

AGENDA DOCUMENT NO. 11-20



THE FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2011 APR -7 P 1:45

April 6, 2011

**MEMORANDUM**

**AGENDA ITEM**

To: The Commission

Through: Alec Palmer *AP*  
Acting Staff Director

From: Patricia Carmona *PC*  
Chief Compliance Officer

Joseph F. Stoltz *JFS*  
Assistant Staff Director  
Audit Division

Tom Hintermister *TH*  
Audit Manager

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Lead Auditor

Subject: Proposed Final Audit Report on the Service Employees International Union Committee on Political Education (SEIU COPE) (A09-28)

For Meeting of 5-5-11

Attached for your approval is the subject report. The SEIU COPE was audited once before, in the 2000 election cycle. Summaries of the findings in the previous audit report are also attached.

A finding concerning the disclosure of the ultimate vendor for independent expenditures associated with advance payments made by SEIU COPE to its connected organization, SEIU, is not included in this report. The Audit staff identified 38 disbursements totaling \$14,427,267 from SEIU COPE, a separate segregated fund, to SEIU. SEIU COPE representatives explained that SEIU subsequently disbursed these funds on behalf of SEIU COPE to numerous entities for independent expenditures<sup>1</sup>.

<sup>1</sup> SEIU also made expenditures for communications to its restricted class that were purportedly coordinated with the Obama campaign. In order to maintain the independence of the SEIU COPE expenditures, it was explained that separate "Teams" were in charge of the different disbursements. The "Blue Team" handled the SEIU COPE independent expenditures and the "Red Team" handled the communications with the restricted class. SEIU COPE representatives state that communication between the two teams was strictly prohibited.

Based on the documentation available, it appears the majority of these disbursements were to SEIU Locals for payroll costs for canvassers, as well as related transportation, accommodation, food and supply costs. There were also payments to media consultants and to other political organizations, including party committees.

SEIU COPE reported these transfers as independent expenditures totaling \$14,099,033 to SEIU with the purpose of “door to door voter ID and get out the vote efforts” supporting Barack Obama or opposing John McCain<sup>2</sup>. These independent expenditures were reported during the period from February to October 2008. Itemization of the ultimate vendor paid from the SEIU account was not included on SEIU COPE’s reports covering the period.

During audit fieldwork, the Audit staff discussed these transactions with RAD and OGC and requested legal guidance concerning the transactions. The Audit Division proposed three questions to OGC.

First, the Audit Division requested guidance as to whether SEIU COPE was required to itemize disbursements in a memo text entry that would disclose those individuals and/or entities that ultimately received payments from the account of SEIU, the connected organization.

Based on the available information, OGC concluded that it could not locate any precedent requiring SEIU COPE to report information on the individuals and/or entities that ultimately received payments made by SEIU. OGC also noted that the additional disclosure would require a very large and detailed amount of reporting for disbursements that adequately disclose the purpose of the disbursements consistent with Commission statute and regulations. 2 U.S.C. § 434(b)(6)(B) and 11 C.F.R. § 104.3(b)(3).

OGC analyzed AO 1983-25 (Mondale) and AO 1984-37 (AMA/AMPAC) and concluded that both Commission advisory opinions would support not requiring further itemization.

In Mondale, a Presidential candidate’s reporting of payments made to a media consulting firm for operating expenditures required no further itemization of the payments by the firm to others under 2 U.S.C. § 434(b)(5)(A) or 11 C.F.R. § 104.3(b)(4)(i). The Commission based its decision on several facts it considered significant in the Mondale situation. First, the consultants were a corporation that was separate and distinct from the Mondale Committee and none of the principals of the corporation held staff positions within the Mondale Committee. Second, the Mondale Committee had no interest in contracts the consultants had with other entities. In the SEIU COPE matter, there is arguably no arm's-length transaction with respect to the

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<sup>2</sup> As part of its reporting of these independent expenditures made after September 2008, SEIU COPE reported a positive entry on Schedule B when amounts were advanced to SEIU, reported a negative entry on Schedule B when these funds were disbursed by SEIU, and a positive entry on Schedule E. Also, SEIU COPE filed 48 Hour Notices for these Independent Expenditures based on when the funds were used by SEIU. Neither the Schedule B entries nor the 48 Hour Notice filings disclose the ultimate payees associated with the independent expenditure.

payments since SEIU COPE is the separate segregated fund of the connected organization SEIU.

