

## **Finding 2. Reporting of Apparent Independent Expenditures**

### **Summary**

During audit fieldwork, the Audit staff reviewed expenditures, totaling \$825,663, that 1199 SEIU disclosed on Schedule B, Line 29 (Other Disbursements). These appeared to be independent expenditures that contained express advocacy and should have been disclosed on Schedule E, Line 24 (Itemized Independent Expenditures). Additionally, of the apparent independent expenditures totaling \$825,663, the Audit staff identified two disbursements, totaling \$75,500, for which 1199 SEIU may have been required to file 24-hour reports depending on the date of public dissemination.

In response to the Interim Audit Report recommendation, 1199 SEIU filed amended disclosure reports that disclosed on Schedule E, Line 24, \$1,075,248 in apparent independent expenditures. In addition, 1199 SEIU acknowledged that the two disbursements, totaling \$75,500, were independent expenditures attributed to Joseph Biden for President and were disseminated between October 6<sup>th</sup> and November 3<sup>rd</sup>, 2020.<sup>1</sup> In response to the Draft Final Audit Report, 1199 SEIU agreed with the Draft Final Audit Report's conclusion pertaining to the amended disclosure reports which corrected the disclosure of independent expenditures on Schedule E. 1199 SEIU further stated it withdrew its "...[r]eference following the exit conference to a figure of \$2.5 million of reported independent expenditures, because it does not reflect either the public record or the Committee's internal records...".

The Commission approved a finding that 1199 SEIU failed to properly disclose apparent independent expenditures, totaling \$1,075,248, on Schedule E (Independent Expenditures). In addition, the Commission approved a finding that 1199 SEIU failed to file 24/48-hour reports for apparent independent expenditures, totaling \$75,500.

### **Legal Standard**

**A. Definition of Independent Expenditures.** An independent expenditure is an expenditure made for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party or its agents.

A clearly identified candidate is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

<sup>1</sup> In absence of the specific date of dissemination, the invoice dates of October 23<sup>rd</sup> and October 26<sup>th</sup>, 2020, were used by the Audit staff.

Expressly advocating means any communication that:

- Uses phrases such as “vote for the President” or “re-elect your Congressman” or communications of campaign slogan(s) or individual word(s), which in context can have no other reasonable meaning than to urge election or defeat of one or more clearly identified candidates; or
- When taken as a whole and with limited references to external events, such as proximity to the election, could be interpreted by a reasonable person only as advocating the election or defeat of one or more clearly identified candidates. 11 CFR §§100.16(a), 100.17 and 100.22.

**B. Disclosure Requirements – General Guidelines.** An independent expenditure shall be reported on Schedule E if, when added to other independent expenditures made to the same payee during the same calendar year, it exceeds \$200. Independent expenditures made (i.e., publicly disseminated) prior to payment should be disclosed as memo entries on Schedule E and as a debt on Schedule D. Independent expenditures of \$200 or less need not be itemized, though the committee must report the total of those expenditures on Line (b) on Schedule E. 11 CFR §§104.3(b)(3)(vii)(C), 104.4(a) and 104.11.

**C. 24-Hour Independent Expenditure Reports.** Any independent expenditures aggregating \$1,000 or more, with respect to any given election, and made after the 20<sup>th</sup> day but more than 24 hours before the day of an election must be reported and the report must be received by the Commission within 24 hours after the expenditure is made. A 24-hour report is required for each additional \$1,000 that aggregates. The 24-hour report must be filed on a Schedule E. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$1,000. 11 CFR §§104.4(f) and 104.5(g)(2).

**D. 48-Hour Independent Expenditure Reports.** Any independent expenditure aggregating \$10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must disclose this activity within 48 hours each time that the expenditures aggregate \$10,000 or more. The reports must be filed with the Commission within 48 hours after the expenditure is made. The date that a communication is publicly disseminated serves as the date that the Committee must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amount of \$10,000. 11 CFR §§104.4(f) and 104.5(g)(1).

