



Phone: (805) 553-0150
www.careau.com

November 26, 2001

Michael Marinelli, Esq.
Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AOR 2001-20

Re: Careau & Co.'s AOR

Dear Mr. Norton:

I am writing to follow-up the voice-mail message I left this morning. In our telephone conversation last week, you seemed to feel that Careau & Co. still needed to identify an individual committee that has indicated they would participate in our program. While, by agreement, the committee names we discussed are not to be publicly disclosed by the Commission, Congressman Buck McKeon has now authorized us to publicly submit the name of his committee to the Commission. I have hesitated in taking this step only because our proposal has been made as a non-partisan program, and we have been careful to maintain that position. However, I understand your request and would like to confirm with you that this will satisfy the Commission's concern.

Additionally, because our request for an advisory opinion does not represent an adversary position before the Commission, I would also like to seek your thoughts on another point. This concerns your 24.October email, wherein you raise the issue of "how the opportunity to contribute is presented as far as earmarking the contribution."

As you know, we have relied upon a literal reading of the law and the Commission's own writings, which state that earmarking may take the form of a designation or instruction that may be direct, indirect, express, or implied. My take on this has been that it should not matter, under the Act or the Commission regulations, whether an "instruction" is verbal, written, or in the form of a "click through" process, which is a standard the Commission has already recognized. Careau has viewed the larger question to be ensuring that the Internet contribution is from a qualified individual donor, using personal funds, and that the donation is made directly to a federal committee or committees. I also believe the Commission has already established these guidelines, which we have incorporated.

If my readings are correct, then it seems that it is a contributor's option whether a contribution is given or not given; or whether a choice to contribute is to one committee or five committees; or even whether those funds should remain with the site provider to support the

Mr. Marinelli
November 26, 2001

Careau & Co.

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program. However, my concern is that you may feel we have relied too heavily on these readings in formulating our program and that you feel we may need to supplement our position.

I am planning to be away from the office for a short period, so I will call you again, later this afternoon. In the alternative, please contact me if you feel that additional information is required.

Respectfully,

CAREAU & CO.

[Signed]

By: _____

Richard F. Carrott, President

cc: Mr. Norton, Chief Counsel, FEC
Hon. Buck McKeon, Congressman, CA-25
Mr. Dunn, Director of Finance, DNC
Ms. Shea, Director of Finance, RNC

01.11.26 LETTER to MMarinelli_FEC



Phone: (805) 553-0150
www.careau.com

November 16, 2001

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Response to October 24 Request
For Supplemental Information

Dear Mr. Norton:

Michael Marinelli, Esq., of your office has asked us to supply two items of information to you in connection with your processing of our advisory opinion request. [See attached copy.] The first of these is a list of the federal campaign committees that have indicated they would participate in, or have expressed an interest in, our proposed program.

Careau has been in discussions with several federal campaign committees. These include the campaign committees for congressmen of both the Democratic and Republican Parties, as well as the Democratic National Committee and Republican National Committee.

All of the committees have expressed interest but await the action of the FEC before moving forward. This is partly because the Commission has not opined on a program precisely like the one we propose. Their hesitation is also out of an abundance of caution given the current political mood toward campaign funding, even where it is distinguished by individual contributions. Respecting their concerns, we are seeking an advisory opinion from the Commission, including any specific guidelines that the FEC wants to suggest. Such an opinion and guidelines would provide the necessary assurances to us and to other interested parties that the proposed program complies with FEC regulations.

The second item of information that Mr. Marinelli has requested is a printed reproduction of what each computer screen would look like. He has expressed particular interest in the wording of the solicitation with respect to individuals earmarking their contributions.

In response to this request, we have generated and attached a series of examples of the proposed Web pages. We believe that these pages are consistent with the Commission's prior rulings and with our request. As I explained to Mr. Marinelli, because we do not yet have the

Commission's guidelines, we are working from discussion documents and unable to present a finished product.

In developing the program and the attached layouts, our focus has been to remind potential subscribers that the emphasis of this Website and the program is to allow individual contributors to support their party of choice and the candidates with whom they have a nexus. This reminder appears as early as the opening page. Indeed, this is what distinguishes this program from programs seeking to "buy" contributor lists from committees in exchange for a fee. We have constructed the program along prior Commission guidelines so that it is the individual who determines whether any contribution is made. The choice to participate in the service is the individual's; the choice to donate is the individual's; and, the funds are under the control of the individual until they are deposited to the accounts the individual has designated.

