



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

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SUBJECT: Draft Final Audit Report on 1199 SEIU United Healthcare Workers East Federal Political Action Fund (LRA 1160)

The Office of the General Counsel has reviewed the Draft Final Audit Report (“DFAR”) on the 1199 SEIU United Healthcare Workers East Federal Political Action Fund (“Committee”). The DFAR contains three findings: (1) Misstatement of Financial Activity; (2) Reporting of Apparent Independent Expenditures; and (3) Recordkeeping for Communications. OGC concurs with the findings, and analyzes Findings 2 and 3, below.

I. REPORTING OF APPARENT INDEPENDENT EXPENDITURES (FINDING 2).

A. Reporting of Apparent Independent Expenditures

The Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), requires nonauthorized political committees to report, among other information, the “name and address of

each ... person who receives any disbursement during the reporting period in an aggregate amount or value in excess of \$200 within the calendar year ... in connection with an independent expenditure by the reporting committee.”¹ The required information for an independent expenditure (“IE”) “shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursement for any independent expenditure to any person exceeds \$200 per calendar year.”²

In the Interim Audit Report (“IAR”), Audit staff identified apparent IEs totaling \$825,663 on Schedule B, Line 29 (Other Disbursements) that the Committee should have disclosed on Schedule E, Line 24 (Itemized Independent Expenditures). The Committee should have reported these IEs on Schedule E because they were publicly disseminated and paid for in the same reporting period;³ Schedule B is appropriate when a committee pays the production and distribution costs associated with an IE in one reporting period but does not publicly disseminate it until a later reporting period.⁴ Properly reporting IEs supports the Commission’s public disclosure priorities because campaign finance data is sorted and accessed differently based on the schedules and line numbers on which data is reported, to meet the needs of the public.

In response to the IAR (“Response”), the Committee amended its reports to “correct the misattributions to Line 29 of disbursements that should have been disclosed on Schedule E.”⁵ The Response thus acknowledges that the Committee incorrectly disclosed its IEs and should have reported them on Schedule E, Line 24.

Subsequent to its Response, the Committee provided other documentation showing that an additional \$253,327 in apparent IEs also should have been reported on Schedule E, Line 24.⁶ Thus, in the DFAR, Audit staff concludes that the Committee did not properly report IEs totaling

¹ 52 U.S.C. § 30104(b)(6)(B)(iii) (also requiring reporting of the date, amount, and purpose of the independent expenditure (“IE”) and the name and office sought by the candidate the IE supports or opposes); *see also id.* § 30101(17) (defining “independent expenditure”).

² 11 C.F.R. § 104.3(b)(3)(vii)(C).

³ *See* Bipartisan Campaign Reform Act of 2002 Reporting, 68 Fed. Reg. 404, 407 (Jan. 3, 2003) (“If the communication is . . . publicly disseminated and paid for in the same reporting period, then the political committee must report the [IE] on Schedule E for that reporting period.”)

⁴ *Id.* (explaining that when a “political committee . . . pay[s] the production and distribution costs associated with an independent expenditure in one reporting period, but [does] not publicly distribute or otherwise publicly disseminate it until a later reporting period . . . the political committee must report the payment as a disbursement on Schedule B for operating expenditures”).

⁵ Response to Interim Audit Report at 1 (Sept. 20, 2023) (“Response”).

⁶ The IEs totaling \$253,327, were included in the IAR in Finding 3 (Recordkeeping for Communications), from which they have now been removed.

\$1,075,248.⁷ OGC concurs with the DFAR’s proposed finding that the Committee did not disclose apparent IEs totaling \$1,075,248.

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

The Act requires a political committee that “makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20th day, but more than 24 hours, before the date of an election [to] file a report describing the expenditures within 24 hours.”⁸ After the initial report, a political committee must “file an additional report within 24 hours after each time [it] makes or contracts to make independent expenditures aggregating an additional \$1,000 with respect to the same election as that to which the initial report relates.”⁹ The 24-hour report must be filed on Schedule E of FEC Form 3X.¹⁰

The 24-hour IE reporting period for the November 3, 2020, general election was from October 15 to November 1, 2020.¹¹ Audit staff identified one disbursement on Schedule B to vendor Berlin Rosen for \$25,500 for “IE CallHub/Voter Contact program management” phone bank services. The invoice¹² was dated October 23, 2020. Audit staff identified a second disbursement on Schedule B to Berlin Rosen for “CallHub Dialer/Text Tool” phone bank services totaling \$50,000. This invoice was dated October 26, 2020.

