, ActBlue served as JEFP's primary online payment processor to handle credit card contributions until JEFP set up processing for such contributions through its own website and vendor. Thereafter, JEFP established an online fundraising program that included two components – one that directed potential contributors to ActBlue for making donations, and a second that directed email recipients to JEFP's own contribution page hosted on its website, processing contributions through its own third-party merchant vendor.¹

¹ Contributors are also able to donate to JEFP by going directly to ActBlue's website which is set up to enable contributors to donate to a large number of candidates, including federal and non-federal.

The process by which contributors were directed to ActBlue began at JEFP's website. Generally, by clicking on the "contribute" link on the JEFP website, prospective contributors were taken, via hyperlink, to a separate page on ActBlue's website dedicated solely to JEFP contributions. This page prominently displays the JEFP logo so that contributors would clearly know that their contribution would go to JEFP. This page also includes all of the eligibility requirements for Internet contributors, and a contributor must confirm that he or she meets those requirements before making a contribution. In addition, a contributor is asked to provide his or her address, occupation, and name of employer.

When a contributor enters credit card information on the ActBlue website, the information is processed through Auburn Quad, ActBlue's service provider, and checked against a credit card billing information database to verify contributor information. If this process is successful, the card is charged the specified amount and the funds are deposited into ActBlue's account. In payments made at least once per week, ActBlue disburses the net amount of contributions to JEFP after deducting a processing fee of 3.95% paid to Auburn Quad.²

JEFP continued to use ActBlue for one component of its online fundraising in part because of the convenience of its processing, which involves low fees, secure handling of credit card information, and reliable management of FECA compliance. For all intents and purposes, JEFP thus used ActBlue as what amounts to an online payment processor to handle credit card contributions.

B. Question Presented

Are credit card contributions to JEFP fulfilled through ActBlue matchable under 11 C.F.R. § 9034.2?

C. Discussion

Contributions fulfilled through ActBlue are substantially similar to credit card contributions matchable under 11 C.F.R. §§ 9034.2(b) and 9034.2(c)(8). The Commission allows credit card contributions made over the Internet to be submitted for matching funds, provided certain conditions are met. Since contributions processed through ActBlue fulfill all of these conditions, the Commission should determine that such contributions meet requirements for matchable contributions.

² On its disclosure reports, JEFP reports the full amount of the contribution made by each contributor, providing all required information and disclosing ActBlue as the conduit. Fees paid to process each contribution are shown as a lump sum disbursement to Auburn Quad on JEFP's Schedule B for the appropriate reporting period.

**1. Contributions Fulfilled Through ActBlue Are Matchable Under
11 C.F.R. §§ 9034.2(b) And 9034.2(c)(8).**

- a. The Commission allows credit card contributions made over the Internet to be submitted for matching funds, provided they follow certain conditions.**

In 1999, the Commission approved regulations specifically allowing matching for credit card contributions, made both on the Internet and otherwise. The Commission noted in the Explanation and Justification (E&J) for the new regulation that it had approved measures suggested in Advisory Opinion 1999-9 to establish adequate “steps to ensure that controls and procedures are in place to avoid the possibility of contributions by foreign nationals, by Federal Government contractors, and by labor organizations, or by an individual using corporate or other business entity credit accounts.”³ In the Commission’s view, such controls and procedures would result in assisting the recipient committee in determining whether the funds were matchable.

Contributions to JEFPP, processed through ActBlue’s website meet the guidelines set forth in the E&J and advisory opinion for matching permissible contributions made via the Internet. Persons making contributions intended for JEFPP must affirm that they are legally permitted to make a contribution. Once the contributor affirms and proceeds to make the contribution, the credit card processor follows the normal procedures to determine whether funds are available, and, if so, forwards them to the recipient. Those funds are deposited with ActBlue, which subsequently forwards them (after deduction of the processing fee paid to its service provider) to JEFPP on a regular basis in accordance with 11 C.F.R. § 102.8(a).⁴

Contributions received through ActBlue and forwarded to JEFPP are handled in substantially the same manner as other credit card contributions deemed matchable under Commission regulations. Hence, contributions processed through ActBlue should be matchable on the same basis that any other credit card contribution is deemed matchable.