We believe that the Mohre Communications site has been laid out in a manner consistent with the Commission's prior Advisory Opinions, the law, and the intent of Congress to open the broadest possible avenue for individuals to become involved in the campaign and contribution process. While involving the small contributor in this process has always been difficult, it is becoming easier as the Internet evolves. Our submission asks the Commission to confirm the guidelines for this program. We will be happy to discuss any changes the Commission wishes to propose.

Please contact me if additional information is required.

Respectfully,

CAREAU & CO.

[Signed]

By: _____
Richard F. Carrott, President

encl(s).

cc: Mr. Marinelli
Mr. Dunn, DNC
Ms. Shea, RNC

Welcome Page

Welcome to Mohre.Com's Sign-Up Site for the
AMERICAN PLAN
A Chance to Make YOUR Choice Count

[Web Page]

\$17.76

Per Month Includes Premium Internet Access
Plus the Choice to Earmark a Part of that Fee to
Support YOUR Party and YOUR Candidates
It's YOUR Choice

Paid for by the donor-recipient committees designated by you.

- On this page, the user is asked to enter his/her e-mail address if they wish to proceed
- The user is reminded that this program is both an Internet Access Service and a fund-raising vehicle for accepting voluntary contributions using credit cards
- "If you wish to become a part of this FUND RAISING opportunity, enter your 5-digit residential Zip code number here: _____" [A text box will be placed after this statement for entry of the person's number.]

Sign-Up Form

[Web Page]

- Users are told something to the effect that: “Federal law requires political committees to report the name, mailing address, occupation, and name of employer for each individual whose contributions aggregate more than \$200 in a calendar year. Although your contributions under this program will not exceed \$200, campaign committees are required to make a “best effort” to obtain, maintain, and be prepared to submit such information. We, therefore, ask you to complete the following secure form:”
- If the subscriber fails to enter any of the required information, a “pop-up” screen alerts him/her that he/she will not be allowed to proceed until the information is provided.
- The subscriber is reminded that this is a secure page and is asked to enter the required information, including the his/her: name, street address, city, state, Zip code, occupation/employer, credit card choice, credit card number, and credit card expiration date.
 - Should a contributor attempt to proceed without completing the form, a “pop-up” screen will alert the person to the problem, for example: “In order to process your form and contribution, we need your [employer’s name, etc.] entered in the space required.”
- If the billing and residential addresses provided by the prospective donor are different, the web site will display the following message:

We have noticed that the billing address on your card is different from your home address. Please note that we cannot accept corporate or business entity credit cards. Your contribution must be made on your personal credit card. This is a reminder that your contribution must be from your own funds and not those of another. If these are your funds, please proceed.

[The donor will be prompted, then, either to continue with the transaction or to cancel it altogether.]

- After completing and reviewing the information provided on the electronic form, the subscriber is told that he/she will now need to choose which campaigns, if any, he/she wishes to support.
- “On the next page, you will be asked to review and confirm the contributions you wish to make. Please ‘click’ the ‘process my information’ button to proceed.”

Contribution and Solicitation Page

[Web Page]

- Users are greeted with: “On this page, you are asked to decide whether you wish to contribute. You may do this by directing that a part of your monthly fee should be deposited directly to the campaign committee or committees.”
- Users are informed: “Whether you choose to donate to one committee, some of the committees, all of the committees, or none of the committees, your monthly ISP fee will remain \$17.76. Your choices will not affect your service.”
- Users are then informed: “All contributions will be confirmed by e-mail and your monthly credit card statement will list your donations as separate line items. The confirmation e-mail will also provide a link to a Website allowing you to modify your contribution choices at any time.”
- Users are asked to check one of the following two boxes: 1) Yes, I want to contribute to one or more of the following committees; or, 2) No, I do not want to contribute to any of the following committees, but I wish continue the sign-up procedure for the service.
- Users are then prompted: “Please review the following list of campaign committees and the monthly contribution amount listed for each of them. After reviewing the list, please select one of the following choices:
 1. “I wish to make all of the listed donations.