The Committee did not submit documentation showing the dates that these communications were publicly disseminated so Audit staff used the respective invoice dates, which fell in the 24-hour IE reporting period, to determine that 24-hour reports were required. The Committee stated in the Response that the two payments to Berlin Rosen were “attributable to independent expenditures supporting Joseph Biden for President via telephone calls . . . that were disseminated between October 6 and Election Day, November 3.”¹³ Because the Committee does not have documentation supporting known dissemination dates, Audit staff in the DFAR used the invoice dates, which fall within 24-hour IE reporting period, for determining the relevant dates of dissemination of these IEs.

⁷ The auditors reduced the initial amount of \$825,663 in the IAR to \$821,921 after the Committee demonstrated that one mailer totaling \$3,742 should not have been included in the total. Thus, \$821,921 + \$253,327 = \$1,075,248.

⁸ 52 U.S.C. § 30104(g)(1)(A).

⁹ *Id.* § 30104(g)(1)(B).

¹⁰ 11 C.F.R. § 104.4(b).

¹¹ 24- and 48-Hour Reports of Independent Expenditures periods: general election (2020), <https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/2020-reporting-dates/24-and-48-hour-reports-independent-expenditures-periods-general-election-2020/>.

¹² The invoice totaled \$41,250, of which \$25,500 was for the CallHub phone bank services. The remainder, totaling \$15,750, was a balance payment for website services.

¹³ Response at 2.

The Committee did not file 24-hour reports for the two payments to Berlin Rosen totaling \$75,500 for the dissemination of IEs within the IE reporting period. Based on this information, OGC concurs with including these communications in the proposed DFAR finding that the Committee did not file 24-hour reports for IEs totaling \$75,500.

II. RECORDKEEPING FOR COMMUNICATIONS (FINDING 3).

The Act specifies that the treasurer of a political committee shall preserve all records and accounts required to be kept for three years after the report to which such records and accounts relate is filed.¹⁴ Commission regulations governing “formal requirements” relating to reports, require that committees “shall maintain all records ... which shall provide in sufficient detail the necessary information and data from which the filed reports and statements can be verified, explained, clarified, and checked for accuracy and completeness.”¹⁵

During fieldwork, Audit staff identified 17 disbursements on the Committee’s 24/48-hour reports totaling \$1,025,299 to media vendor A/B Partners for which the Committee did not submit sufficient documentation to verify the disbursement reporting. Subsequent to the IAR Response, the Committee filed Schedules E amendments showing that its federal candidate-related media disbursements to A/B Partners totaled \$1,377,350. The Committee also provided Audit staff with documentation for disbursements totaling \$1,413,000. Based on the Committee’s documentation, however, Audit staff found that the Committee’s expenditures for federal candidate-related media might total \$1,377,080, and not \$1,377,350, after subtracting \$35,920 for disbursements attributable to state candidates and non-partisan advertisements. In the DFAR, Audit staff concludes that the Committee’s documentation supported \$801,699 in federal candidate-related media disbursements to A/B Partners. The Committee’s documentation did not account for the remaining digital media disbursements to A/B Partners totaling \$575,651.

Because the Committee has not met its obligation to maintain and submit records by which Audit staff can verify the remaining disbursements to A/B Partners totaling \$575,651, OGC concurs with the inclusion of the recordkeeping finding in the proposed DFAR and its conclusion that the Committee did not provide documentation showing that disbursements totaling \$575,651 were properly reported.¹⁶

¹⁴ 52 U.S.C. § 30102(d); *see also* 11 C.F.R. § 102.9(b).

¹⁵ 11 C.F.R. § 104.14(b)(1).

¹⁶ Audit staff explained that despite their calculations, their conclusions are based on disclosed amounts because Audit staff would have no way of knowing whether a committee might have documents that were not provided to Audit staff.