



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

September 12, 2008

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2008-08

Mr. Jonathan Zucker  
36 A Street #5B  
Boston, MA 02127

Dear Mr. Zucker:

We are responding to your advisory opinion request concerning the application of contribution limits of the Federal Election Campaign Act of 1971, as amended (the "Act"), 2 U.S.C. 431 et seq., and Commission regulations to a contribution you have sent through ActBlue to either the 2010 Democratic candidate for the U.S. Senate in Arizona or the Democratic Senatorial Campaign Committee ("DSCC"). The Commission concludes that your contribution is considered to be "made" in 2008, and therefore counts toward your 2007-2008 biennial contribution limits and your 2008 calendar year contribution limit.

***Background***

The facts presented in this advisory opinion are based on your letter received on July 30, 2008.

On June 25, 2008, you sent, via the Internet, a credit card contribution to ActBlue, earmarked for the 2010 Democratic nominee for the United States Senate in Arizona. In

the event there is no such Democratic nominee, Act Blue will forward your contribution to the DSCC.

ActBlue is a nonconnected political committee that was formed to promote the election of Democratic candidates for Federal office and is registered with the Commission. *See* Advisory Opinion 2006-30 (ActBlue). ActBlue solicits contributions for Democratic candidates and party committees only on its website, [www.actblue.com](http://www.actblue.com), and accepts contributions made only by credit card. *Id.* ActBlue forwards contributions it collects to the intended recipient via a check. *Id.*

### **Question Presented**

*Which biennial and annual contribution limits will your contribution count against, the ones in effect when the contribution was received by ActBlue or the ones that will be in effect when the contribution is forwarded to the recipient candidate or political party committee?*

### **Legal Analysis and Conclusions**

Your contribution will count against the contribution limits in effect when the contribution was received by ActBlue.

*Biennial Limits:* The Act and Commission regulations state that from January 1 of an odd-numbered year through December 31 of the following even-numbered year, no individual shall make contributions aggregating more than an inflation-adjusted amount that for 2007-2008 is \$108,200. *See* 2 U.S.C. 441a(a)(3) and (c)(1); 11 CFR 110.5(b)(1); and 72 FR 5294 (February 5, 2007). Within this overall limit, an individual may make contributions to candidates and their authorized committees totaling no more than an inflation-adjusted limit that for 2007-2008 is \$42,700. 2 U.S.C. 441a(a)(3)(A) and (c)(1); 11 CFR 110.5(b)(1)(i); and 72 FR 5294 (February 5, 2007). During that same period, an individual may make other contributions totaling an inflation-adjusted amount of \$65,500 in 2007-2008, of which not more than \$42,700 (inflation-adjusted for 2007-2008) may be attributable to contributions to political committees that are not political committees of national political parties. 2 U.S.C. 441a(a)(3)(B) and (c)(1); 11 CFR 110.5(b)(1)(ii); and 72 FR 5294 (February 5, 2007).

*Annual Limits:* The Act and Commission regulations also state that no person shall make contributions to the political committees established and maintained by a national party committee in any calendar year which, in the aggregate, exceed an inflation-adjusted amount that for 2007-2008 is \$28,500. *See* 2 U.S.C. 441a(a)(1)(B) and (c)(1); 11 CFR 110.1(c)(1); and 72 FR 5294 (February 5, 2007). Inflation adjustments beyond 2008 cannot be determined at this point.

Typically, every person who receives a contribution of any amount for an authorized political committee, or a contribution of more than \$50 for a political committee that is not an authorized political committee, must forward that contribution to

the treasurer of the political committee no later than ten days after receiving it. *See* 2 U.S.C. 432(b)(1) and (2)(B); 11 CFR 102.8(a) and (b)(1), and 110.6(c)(1)(iii) and (iv). A person who receives a contribution of \$50 or less for a political committee that is not an authorized political committee must forward that contribution to the treasurer of the political committee no later than thirty days after its receipt. *See* 2 U.S.C. 432(b)(2)(A) and 11 CFR 102.8(b)(1).