2. **"I would like to determine each of the donations individually"**
- **If the donor selects number "1," he/she is prompted to proceed to the next step**
 - **If the donor selects number "2," he/she is prompted to "click" the "yes" or "no" box following each name and contribution amount**
 - **Each line displays the committee/candidate name and the total contribution amount**
 - **NOTE: The Web page will state that if a committee does not yet exist for any of the listed elected federal offices serving the donor's locale, the default committee in each category is the national party committee for that office (e.g., the Democratic Congressional Campaign Committee and the National Republican Congressional Committee, or the Democratic Senatorial Campaign Committee and the National Republican Senatorial Committee)**
- **After the donor has reviewed the donation list, he/she is prompted: "After reviewing the list, please select one of the following choices:**
 1. **"I am satisfied with my choices and wish to proceed to the next page**
 2. **"I wish to modify my choices**
 3. **"I wish to leave without making any contributions"**
 - **When the donor selects number "1," a "pop-up" screen appears, listing only the donation choices, the name of the committee to receive each donation, and the amount of each donation. The donor is asked to confirm that he/she wishes to have this amount deposited directly to the account of each listed committee each month. The donor is prompted to "click" either the "yes" or "no" box displayed below the list.**
 - **If, in reviewing the list of committees and donations, the donor chooses not to donate to one or more committees, a separate "pop-up" screen appears, after the donor has determined that he/she is satisfied with his/her/choices. On this screen, the donor is reminded that the choice to donate or not donate does not change the monthly service fee for the ISP. The donor is prompted to express his/her understanding of this by "clicking" one of the displayed boxes, for example:**
 1. **"I understand that my choice to donate or not donate has no effect on the monthly rate for this service.**
 2. **"I have decided not to subscribe to this service and wish to terminate this program without making any donations.**
 3. **"I would like to review my donation choices again."**

Attestation Page

[Web Page]

- **“Federal election campaign committees may accept voluntary contributions from individuals, provided the contributions do not exceed, in the aggregate, \$1,000. However, federal law prohibits campaign contributions from:**
 - **the general treasury funds of corporations, labor organizations, or national banks (including corporate or other business entity credit cards);**
 - **any person contributing from another person’s funds;**
 - **foreign nationals who lack permanent resident status; and,**
 - **government contractors.”**
- **“In order for us to process your donations, we ask you to confirm the following information by ‘clicking’ the ‘yes’ box if the statement is true and the ‘no’ box if the statement is false:**
 - **These contributions are voluntary and I am directing that they be made directly to the committees in my name [yes – no]**
 - **I am making these contributions from my own funds and not those of another person [yes – no]**
 - **These contributions are made from a personal credit card for which I have the legal obligation to pay, they are not made on a corporate or other**

business entity credit card nor on the credit card of another person [yes – no]

- I am a United States citizen or a person with permanent resident status in the United States [yes – no]
- I am not a federal contractor [yes – no]
- In the event that a donor answers “no” to any of the statements or fails to give a response to one of the statements, a “pop-up” screen will appear stating, for example:

Sorry, federal law prevents committees from accepting contributions from [e.g., foreign nationals who lack permanent residential status in the United States]. If you believe you may have marked the wrong box, you should review your response.

[The subscriber will then be prompted to return to the previous screen, continue the subscription process without making any donations, or end the session.]

Thank You Page

[Web Page]

- **“Congratulations. You have successfully completed the sign-up process.”**
- **“An e-mail confirmation has been sent to you for each of the contributions you have made. Each month you will receive a similar e-mail confirming the payment of your monthly service fee and each of your contributions to each committee. Although your political contributions are not deductible for Federal Income Tax purposes, you should retain these confirmations and compare them to the line item charges on your monthly credit card statements.”**
- **“Each confirmation will also include a link to a Website where you may discontinue or modify your contribution list at any time.”**

Richard F. Carrott

From: "Michael Marinelli" <mmarinelli@fec.gov>
To: <RFC@Careau.com>
Sent: Wednesday, October 24, 2001 1:10 PM
Subject: more information for advisory Opinion request

As per our conversation Wednesday, we would need the following information to process your advisory opinion request

1. a list of the Federal candidates/Committees that have expressed an interest or indicated they would participate in your proposal to have contributions made to them via your proposed web site
2. a reproduction on paper of what each computer screen would like as a potential contributor accessed your site and went through the purchase of your service and a contribution process. In particular the wording of the solicitation to make contributions is important as well as how the opportunity to contribute is presented as far as earmarking the contribution

Thanks!

