



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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MEMORANDUM

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SUBJECT: Interim 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 Interim Audit Report (“IAR”) on the 1199 SEIU United Healthcare Workers East Federal Political Action Fund (“Committee”). The draft IAR 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

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 on Schedule E because its IEs 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 those exploring the data.

The Committee does not dispute that the communications in this finding were IEs and, in its response to the audit exit conference (“Response”), said that “as the result of an administrative error the Committee appears to have disclosed its independent expenditures on line 29 of its October quarterly and pre- and post-general election reports.”⁵ The Committee stated that “[as] recommended by the Audit staff, [the Committee] will amend its reports to move all applicable expenditures to Schedule E.”⁶

The Response acknowledges that the Committee incorrectly disclosed its IEs and should have reported them on Schedule E, Line 24. OGC concurs with the IAR’s proposed finding that, barring submission of additional documentation, the Committee improperly reported these IEs and the recommendation that the Committee amend its reports to disclose the disbursements totaling \$825,663 as IEs on Schedule E.

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 Exit Conference Response at 2 (March 9, 2023) (“Response”) (the Response follows the Exit Conference Outline, dated February 23, 2023, which transposed what are now Findings 2 and 3).

⁶ *Id.*

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.”⁷ 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.”⁸ The 24-hour report must be filed on Schedule E of FEC Form 3X.⁹

The 24-hour IE reporting period for the November 3, 2020, general election was from October 15 to November 1, 2020.¹⁰ 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 invoice¹¹ 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 did, however, acknowledge in the Response that the two payments to Berlin Rosen for use of the Call Hub Dialer “were for additional distribution of the same live phone call script ... reported by the Committee on page 1 of its 24-hour report filed October 26, 2020.”¹²

The Committee thus implicitly acknowledged that it did not file 24-hour reports for the two payments to Berlin Rosen totaling \$75,500 for the apparent subsequent dissemination of IEs within the IE reporting period. Based on this information, OGC concurs with including these communications in the proposed IAR finding and the recommendation that the Committee provide documentation to support the date of public dissemination for the phone bank scripts.

⁷ 52 U.S.C. § 30104(g)(1)(A).

⁸ *Id.* § 30104(g)(1)(B).

⁹ 11 C.F.R. § 104.4(b).

¹⁰ 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/>.

¹¹ 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.

¹² Response at 2. The call script includes phrases – such as “will you join me and vote to elect Joe Biden and democratic candidates who will stand up for us?” – that satisfy the express advocacy element in the IE definition. *See* 11 C.F.R. § 100.22(a).

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.¹³ 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.”¹⁴

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.

The Committee submitted two invoices totaling \$1,413,000 to support the 17 disbursements for digital ads, digital ads set up, a projected digital ad buy, and projected staff compensation for phone banking. The invoices present an outline of the full media campaign, including its two and a half month duration and total budget.¹⁵ The invoices do not, however, document the cost for each ad that was run or indicate other information and data – such as the date of dissemination and candidate(s) supported or opposed for each IE¹⁶ – from which the filed reports and statements can be verified, explained, clarified, and checked for accuracy and completeness.

In its Response, the Committee offered an explanation to support its contention that it accurately reported disbursements to AB Partners on 24- and 48-hour reports: “AB Partners and Committee staff tracked projected and ultimately actual costs on a running basis on an online spreadsheet.”¹⁷ The Committee represented that its “24- and 48 hour reports disclosed the projected costs listed in the online tracker at the time an ad was disseminated to the public.”¹⁸

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

¹⁴ 11 C.F.R. § 104.14(b)(1).

¹⁵ The first invoice, dated September 8, 2020, for \$923,000, was for “Healthcare United Paid Media Campaign.” The second invoice, dated October 23, 2020, for \$490,000, was for “Paid Media spend for AZ, NC, and FL campaigns in the last 10 days of the election.” The Committee also submitted a copy of its “Master Service Agreement” with A/B Partners. The agreement was for the overall ad campaign and included a work plan setting forth two phases of the project. The first phase, “Research and Data Analysis,” was scheduled for “August 17th-31st” and included activities such as “messaging and research counsel,” “clarification of data infrastructure and voter information capture capability,” and “analysis of voter data.” The second phase, “Voter Mobilization Campaign,” had two components: (1) “Content Creation,” scheduled for “September 1-18,” and (2) “Campaign Deployment,” scheduled for “September 23-November 3.” The agreement included a “Budget” of \$1,025,000 which allocated \$923,000 for “Paid Media Spend” and \$102,000 for “Agency Fess.”

¹⁶ *See supra*, note 1.

¹⁷ Response at 2.

¹⁸ *Id.*

The Committee did not give Audit staff the spreadsheet or provide them with access, and it did not submit any other documentation to verify the accurate reporting of these 17 disbursements.

Because the Committee has not met its obligation to maintain and submit records by which Audit staff can verify the 17 disbursements, OGC concurs with the inclusion of the recordkeeping finding in the IAR and the recommendation that the Committee provide documentation such as invoices, scripts, digital media, and advertising communications linking each communication to an invoice(s) to show that the 17 disbursements totaling \$1,025,299 were properly reported.