In Advisory Opinion 2006-30, the Commission determined that ActBlue could solicit and receive contributions earmarked for a prospective 2008 Democratic presidential candidate, and then delay forwarding the contribution until no later than ten days after the candidate had registered a presidential campaign committee with the Commission, rather than within ten days after ActBlue's receipt. The Commission also determined that ActBlue could forward the contribution to the Democratic National Committee in the event the intended candidate did not register with the Commission by a date certain.<sup>1</sup> Similarly, in Advisory Opinion 2003-23 (WE LEAD), the Commission determined that WE LEAD could accept contributions earmarked for the as-yet unnamed presumptive nominee of the Democratic Party for President of the United States, provided that WE LEAD forwarded such contributions within ten days from when that nominee became known.

The answer to your question turns on when the contribution was "made." A contribution is considered "made" when the contributor relinquishes control over it. 11 CFR 110.1(b)(6). A credit card contribution is "made" when the credit card or credit card number is presented, because at that point "[t]he contributor is strictly obligated by the card agreement to make payment of the credit card bill and incurs substantial penalties with possible collection fees and cancellation of future credit privileges for nonpayment." Advisory Opinion 1990-14 (AT&T) (addressing when a credit card contribution made by phone is "made"). *See also* Advisory Opinion 1995-09 (NewtWatch PAC) (concluding that, where the requestor intended to use a financial services company to enable online contributions, the date the contributor sent an electronic confirmation to the financial services company would be the date the contribution was made); Advisory Opinion 1991-01 (Deloitte) (concluding that the contribution would be considered "made" when the credit card was charged where a contributor deferred a charge to his or her account until a specific time after the contributor's authorization was presented).

Here, your credit card has already been charged for your contribution, and you are obligated to pay the amount of your contribution to your credit card company. Thus, your contribution has already been "made." Moreover, Commission regulations provide that a contribution to a candidate or a candidate's authorized committee with respect to a particular election, *including an earmarked contribution*, shall be considered to be made during the election cycle in which the contribution is actually made, regardless of the year in which the particular election is held. 11 CFR 110.5(c)(1).

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<sup>1</sup> The Commission further concluded that the lack of direction or control by ActBlue over who would be the contribution's eventual recipient meant that the contribution would be from the contributor to the eventual recipient only, and would not also be treated as a contribution from ActBlue.

Accordingly, if there is a 2010 Democratic nominee for the United States Senate in Arizona, and your contribution is forwarded to that nominee, your contribution will count against your biennial contribution limits for the 2007-2008 election cycle. If there is no 2010 Democratic nominee for the United States Senate in Arizona, and ActBlue forwards your contribution to the DSCC, that contribution also counts against your biennial contribution limits for the 2007-2008 election cycle. Further, if there is no 2010 Democratic nominee for the United States Senate in Arizona and your contribution is forwarded to the DSCC in 2010, that contribution will count against your calendar year contribution limit for 2008.

The Commission recognizes that you do not know now, and may not know until 2010, whether your contribution ultimately will be forwarded to the 2010 Democratic Senate nominee or the DSCC. In light of this, the only way to ensure that you do not exceed any possible limit that may apply would be to consider your contribution as if it were made both to the 2010 Democratic Senate nominee and to the DSCC.

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 requestor may not rely on that conclusion as support for its proposed activity. Any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which this advisory opinion is rendered may rely on this advisory opinion. *See* 2 U.S.C. 437f(c)(1)(B). Please note that the analysis or conclusions in this advisory opinion may be affected by subsequent developments in the law including, but not limited to, statutes, regulations, advisory opinions and case law. All cited advisory opinions are available on the Commission's website at <http://saos.nictusa.com/saos/searchao>.

On behalf of the Commission,

(signed)  
Donald F. McGahn II  
Chairman