Michael Marinelli



RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

OCT 19 12 03 PM '01

Phone: (805) 553-0150
www.careau.com

October 17, 2001

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Request for Advisory Opinion

Dear Mr. Norton:

Pursuant to 2 U. S. C. § 437f, this letter requests an advisory opinion from the Federal Election Commission (the "Commission") on behalf of Careau & Co. ("Careau"), a California corporation, and Mohre Communications ("Mohre"), a Nevada corporation. Careau and Mohre will be referred to herein collectively as the "Companies."

INTRODUCTION

The Companies ask the Commission to interpret the Federal Election Campaign Act of 1971, as amended (the "Act"), the Presidential Primary Matching Payment Account Act (the "Matching Act"), 26 U.S.C. 9031-9042, and Commission regulations to permit the Companies' proposed business program for the solicitation, distribution, and accounting of federal account contributions by credit card¹ over the Internet.

Careau is a marketing company that develops programs for the Internet. Related to this, it has two pending patent applications, one of which has been approved for issuance by the USPTO, covering methods for allocating payments made over the Internet. Careau has licensed these patents to Mohre to facilitate the Companies' proposed program (the "Program") for allocation of federal account contributions in accordance with guidelines approved in prior Commission advisory opinions.²

¹ As used throughout this document, the term "credit card" refers to credit cards, charge cards, debit cards, and any other commonly accepted form of electronic transfer of funds in commerce over the Internet.

² The Program is geared to both federal and non-federal committees, and the compensation element is uniform for all organizations. This advisory opinion request (AOR), however, is concerned only with those committees that

Pursuant to the Program, Mohre, an affiliated company of Careau, will provide services as an Internet Service Provider and portal ("ISP"). The various political committees participating in the Program will direct their supporters to Mohre's signup Site in the hope that the supporter will choose both to subscribe to the ISP and to make contributions to federal election committees. Individuals who choose to subscribe to this full service ISP may do so over the Internet by credit card and may elect to earmark³ a small portion of the monthly service fees as contributions to specific federal election committees. At the individual's discretion, up to five contributions may be made from each month's payment of service fees. The committees to receive the contributions will be determined by where the subscriber lives.⁴

Careau, on behalf of the Companies, is currently in discussions with various federal political committees regarding the committees' participation in the Program. During these discussions, all parties agreed upon the importance of ensuring that the Companies' program complies with federal election laws by obtaining an advisory opinion from the Commission. Careau therefore requests such an opinion confirming that:

1. The Companies' proposed program involves: 1) direct contributions to federal committees earmarked and controlled by an individual as permitted by law;

are subject to the Act (i.e., federal campaign committees) and will focus, therefore, only on those aspects of the Program. All references will be only to federal election committees and related contributions.

³ Earmarked means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee. 11 CFR § 110.6(b)(1).

⁴ Upon approval, Mohre plans to introduce the Program as "The American Plan," priced at \$17.76 per month. Of this amount, subscribers may contribute a total of up to \$2.00 per month, in specific amounts, to as many as five election committees from the contributor's political party. The committees will vary by individual. In this case, they are the committees for federal office that directly relate to where the contributor lives, which establishes a direct nexus to the contributor: his or her congressional district; the Senators from his or her state; and, the national committee for the election of the President. If the incumbent is from another party, or if no election committee has yet been formed for one of these offices, the contribution will be paid to the affiliated national congressional or senatorial committee. The contributor may choose to make (or not to make) contributions in the following amounts (including all processing fees, merchant account charges, and related fees):

- Local congressional committee: \$0.75 per month
- Senatorial Committees (total): \$0.45 per month
- National Committee: \$0.30 per month
- Referring Committee: \$0.50 per month

The "referral" contribution assumes that the contributor was referred to Mohre's website (the "Site") from a committee's supporter list. If this is not the case, the contributor is asked which committee, if any, should receive this contribution. Additionally, the contributor may discontinue any or all of the contributions any time, including during the signup procedure. A decision to "opt out" will not affect the subscriber's rights or access to the ISP.

and, 2) contributions that the contributor has affirmed are from personal funds and not funds otherwise prohibited by law.

2. The Program's proposed procedures for accepting credit card contributions over the Internet comply with the Commission's guidelines and that those guidelines, adopted with regard to funds raised under the Matching Act,⁵ also apply to contributions to any federal election committee.
3. Because the contributions under the Program will be contributions from individuals using personal funds, the Program is not governed by the negative findings regarding prohibited contributions from corporate treasuries in the Commission's Advisory Opinions regarding affinity group programs.⁶

We respectfully submit that existing law already supports such confirmations. Furthermore, by making the requested confirmations, the Commission will expand the use of new technology in the area of individual campaign contributions,⁷ and it will encourage the participation of individuals in our political processes.