**E. Allocation of Expenses Between Candidates.** Expenditures made on behalf of more than one clearly identified federal candidate shall be attributed to each such candidate according to the benefit expected to be derived. In the case of a publication or broadcast communication, the attribution shall be determined by the proportion of space or time devoted to all candidates. This method shall be used to allocate

payments involving both clearly identified federal candidates and one or more clearly identified non-federal candidates. 11 CFR §106.1(a).

## **Facts and Analysis**

### **A. Reporting of Apparent Independent Expenditures**

#### **1. Facts**

During audit fieldwork, the Audit staff reviewed disbursements to ensure proper reporting. The Audit staff noted that 1199 SEIU did not disclose these apparent independent expenditures on Schedule E, rather the disbursements, totaling \$825,663, were disclosed on Schedule B, Line 29 and appear to be media related. These expenditures were for 12<sup>2</sup> digital ads, one mailer, one text script and one phone script which contain express advocacy. An analysis for these expenditures is as follows:

#### **Apparent Independent Expenditures Reported as Other Disbursements (Associated Digital Ads, Mailer, Phone and Text Scripts Invoices Provided under 11 CFR §100.22(a))**

The purposes on the invoices provided to the Audit staff for these expenditures were: paid media campaigns, service fees for campaigns, call hub dialers and text tools, and card print for card stock. The digital ads provided to the Audit staff contained phrases such as, “Vote Biden-Harris Nov.3,” “Vote Early for Biden-Harris Oct.12-30,” “Vote Early for Biden-Harris Oct. 15-31,” “Vote Early for Biden-Harris Oct.13 – 30,” “Vote Siegel Nov 3,” and “Vote Ortiz Jones Nov 3.” All of these communications contained language expressly advocating the election or defeat of a clearly identified candidate, as defined under 11 CFR §100.22(a).

#### **2. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with 1199 SEIU representatives during the exit conference and provided a schedule detailing these expenditures. During the exit conference, 1199 SEIU representatives requested that the Audit staff explain the finding, including how the finding total was derived. The Audit staff explained the schedule and the various amounts identified. In response to the exit conference, 1199 SEIU stated that, “as the result of an administrative error the Committee appears to have disclosed its independent expenditures on line 29.” In addition, 1199 SEIU stated that, with the exception of two payments to its phone bank vendor, all expenditures were disclosed on its 24/48-hour reports. 1199 SEIU further stated that, as recommended by the Audit staff, it would amend its reports to disclose all applicable expenditures on Schedule E.

The Interim Audit Report recommended that 1199 SEIU provide documentation that apparent independent expenditures, totaling \$825,663, did not require

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<sup>2</sup> There were 12 distinct digital ads, which referenced various early voting periods and the November 3<sup>rd</sup> general election date.

reporting as independent expenditures. Absent such documentation, the Interim Audit Report recommended that 1199 SEIU amend its reports to disclose these disbursements as independent expenditures on Schedule E.

### **3. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, 1199 SEIU filed the 2020 Pre-General and the 2020 Post-General amended disclosure reports which disclosed, on Schedule E, Line 24, \$1,075,248 in apparent independent expenditures. In addition, 1199 SEIU acknowledged that two disbursements, totaling \$75,500, were independent expenditures attributed to Joseph Biden for President and were disseminated between October 6<sup>th</sup> and November 3<sup>rd</sup>, 2023. In response to a request for clarification, 1199 SEIU provided updated documentation that increased the amount of apparent independent expenditures by \$253,327, that were not previously reported on Schedule E, Line 24, from \$821,921<sup>3</sup>, to \$1,075,248. 1199 SEIU stated the amendments were filed, “to correct the misattributions to Line 29 of disbursements that should have been disclosed on Schedule E, and to update the estimates reflected on the 48-Hour and 24-Hour reports submitted during October and November 2020 with information ascertained since.”

The Audit staff concluded that 1199 SEIU did not disclose apparent independent expenditures that contain express advocacy, totaling \$1,075,248, on Schedule E, Line 24.