In AMA/AMPAC AO 1984-27, AMPAC wanted to buy, in advance, the services of its connected organization's (i.e., AMA's) employees (as political consultants) to donate to candidates. AMPAC was required to report each advance payment for the services of AMA employees as an expenditure and provide as a memo entry the allocation of the expenditure as an in-kind contribution to each candidate for whom the services were provided. More detailed itemization to disclose subsequent payments to the AMA employees was not required.

OGC also analyzed MUR 3847 (Stockman) relevant to the reporting issue. In MUR 3847, the Commission rejected application of the provisions of Mondale, and instead required Friends of Steve Stockman to report the ultimate payee, essentially because the consulting firm did not have an arm's-length relationship, as in the Mondale AO. In Mondale, the Commission approved not reporting a vendor's disbursements to sub-vendors on behalf of the Mondale Committee in part because there was an arm's-length relationship between the Mondale Committee and the vendor. In Stockman, there was no such arm's-length relationship. Stockman paid a vendor called "Political Won Stop" approximately \$470,000, which the vendor disbursed to third party vendors. Additionally, unlike in Mondale, (1) there was no written contract, (2) Political Won Stop was staffed by persons with close relationships to Stockman and while Political Won Stop had other clients, those clients paid the consultant very small amounts (\$350 to \$1,206) compared to Stockman (\$470,000), and (3) many of those clients also had very close relationships to Stockman. See MUR 3847 General Counsel's Report Recommending Probable Cause (Dec. 2, 1997) and Conciliation Agreement (Commission approved Dec. 8, 1997). The Committee also did not provide a full description of the underlying purpose of the disbursement. *Id.*

The facts in SEIU COPE would appear to be somewhere between MUR 3847 (Stockman) and AMA/AMPAC (AO 1984-37). It was concluded that SEIU COPE is not required to disclose ultimate payees of the advances it made to the SEIU because these facts are closer to AMA/AMPAC. Similar to the circumstances of MUR 3847 (Stockman), but unlike those in AO 1984-37 (AMA/AMPAC), there are "ultimate payees" that conceptually could be disclosed. In AMA/AMPAC, the connected organization, AMA, essentially *was* the ultimate payee because AMPAC was doing no more than buying, on behalf of the recipients of its in-kind contributions, the services of AMA employees who would then receive their regular AMA salaries and benefits; AMPAC reported payments to the connected organization on behalf of the candidate. In this case, SEIU used the funds provided by SEIU COPE to procure goods and services from third parties relative to the independent expenditures. There is an important difference between the nature of the relationship between SEIU COPE and SEIU (and between AMPAC and AMA) and between the Stockman committee and the purported "vendor" in MUR 3847 (Stockman). The relationship between SEIU and SEIU COPE is open, transparent and defined by provisions of the Act. SEIU is the connected organization of its separate segregated fund, SEIU COPE. By contrast, the "vendor" in MUR 3847 (Stockman) appeared to have little reason to exist except as a vehicle for shielding the Stockman committee from public disclosure. The Mondale AO's references

to an arm's-length relationship were likely intended to prevent the very scenario that presented itself in MUR 3847 (Stockman). SEIU is one of the largest labor unions, with many purposes beyond independent expenditures, and unlike "Political Won Stop," it shows no sign of being a sham intended only to shield SEIU COPE from public disclosure. Clearly, there is no "arm's -length" relationship between SEIU COPE and SEIU. Applying the Mondale AO's "arm's-length" language to the relationship between a union and its connected organization in the same way the Commission applied that language to the "vendor" and the authorized committee in MUR 3847 (Stockman) would create a potentially heavy administrative burden that might effectively shut off the application of the AMA/AMPAC model to independent expenditure cases. This may be a moot point after *Citizens United*, because connected organizations themselves may now make independent expenditures from general treasury funds. Given the circumstances, OGC suggested the Audit Division present the issue in the cover memorandum to the audit report.