LEGAL BASIS

Through a uniform series of interpretations, the Commission has permitted political committees to raise funds by credit card and other electronic means,⁸ including credit card contributions over the World Wide Web.⁹ While these advisory opinions deal specifically with matching funds, the Companies believe that these opinions reflect a general opinion of the Commission encompassing contributions to all federal accounts, as defined under 11 CFR § 102.5(a)(1)(i). It is important to note that the Commission considered whether implementation of procedures for soliciting, receiving, and accounting for credit card contributions over the Internet would compromise the intent of the Act or regulations before

⁵ This refers specifically to Advisory Opinion ("AO") 2001-4, AO 1999-22, and AO 1999-9.

⁶ Affinity group programs typically involve a corporation or financial institution soliciting members of a sponsoring or endorsing organization (the "affinity group") in return for some form of compensation paid by the corporation or financial institution to the membership organization. The Commission has generally concluded that payments by corporations to political committees resulting from such activities are contributions to the political committees that may violate 2 USC § 441b. AO 1979-17, AO 1988-12, and AO 1992-40 (the "Affinity Group Opinions").

⁷ The Commission has a history of interpreting the Act and its regulations to allow such technological innovations if neither the intent of the Act nor the regulations thereunder would be compromised. AO 1999-09, citing Advisory Opinions 1999-3, 1995-35, 1995-9, 1994-40, and 1984-4.

⁸ See, Advisory Opinions 1999-9, 1995-34, 1994-33, 1991-1, 1990-4, 1984-45, and 1978-68.

⁹ See, Advisory Opinions 2001-4, 1999-22, and 1999-9, citing 1995-35 and 1995-6.

approving changes to the Matching Act to allow such programs. See AO 1999-9, citing Advisory Opinions 1999-3, 1995-35, 1995-9, 1994-40, and 1993-4.

In past advisory opinions, the Commission has also established a procedure for allowing individual contributors to earmark contributions from personal funds to be deposited with the various committees through a merchant account. See AO 1999-22. The regulations provide that all contributions by a person 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. 11 CFR § 110.6(a) and 2 U.S.C. § 441a(a)(8). Additionally, a contribution is considered to be made when the contributor relinquishes control over the contribution, and the contributor is considered to relinquish control over the contribution when the contributor delivers it to the candidate, to the political committee, or to an agent of the political committee. 11 CFR § 110.1(b)(6). Based upon these provisions of section 110, the Companies believe that an individual is entitled to earmark personal funds and control the distribution of those funds directly to political committees¹⁰ through the standard business clearing and forwarding operation of a merchant account. See AO 1999-22.

These are precisely the methods intended to be used by the Program and there appears to be no serious doubt that these methods comply with law. The question therefore becomes the specific one of whether the procedures implementing those methods are in compliance with the Commission's Advisory Opinions.

COMPLIANCE WITH CONDITIONS

The Commission has established detailed procedures for properly soliciting, receiving, and accounting for contributions made over the Internet.¹¹ The Companies have adopted a series of procedures specifically designed to ensure such compliance. Website procedures, reports to committees, separate merchant identifications for each committee receiving contributions, "written instrument" compliance with 11 CFR § 9034.2(b) (e.g., merchant account documentation showing that the separate amount received by each committee appears on the contributor's credit card bill for each contribution made and that the contributor authorized each contribution), document storage, disclaimer and best efforts requirements, screening procedures, and all of the other guidelines established under Advisory Opinions 2001-4, 1999-22, and 1999-9 will be followed under the Program.

¹⁰ As discussed in the "Compliance" section, contributors will be notified in the "real time" confirmation that the credit card bill will reflect the contributions in the name of each committee.

¹¹ AO 1999-09 and AO 1999-22.

Individuals who visit the ISP signup Site to subscribe to the ISP services¹² may also choose to contribute or not to contribute to the committees by filling out and transmitting an electronic form like that approved by the Commission in Advisory Opinion 1995-9. See also, AO 1999-9. The contributor will then directly provide credit card, debit card, or other electronic fund transfer information to the committee through the electronic form. The form will state that, under FEC rules and regulations, each committee receiving contributions from the donor shall receive and retain information from this form. The form will require, *inter alia*, the contributor's name, the contributor's name as it appears on the credit card, the billing address on record with the issuer of the credit card, the credit card number, the expiration date of the card, the contributor's residential address, and the amount of the contribution. AO 1999-9 and AO 1999-22. Both the committee and the Site will send a confirmation of the contribution to the donor via electronic mail, and will submit the information for payment through the appropriate card issuer. To avoid the receipt of corporate contributions, the committee will pay all applicable processing fees. See AOR 1999-9, as approved under AO 1999-9.

