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VIA ELECTRONIC TRANSMISSION

December 14, 2020

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

RE: Comments on Proposed Rulemaking Concerning *Labor Organization Annual Financial Reports: LM Form Revisions* (85 FR 64726; RIN 1245-AA10)

Dear Secretary Scalia:

The United Food and Commercial Workers International Union (UFCW) submits the following comments on Labor Department's Office of Labor-Management Standards (OLMS) proposed rulemaking *Labor Organization Annual Financial Reports: LM Form Revisions,* (85 FR 64726; RIN 1245-AA10). The UFCW represents 1.3 million workers throughout the United States in numerous sectors including retail food stores; food packinghouses and processing plants; department and drug stores; chemical facilities; and distillery industries.

UFCW opposes the *LM Long Form Revisions* proposed rule which seeks to create a "long form" version of the current LM-2 form for unions with more than $8 million in annual receipts, which would apply to UFCW International and a number of affiliates. The agency has failed to justify a need for increasing the burden of complying with the already exhaustive existing LM-2 reporting requirements. The current LM-2 form has been in use for nearly two decades and already is an extensive report that for many unions regularly stretch to hundreds of pages, including the UFCW. Adding even more burdensome requirements is unnecessary and would simply further complicate members' ability to understand the disclosures.

With this proposed rule, OLMS seeks to make Form LM-2 revisions that it had attempted to implement in a 2009 Final Rule, which the agency withdrew because it lacked sufficient analysis and underestimated the compliance burden. 85 FR at 64730; 74 FR 52401, 52402 (Oct. 13, 2009). This current proposal is even less supported than the 2009 Final Rule. And the new proposals in this proposal would likewise make reporting both more burdensome and less informative. For all these reasons, the current proposal should be withdrawn.

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1. OLMS failed to adequately analyze reporting experience under the current Form LM-2 or the additional burden of complying with the proposed changes.

a. Field staff survey

The agency has failed to provide an adequate basis for this proposed rule—OLMS is solely relying on a perfunctory internal survey as evidence for the present reporting experience and the potential effect of the proposed changes. The agency conducted a remote survey of field staff during July and September 2019. 85 FR at 64730. Staff members were given a list of 7 aspects of the current reporting and a list of 3 possible changes. These inquiries generated only 5 pages of comments on the current reporting regime and 6 pages of comments on possible changes, mostly consisting of brief sentence fragments.

Even worse, the agency freely ignored the results of the agency's own cursory survey when it proposed these rule changes. While the proposed rulemaking suggests that "some of the comments provided by OLMS staff are directly implemented as proposed revisions to the LM forms," it admits that "[t]he Department [] does not, however, view itself as restricted to these comments when deciding how to revise the LM forms." 85 FR at 64730.

b. OLMS's failed to adequately evaluate the additional compliance burden of its proposed revisions.

OLMS failed to complete any adequate burden analysis prior to issuing its proposed rule. In fact, it neither engaged with unions nor its members when crafting this proposal. Instead, the proposed rulemaking simply asserts that its proposed additional reporting requirements "has practical utility to labor organizations [and] their members." 85 FR at 64751.

This proposed rule suffers even worse from the same flaws that doomed the 2009 Final Rule. The 2009 Final Rule suffered from an inadequate burden analysis, despite that final rule containing 6 pages of burden analysis analyzing 9 proposed new reporting schedules. 74 FR at 3707-13. This current proposed rule contains only 4 paragraphs of burden analysis, despite requiring 12 new reporting schedules. The current proposed rule fails to even investigate the burden of each schedule, simply providing a blanket estimate of 5 hours for each new schedule– or a total of 60 hours for the 12 new schedules. This is despite each schedule varying in the questions asked, level of detail, and number of requests. 85 FR 64753-54. Moreover, OLMS failed to consult even once with the regulated community to determine compliance burden.

2. The changes to the functional reporting requirements distort and complicate the reporting to members.

The proposed rulemaking introduces multiple changes to the functional reporting of disbursements that would distort the presentation of union expenditures to the membership.

a. Salary related expenditures

The proposed rulemaking seeks to no longer functionally allocate salary-related expenditures. The result of this would inflate the percentage of expenditures going to overhead and undercount the percentage going for representational activities, such as negotiations and grievance-handling. 85 FR at 64739-40. Ultimately, the proposed rulemaking would result in

providing members a misleading depiction of union expenditures, particularly since much of the representational activities are handled by union staff, including for example negotiators, researchers, economists, and lawyers. The U.S. Supreme Court itself had noted that representational activities such as negotiating and administering collective bargaining agreements, settling disputes, and processing grievances "often entail expenditure of much time and money." *Abood v. Detroit Board of Education*, 431 U.S. 209, 221 (1977) (citation omitted).

b. Representational/Organizing

Another proposed change would divide the functional category of representation into separate contract administration/negotiation and organizing categories. The original categorization reflects that a union's organizing activity directly impacts the union's ability to effectively represent employees in collective bargaining. But the proposed rulemaking seeks to split the representation category, asserting without any justification that "organizing and contract negotiation are discrete activities" and that the benefits of organizing "to the organized members are attenuated[.]" 85 FR at 64743. The proposed rulemaking's assertions contradict not only reality, but the Supreme Court's longstanding recognition of the direct connection between organizing and collective bargaining. Chief Justice Taft observed a century ago that for unionized workers to be effective, they must "have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood." *American Steel Foundries v. Tri-City Central Trades Council*, 257 U.S. 184, 209 (1921).

c. Political/Lobbying

Likewise, the proposed rulemaking seeks to create another false dichotomy by splitting the political/lobbying expenditure category claiming that the two new categories, lobbying and political, are distinct. 85 FR at 64742-43. A union's ability to effectively lobby for its members is related to its political activity, which is the same reality faced by other lobbying entities, such as corporations.

3. OLMS fails to justify its proposed changes to disclosing confidential information.

OLMS fails to sufficiently justify proposed changes to the ability of unions to protect confidential information from disclosure.

a. Strike Fund

The proposed rulemaking would require unions to disclose the amounts held in any strike fund, which is confidential information that employers could exploit to the detriment of members. 85 FR at 64735. The proposed rulemaking acknowledges that "employers may benefit from knowing the extent of their employees' union strike fund" and that "the information may lead to less favorable contracts, harming the members." *Id.* Despite this recognition, the proposed rule does not provide any justification why public disclosure of strike fund amounts is necessary or advisable, particularly considering the significant harm it could have on members and their bargaining representative.

b. Confidentiality exemption

Additionally, the proposed rulemaking's request for comments on the confidentiality exemptions suggests that OLMS might generally limit the current confidentiality exception in some way. 85 FR at 64744-45. To justify possibly limiting the exception, the proposed rulemaking cites two instances in which the exception was claimed for large amounts. *Id.* at 64745. Rather than questioning the overall reasoning behind confidentiality, the agency should instead simply focus on investigating those specific expenditures that it may have questions about. This way, OLMS can still ensure compliance as needed, while avoiding wholesale public disclosure harmful to members' interests.

Conclusion

The present Form LM-2 is already an extensive form that is burdensome to complete, and its length makes it hard for members to decipher. The proposed rulemaking seeks to make the Form LM-2 even longer, more burdensome, and more difficult to interpret. The proposed rulemaking lacks the necessary analysis and evidence justifying such a drastic change. Thus, the proposed rule should be withdrawn.

Sincerely,

Peter J. Ford
General Counsel