Second, the Audit staff requested guidance on whether SEIU, the connected organization, had a reporting obligation with respect to the transactions. OGC reasoned that SEIU did not have a reporting obligation because these transactions were related to advances from the SEIU COPE to SEIU. As a result, SEIU did not make the independent expenditures (SEIU COPE did) and was not required to report the detailed information. 11 C.F.R. § 104.4.

Finally, the Audit staff requested guidance on the responsibility of recordkeeping for the transactions and the extent to which either organization (SEIU or SEIU COPE) had an obligation to produce records supporting the ultimate disposition of the funds advanced by SEIU COPE.

OGC analyzed whether SEIU COPE is responsible for providing detailed records showing how SEIU spent approximately \$14 million in advance payments from SEIU COPE, or whether it is sufficient to document the advance payments. OGC concluded that, based on the available information, SEIU COPE appeared to have met the requirements of 102.9(b) for the recordkeeping of disbursements because SEIU COPE has produced the equivalent of a canceled check for the disbursements made to SEIU. 11 C.F.R. § 102.9(b)(2). The Commission's recordkeeping provisions require that an account be kept of disbursements made by or on behalf of the committee and include the name and address of the person receiving the disbursement as well as the date, amount and purpose of the disbursement. 11 C.F.R. § 102.9(b)(1). Additionally, if the disbursement is more than \$200, the committee should retain a receipt or invoice from the payee or a canceled check to the payee. SEIU COPE provided an "Account Transfer Detail," generated from the SEIU's accounting system, which documented the date and amount of the transfer and identified the accounts involved in the transfer. The Audit Division traced all wire transfers to the SEIU COPE's bank statements demonstrating that the transfers for the advances occurred; such documentation is the equivalent of a canceled check for the disbursements and has satisfied the provisions of section 102.9(b)(2).

OGC also addressed whether documentation was required to support whether the transfers from SEIU COPE to SEIU were made in advance of the payments made by SEIU. OGC noted that the critical factor that permitted the Commission to approve the arrangement for the advance payment option in AO 1984-37 (AMA/AMPAC) was that AMPAC made payments to AMA in advance of AMA providing services to the committees that received the in-kind contributions of consulting services. (The Commission also approved a "dual employment option," not applicable to our facts). In AO 1984-24, the Commission had rejected a proposal by Sierra Club and its separate segregated fund, SCCOPE, in which payment for Sierra Club's services was not made in advance. Failure to make payment in advance, the Commission held, would result in a violation of 2 U.S.C. 441b. In the current matter, failure to make payment in advance would result in either attributing independent expenditures to SEIU instead of SEIU COPE, which is now permissible under *Citizens United*, but which would substantially change the requirements for reporting of disbursements, or in in-kind advances from SEIU to SEIU COPE, which are still prohibited by 2 U.S.C. 441b. SEIU COPE provided documentation verifying the date the funds were transferred to SEIU along with an explanation that the funds in question were advanced to SEIU. However, the Audit staff could not verify whether the funds were made in advance of any independent expenditure.

Based on the legal guidance and statements provided by SEIU COPE, the Audit Report does not include a finding relative to the disclosure of or recordkeeping for these independent expenditures. The Audit Report includes a brief scope limitation stating that SEIU COPE met the recordkeeping requirements of 11 CFR §102.9(b); the records examined did not, however, enable the Audit staff to verify the reporting of the approximately \$14 million in independent expenditures. The limited accounting records and documentation reviewed for the disbursements prevented the Audit staff from verifying how the funds transferred to SEIU were spent and the timing of such independent expenditures for 24/48-Hour notice filing purposes.

This report is being circulated on a 72-hour, no objection basis. Should an objection be received, it is recommended that the report be considered at the next regularly scheduled open session. If you have any questions, please contact Jeff Spilizewski or Tom Hintermister at 694-1200.