Prospective contributors visiting the Site will be told that to subscribe and contribute they must complete and transmit the electronic form for further processing. Each prospective contributor will be asked to confirm his/her intent to contribute from personal funds. An affirmative answer is required. Before proceeding, the contributor will be asked to confirm the amount of each contribution payable to each committee without qualification.¹³ The contributor will be informed, further, that the decision to contribute or not to contribute to any or all of the enumerated committees is theirs. Additionally, the individual will be told that he or she may choose to discontinue the contribution program (i.e., "opt out") at any time.

Each contributor will be reminded that Mohre's ISP program has been established in conjunction with the federal election committees and that, by proceeding with the donation, the donor will be acknowledging that enrollment in this ISP is intended to include voluntary contributions to these committees.

Mohre will also submit, to each committee, all of the information each committee is required to have and store under the Act and Commission regulations.

¹² The service charge and the contributions are separate, line item payments approved and paid directly by the contributor.

¹³ Before the contributor is allowed to proceed to the next page, a pop-up screen will appear for each earmarked amount asking if the contribution amount and the committee name of the committee receiving the contribution are correct. An affirmative response is necessary. If the answer is negative, the contributor will be returned to the appropriate screen and instructed how to make the desired changes.

See AO 1999-09. This includes copies of the electronic forms submitted by the donors in electronic form, for reproduction, along with documentation showing the contributions deposited into designated depositories. The information necessary for these reports will be compiled from the forms completed during the application period and from the monthly disbursement records compiled by the Companies. Each committee must preserve such records for audit or inspection by the Commission for a period of at least three years after the filing of the related report or statement. See 11 CFR 104.14(b)(3) and 102.9(c). Careau/Mohre will retain backup copies of all of the information for the same period.

The committees receiving each contribution will pay all applicable processing fees and any associated merchant account charges, as provided in Advisory Opinions 1999-9, 1995-34, 1995-9, and 1994-33, in order to avoid the receipt of corporate contributions. (See footnote number 2.) Additionally, the monthly ISP fee, charged at a fair market price, is clearly within the mid-range of similar programs.¹⁴

Following the submission and approval of the prospective contributor's information through the appropriate card issuer, Mohre and the committees will send confirmations of the contribution to the donor via electronic mail expressing appreciation for the contribution and will note the contribution in their respective databases. The Site also will request that the donor contact the Site promptly either by telephone or by e-mail with any questions or concerns about the contribution, or about the process through which it was made. All such contact information will be promptly forwarded to each affected committee.

Every month, the contributor's credit card bill will enumerate the separate contribution amounts and the contributor will receive an email confirmation of the amount received by each committee. Additionally, the Site will confirm each monthly contribution to each committee and to each contributor. The email confirmation to the contributor will include a reminder that the individual may choose to "opt out" of any of the contributions at any time and an "opt out link" will be included. As stated above, the required information on the monthly contributions will be provided to each committee for database and storage requirements.

The Site will also observe disclaimer and best efforts requirements and will screen for prohibited contributions in the manner endorsed by the Commission in Advisory Opinion 1995-9. The Companies intend to employ and support the same

¹⁴ Similar ISP programs range in price from around \$10.00 per month (e.g., NetZero Platinum) to around \$22.00 per month (e.g., AOL and MSN).

practices a committee would follow if a donor wrote checks through different or multiple checking accounts. Upon receipt of a contribution, the donor's name will be entered into a database of contributors so that the committees may check to see if the individual made other donations. The database will then be updated to all committees on a regular basis. Because no single program contribution will exceed \$15.00 per year, the information provided will primarily be to support the committees' best efforts programs for identifying aggregate contributor thresholds. AO 1995-9.

The Site, on behalf of the various committees, intends to use the services of an Internet credit card processing vendor that has the capability to compare the contributor information submitted to the Site with the name, address, and other billing information on file with the issuer of the contributing credit card. This capability will allow the Site to verify the identity of those who contribute via credit card with the same degree of confidence that political committees generally accept checks via direct mail and other forms of solicitation that are consistent with Commission regulations, while not necessarily involving direct personal contact between staff and the donors. AO 1999-22 and AO 1999-9.