### **4. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that 1199 SEIU provided updated documentation that increased the amount of apparent independent expenditures by \$253,327, that were not previously reported on Schedule E, Line 24, from \$821,921, to \$1,075,248. 1199 SEIU filed amended disclosure reports which disclosed on Schedule E, Line 24, \$1,075,248 in apparent independent expenditures.

### **5. Committee Response to the Draft Final Audit Report**

In response to the Draft Final Audit Report, 1199 SEIU agreed with the DFAR’s conclusion pertaining to the amended disclosure reports which corrected the disclosure of independent expenditures on Schedule E. 1199 SEIU stated it withdrew its “[r]eference following the audit exit conference to a figure of \$2.5 million of reported independent expenditures, because it does not reflect either the public record or the Committee’s internal records...”.

## **Commission Conclusion**

On February 28, 2024, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended that the Commission find that 1199

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<sup>3</sup> 1199 SEIU stated one mailer, totaling \$3,742, was a member communication and was disseminated only to the restricted class of the it’s organization. As a result, the Audit staff deducted \$3,742 from the total. (\$825,663 - \$3,742).

SEIU failed to properly disclose apparent independent expenditures, totaling \$1,075,248, on Schedule E (Independent Expenditures).

The Commission approved the Audit staff's recommendation.

## **B. Failure to File 24-Hour Reports for Apparent Independent Expenditures**

### **1. Facts**

In addition to not reporting the apparent independent expenditures during the audit period, 1199 SEIU did not file two 24-hour reports, totaling \$75,500.<sup>4</sup> The two disbursements were reported on Schedule B, Line 29, for phone bank scripts that contained express advocacy.

### **2. Interim Audit Report & Audit Division Recommendation**

The Audit staff discussed this matter with 1199 SEIU representatives during the exit conference and provided the relevant schedules. During the exit conference, 1199 SEIU representatives questioned whether 1199 SEIU filed 48-hour reports for the two apparent independent expenditures, totaling \$75,500, and the Audit staff confirmed that such reports were not filed. In response to the exit conference, 1199 SEIU stated that, apart from two payments to its phone bank vendor, all expenditures were disclosed on its 24/48-hour reports.

The Audit staff reviewed all 24/48-hour reports filed by 1199 SEIU and maintained that 24-hour reports were not filed for the two apparent independent expenditures, totaling \$75,500.

### **3. Committee Response to Interim Audit Report**

In response to the Interim Audit Report recommendation, 1199 SEIU stated that the two payments were attributed to independent expenditures supporting Joseph Biden for President via telephone calls. These calls were part of a campaign and were disseminated between October 6 and November 3, 2020.<sup>5</sup> 1199 SEIU stated it believed the volume of calls were evenly spaced throughout the period.

The Audit staff concluded that 1199 SEIU did not file 24-hour reports for the two independent expenditures, totaling \$75,500.

### **4. Draft Final Audit Report**

The Draft Final Audit Report acknowledged that 1199 SEIU stated that the two payments were attributed to independent expenditures supporting Joseph Biden for President via telephone calls and were part of a campaign disseminated between October 6 and November 3, 2020.

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<sup>4</sup> The date the expenditure was publicly distributed served as the date that the independent expenditure was made for the purposes of the additional 24/48-hour filing requirements. In the absence of a known date for public dissemination, the Audit staff used the invoice date to determine if a 24/48-hour report was required.

<sup>5</sup> See *supra* footnote 6.

**5. Committee Response to the Draft Final Audit Report**

1199 SEIU did not address this section of the finding in its response to the Draft Final Audit Report.

**Commission Conclusion**

On February 28, 2024, the Commission considered the Audit Division Recommendation Memorandum in which the Audit staff recommended the Commission find that 1199 SEIU failed to file 24/48-hour reports for apparent independent expenditures, totaling \$75,500.

The Commission approved the Audit staff's recommendation.