Attachments:

Proposed Final Audit Report on the Service Employees International Union Committee on Political Education

Attachment 1- Summary of Previous Audit

<b>Summary of Previous Audit</b>
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**Service Employees International Union Political Campaign Committee (SEIU)**

**Election Cycle:** 2000

**Release Date of Final Audit Report:** November 1, 2004

**Finding 1. Failure to Maintain Contributor Payroll Deduction Authorizations**

Based on a sample of transmittals for which detailed contributor information was provided, the Audit staff determined that payroll deduction authorization forms were not available for approximately 50% of the contributors sampled. SEIU made available new procedures designed to insure that all PDA's would be maintained. The Audit staff recommended that SEIU demonstrate that its new procedures have been implemented and provide any other comments it may have relative to this matter. SEIU has complied with the recommendations.

**Finding 2. Untimely Transmittal of Contributions**

Transmittals were tested to determine if local unions transmitted contributions timely. The sample results projected that contributions, totaling \$383,588, made via payroll deduction were not transmitted timely. The Audit staff recommended SEIU demonstrate that such contributions were transmitted timely. SEIU stated it could not demonstrate that the transmittals were made timely. However, SEIU submitted copies of revised procedures that it indicated were sent to all local unions. It was also recommended that SEIU demonstrate that its new procedures have been implemented. SEIU has complied with the recommendations.

**Finding 3. Apparent Prohibited Contributions**

The sample of transmittals also projected that contributions totaling \$59,322 had been received from prohibited sources. SEIU either made refunds to the local unions or transfers to its political education account (treasury account) for contributions totaling \$46,733. The Audit staff recommended that SEIU provide evidence demonstrating that the sample errors were not received from prohibited sources. Absent such a demonstration, the Audit staff recommended that SEIU transfer \$12,589 (\$59,322 - \$46,733) to its treasury account and provide evidence of such transfer. In response, SEIU stated that it accepted the finding and has transferred \$12,589 to its treasury account. A copy of the check was submitted with its response.

**Finding 4. Disclosure of Transfers from Affiliated Committees**

SEIU failed to itemize forty-five transfers from affiliated committees totaling \$565,370. The Audit staff recommended that SEIU file amended disclosure reports itemizing these transfers. In response, SEIU filed amended disclosure reports itemizing the transfers from affiliated committees.

**Finding 5. Disclosure of Independent Expenditures**

The Audit staff identified eleven independent expenditures, totaling \$1,037,568, that were not properly disclosed. SEIU disclosed these expenditures on Schedule B (Itemized Disbursements) rather than itemizing on Schedules E (Independent Expenditures) as required. In response to the interim audit report, SEIU filed amended reports itemizing the expenditures on Schedules E.

**Finding 6. Reporting of Debts and Obligations**

SEIU failed to report debts owed to two vendors, totaling \$359,322, during calendar year 2000. The Audit staff recommended that SEIU file amended disclosure reports including Schedules D (Debts and Obligations) disclosing these obligations. In response, SEIU filed amended reports disclosing the debts and obligations.



# Proposed Final Audit Report on SEIU COPE (Service Employees International Union Committee on Political Education)

January 1, 2007 – December 31, 2008

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## Why the Audit Was Done

Federal law permits the Commission to conduct audits and field investigations of any political committee that is required to file reports under the Federal Election Campaign Act (the Act). The Commission generally conducts such audits when a committee appears not to have met the threshold requirements for substantial compliance with the Act.<sup>1</sup> The audit determines whether the committee complied with the limitations, prohibitions and disclosure requirements of the Act.

## About the Committee (p. 2)

The SEIU COPE (Service Employees International Union Committee on Political Education) is a separate segregated fund of the Service Employees International Union (SEIU) headquartered in Washington, DC. For more information, see chart on the Committee Organization, p 2.

## Financial Activity (p. 2)

• <b>Receipts</b>	
○ Contributions from Individuals	\$15,973,115
○ Transfers from Affiliated Committees	12,873,571
○ Refunds from Federal Candidates	13,500
○ Other Receipts	2,359,327
<b>Total Receipts</b>	<b>\$31,219,513</b>
• <b>Disbursements</b>	
○ Operating Expenditures	\$ 1,819,586
○ Contributions to Federal Candidates	2,868,450
○ Independent Expenditures	35,191,683
○ Other Disbursements	7,525,177
<b>Total Disbursements</b>	<b>\$47,404,896</b>

## Commission Finding (p. 3)

Based upon a limited examination of the statements and reports filed and the records presented by SEIU COPE, Audit staff did not discover any material non-compliance.