- b. ActBlue processing complies with Commission requirements.**

ActBlue has in place sound, secure technical, financial, and compliance systems to ensure that the ultimate recipients receive permissible contributions made by individuals. The superior security and reliability of its credit card contribution processing, coupled with its reasonable fees, have led JEFPP to direct many of its contributors to ActBlue’s John Edwards page for the processing of their donations. Thus, although ActBlue is a political committee, when JEFPP

³ 64 Fed. Reg. 62,396 (June 17, 1999).

⁴ There is no contribution from any other entity, and JEFPP bears all processing costs for each contribution. Further, it is our understanding that ActBlue does not exercise any direction or control over contributions forwarded to JEFPP, and that ActBlue deposits earmarked contributions into an account that consists exclusively of funds that meet the prohibitions and limitations of the FECA.

directs potential contributors to ActBlue, it in effect functions as a processor of contributions to JEFPP, much in the same way that a credit card company would.⁵

2. Adequate Safeguards Exist to Ensure That Contributions From Impermissible Sources Are Not Matched

ActBlue has in place solid safeguards to ensure that funds which do not comply with FECA restrictions are not contributed to JEFPP. ActBlue requires contributors to affirm that the following statements are true and accurate: (1) I am a United States citizen or a permanent resident alien; (2) This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution; (3) I am making this contribution with my own personal credit card and not with a corporate or business credit card or a card issued to another person; (4) I am not a federal contractor; and (5) I am at least eighteen years old.⁶ Given the requirement that contributors affirm that such statements are true, adequate safeguards exist to ensure that only contributions from an individual's personal funds are matched.

In this regard, it should be noted that Commission regulations at 11 C.F.R. § 9034.3(f) prohibit matching contributions "in the form of a check drawn on the account of a committee, corporation, union or government contractor even though the funds represent personal funds earmarked by a contributing individual...." The basic thrust of Commission regulations at 11 C.F.R. §9034.3(f) is to clarify that contributions from illegal sources such as corporations, unions or government contractors cannot be matched, even when the ultimate source of those contributions is individual personal funds. As discussed above, ActBlue's process is designed to avoid such contributions. Therefore, there is little danger that contributions processed through ActBlue would result in matching contributions that do not qualify for such.⁷ Nor is this a situation in which contributions made through ActBlue count both as a contribution from the individual contributor, and a contribution from ActBlue. Rather, such donations are treated only as contributions from the individual contributor.

Further, it is our understanding that ActBlue would be able to provide JEFPP with all necessary information required in Chapter II.C. of its revised Guideline for Presentation in Good

⁵ See also, Dan Morain, *ActBlue Makes Giving Easy, and It's Become a Major Political Player*, *L.A. Times*, March 11, 2007, at A21 (referring to ActBlue as "the PayPal of political giving").

⁶ ActBlue Contribution Page, <https://secure.actblue.com/contribute/entity/16315> (last visited Oct. 19, 2007).

⁷ ActBlue as a non-connected political committee registered with the Commission, is not a "committee" as that term is used in § 9034.3(f). That section says nothing about matching contributions or checks drawn on the account of a "political committee," a term clearly defined under the Federal Election Campaign Act and in multiple FEC regulations. Rather the regulation avoids that term of art and instead refers to the matching of contributions by check drawn on the account of a "committee," that is, an entity which is not registered with the FEC and hence a potential source of illegal contributions. Moreover, this regulation was adopted approximately 30 years ago and reflects an early focus of the law and the Commission on the use of committees as a subterfuge enabling wealthy or illegal donors to evade contribution limitations. Given technological developments, including computerized reporting, the Commission and the public have available efficient and effective methods for tracking and monitoring contributions.

Order. Thus JEFPP will be able to provide all necessary documentation to the Commission that is ordinarily required to ensure matchability of credit card contributions received via the Internet.

3. As A Public Policy Matter, The Commission Should Treat All Contributions Made Through Similar Processes As Matchable.

Contributions made to JEFPP through ActBlue are processed in an almost-identical fashion to credit card contributions processed through a vendor bank. There is no reason to treat these contributions differently for the purposes of matching. Therefore as a policy matter, the Commission should match contributions made to JEFPP through ActBlue.

In light of the development in the use of credit cards as a mechanism for making contributions via the Internet, and the FEC's determination to match such contributions, ActBlue contributions should be matchable because it is in essence doing nothing more than conveying permissible funds donated by individuals to JEFPP, which receives the full amount contributed, paying only a processing fee to Auburn Quad.