The Companies intend to screen for prohibited contributions by taking a series of sequential measures designed to comply with Advisory Opinion 1995-9. First, on the web page that contains the contribution solicitation form, the Companies will post language in a clear and conspicuous manner informing prospective donors of the Act's source restrictions and contribution limits. This language is derived from the Commission's guidance in Advisory Opinion 1995-9.

Second, the electronic form will be structured and handled in compliance with the Act and Commission regulations. In the event a prospective donor fails to provide any of the required information, or leaves one of these fields blank, the Site will reject the form and prompt the prospective donor to provide the missing information.

Third, to screen further for corporate or business entity cards, the Site intends to take advantage of the fact that corporate or business entity credit cards are generally billed directly to the entity's offices, rather than to an individual's home. If the billing and residential addresses provided by the prospective contributor are different, the web site will display the approved form of message, alerting the prospect of and asking that person to attest to the legality of his or her contribution by checking the appropriate disclaimer boxes. The failure to check any of the attestation boxes will cause the Site to reject the form and to display a message noting the applicable source restriction, for example: "We're sorry. Federal law prohibits contributions from the general treasury funds of corporations, labor

organizations, or national banks." It will then prompt the donor either to correct any missing or inaccurate information, or to cancel the transaction.

Fourth, when the form has been successfully completed, the contributor will transmit it to the Site for "real time" processing. The credit card data will be sent directly to the credit card processing company. The company will crosscheck the contributor information submitted with its own information on the name, billing address, account number, and expiration date of the card and will process the transaction.

Fifth, in the event the processing company rejects the credit card transaction, the Site will then send a message to the prospective donor that the contribution has been rejected.

Sixth, in the event the credit card submission is approved, each committee will be assigned a separate merchant number, which will result in the contributor's credit statement reflecting the contributions in the name of each committee. See AO 1999-22. The Commission has determined that that placing contributions in a separate banking account, maintaining separate book accounts for each political committee, and providing the treasurers of the political committees with the required information addresses concerns raised by the Commission in previous opinions. Based upon these precautions, the Commission has concluded that for contributions that are not submitted under the Matching Act and that use a unique merchant ID to collect contributions for multiple clients are permissible under the Act. Ibid.

The contributions, less the processing fees, will then be deposited directly into the campaign depositories from the merchant account distributions. This recurring process is based upon each individual's section 110.6 authorizations and is made possible by the technological innovations that commerce over the Internet has made possible. Moreover, the individual receives real-time electronic mail confirmations of the payments for the service and for each contribution to the committees. These monthly receipts create a complete record and notice for both the individual and the committee of each contribution and improve the monthly credit card billing wait-time for the individual to react to any inaccuracy or impropriety.

The Companies acknowledge that the payments made to federal election committees under the Affinity Group Opinions were contributions by the corporate providers and prohibited under section 441(b).¹⁵ The Companies respectfully

¹⁵ For example, see Advisory Opinions 1992-40, 1988-12, and 1979-17.

submit, however, that the Program does not fall under the prohibitions of section 441(b) because, under the facts of the Affinity Group Opinions, the contributions were made by corporate entities. That fact was crucial in those opinions. It is not a factor under the Program. The Program involves individuals contributing from earmarked, personal funds that have not been commingled in a corporate account. 11 CFR §§ 110.1(b)(6) and 110.6(a); also, AO 1999-22. This supports different treatment of the Program from the treatment afforded under the Affinity Group Opinions.

CONCLUSION

The Commission's existing Advisory Opinions, the Act, and the regulations support the three matters that the Companies have asked the Commission to confirm. The sum and substance of this is that the Companies are asking the Commission to affirm that the Companies' program for the solicitation, distribution, and accounting of federal account contributions over the Internet is permissible and that the procedures established by the Companies comply in all respects with the several Commission Advisory Opinions on the subject and with the Act and regulations. The Companies, therefore, respectfully request that the Commission confirm these beliefs in the form of an Advisory Opinion.

Respectfully,

CAREAU & CO

By 

Richard F. Carrott, President

cc: Chairman McDonald
Vice Chairman Mason
Commissioner Sandstrom
Commissioner Smith
Commissioner Thomas
Commissioner Wold