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<sup>1</sup> 2 U.S.C. §438(b).

# **Proposed Final Audit Report on SEIU COPE (Service Employees International Union Committee on Political Education)**

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January 1, 2007 – December 31, 2008



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# Part I

## Background

### Authority for Audit

This report is based on an audit of the Service Employees International Union Committee on Political Education (SEIU COPE), undertaken by the Audit Division of the Federal Election Commission (the Commission) in accordance with the Federal Election Campaign Act of 1971, as amended (the Act). The Audit Division conducted the audit pursuant to 2 U.S.C. §438(b), which permits the Commission to conduct audits and field investigations of any political committee that is required to file a report under 2 U.S.C. §434. Prior to conducting any audit under this subsection, the Commission must perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act. 2 U.S.C. §438(b).

### Scope of Audit

Following Commission approved procedures, the Audit staff evaluated various factors and as a result, this audit examined:

1. The receipt of excessive contributions and loans.
2. The receipt of contributions from prohibited sources.
3. The disclosure of contributions received.
4. The disclosure of disbursements, debts and obligations.
5. The consistency between reported figures and bank records.
6. The completeness of records.
7. Other committee operations necessary to the review.

### Limitations

Although the SEIU COPE complied with the recordkeeping requirements of 11 CFR §102.9(b), the Audit staff did not review additional documentation for 38 disbursements to SEIU totaling \$14,427,267 for independent expenditures to verify:

1. That the disbursements were made in advance of any independent expenditure made through SEIU;
2. The date of public dissemination for the independent expenditure and timeliness of any 24- or 48-hour notices filed; or
3. The use of proper disclaimers for any public communications contained in those expenditures.

## Part II

### Overview of Committee

#### Committee Organization

<b>Important Dates</b>	<b>SEIU COPE</b>
• Date of Registration	April 17, 1972
• Audit Coverage	January 1, 2007 – December 31, 2008
<b>Headquarters</b>	Washington, DC
<b>Bank Information</b>	
• Bank Depositories	2
• Bank Accounts	4
<b>Treasurer</b>	
• Treasurer When Audit Was Conducted	Anna Burger/Gerald Hudson
• Treasurer During Period Covered by Audit	Anna Burger
<b>Management Information</b>	
• Attended FEC Campaign Finance Seminar	Yes
• Who Handled Accounting and Recordkeeping Tasks	Paid Staff

#### Overview of Financial Activity (Audited Amounts)

<b>Cash on hand @ January 1, 2007</b>	<b>\$18,191,099</b>
○ Contributions from Individuals	15,973,115
○ Transfers from Affiliated Committees	12,873,571
○ Refunds from Federal Candidates	13,500
○ Other Receipts	2,359,327
<b>Total Receipts</b>	<b>\$31,219,513</b>
○ Operating Expenditures	1,819,586
○ Contributions to Federal Candidates	2,868,450
○ Independent Expenditures	35,191,683
○ Other Disbursements	7,525,177
<b>Total Disbursements</b>	<b>\$47,404,896</b>
<b>Cash on hand @ December 31, 2008</b>	<b>\$ 2,005,716</b>

## **Part III**

### **Commission Finding**

Based upon a limited examination of the statements and reports filed and the records presented by SEIU COPE, Audit staff did not discover any material non-compliance.

## CASE INDEX FORM

**CASE NO. & NAME:** Service Employees International Union Committee on  
Political Education (SEIU COPE) (A09-28)

**STAFF ASSIGNED:** Tom Hintermister, Audit Manager  
Jeff Spilizewski, Auditor

**TELEPHONE:** Audit - 202-694-1200

**DATE**

**DOCUMENT**

September 11, 2009

Doc 1 - Reports Analysis Audit Referral  
A09-28

April 27, 2010

Doc 2 - Audit Scope Determination

April 6, 2011

Doc 3- Proposed Final Audit Report

**The above documents can be found at the following server location:**

**\\Ntsrv1\ voting ballot matters\Audit\SEIU COPE**

**For more information or to request any of the documents listed above, contact Tom Hintermister at 694-1200.**