There is clear donative intent on the part of the contributors to give to the specific candidates chosen. In the case of JEFPP, many contributors have been directed to the ActBlue site from the JEFPP site. Regardless of whether a contributor is directed to ActBlue's site through JEFPP, or via a third party, once an individual accesses the ActBlue website, that contributor has total control over which candidate will receive a contribution. Moreover, because a contributor choosing to support Senator Edwards links to a page which prominently displays "John Edwards '08" at the top, ActBlue has adequate measures in place to ensure that contributors are fully aware that they are making a contribution only to JEFPP and not to any other committee.

D. Conclusion

JEFPP has begun the process of compiling matchable contributions for submission to the Commission. Due to the expedited nature of the 2008 nominating process, it is not clear at this time when the first caucuses and primaries of the season will begin.

JEFPP respectfully requests that the Commission:

- (1) treat credit card contributions fulfilled through non-connected political committees, where those committees act simply as conduits to committees, as campaign contributions suitable for matching under 11 C.F.R. § 9034.2(b) and 9034.2(c)(8); and
- (2) process this advisory opinion on an accelerated basis as the Presidential primary process will begin shortly.

Sincerely,



Lora M. Haggard
Chief Financial Officer
John Edwards for President



"Lora Haggard"
<LHaggard@johnedwards.com>

11/01/2007 09:13 PM

To <EHallstrom@fec.gov>

cc

bcc

Subject AO for John Edwards for President Additional Information Response

History: This message has been forwarded.

Dear Mr. Hallstrom,

You have transmitted a request for additional information regarding John Edwards for President's ("JEFP") advisory opinion request of October 23, 2007. Please see below for JEFP's answers to your questions.

1. The request letter states that once Senator Edwards announced his candidacy, "ActBlue served as JEFP's primary online payment processor to handle credit card contributions until JEFP set up processing for such contributions through its own website and vendor." Please provide or describe the terms of any agreement establishing a formal relationship between JEFP and ActBlue during this period.

The terms of JEFP's agreement with ActBlue for processing online contributions are found on ActBlue's website, which sets forth comprehensive terms of service for committees that use ActBlue. These are found at a "learn more" page on ActBlue's website (http://www.actblue.com/content/learnmore_campaigns) which outlines how committees can get set up and listed on ActBlue's website. On this page, ActBlue notes the simplicity of their processing: "No setting up your own merchant account or secure website... We collect all FEC- and state-required donor information... Access all contributor and compliance data in real-time." This same page also describes the disbursement of contributions to committees: "We'll send you checks each week for your contributions. Just deposit them with your other campaign contributions. Then log in for easy data downloads and reporting instructions."

ActBlue's "Frequently Asked Questions" page (<http://www.actblue.com/faq#q13>) describes how committees are charged for credit card processing fees by Auburn Quad. This page states: "The recipient candidates bear the cost of the credit card processing fees, just as if you gave on the candidate's (or committee's) own web site. The processing fee — 3.95% of the gross contribution amount — pays for our access to the credit card network and the operation and ongoing development of our fundraising infrastructure. These services are provided to ActBlue by Auburn Quad."

Finally, the ActBlue site also includes a "Privacy Policy" (<http://www.actblue.com/privacy>), which describes how credit card processing is handled by ActBlue, and the protections in place for contributors' information.

By actively directing contributors to ActBlue's website for processing online contributions, JEFF agreed to all of the above terms. Further, JEFF worked with ActBlue to customize the JEFF contribution page on ActBlue for all contributors, whether directed by JEFF or otherwise, thereby accepting ActBlue's terms for processing contributions.

2. Your request states that these credit card contributions are "deposited into ActBlue's account" and disbursed (after deducting Auburn Quad's processing fee) "at least once per week" to the JEFF. First, are these funds deposited into an ActBlue account specifically designated for JEFF, or are they deposited into a general ActBlue account? Second, how are the funds disbursed (e.g., check, wire-transfer, electronic funds transfer)?

Contributions to JEFF processed through ActBlue are deposited into ActBlue's federal conduit account and then disbursed as checks in net amounts equal to gross contributions less Auburn Quad's processing fees. By way of comparison, JEFF's merchant vendor gathers all contributions for a particular day and disburses them daily to JEFF's bank account, after deducting processing fees. Hence, the only difference is that ActBlue disburses contributions on a weekly basis by check, which provides JEFF with a less costly alternative to wire-transfer or direct-deposit.

If you have any further questions, please do not hesitate to contact us.

Sincerely,

Lora Haggard
Chief Financial Officer
John Edwards for President