

Pacific Northwest Regional Council of Carpenters



*Affiliated with the
United Brotherhood of Carpenters and Joiners of America*



Evelyn Shapiro, Executive Secretary-Treasurer
25120 Pacific Highway South • Suite 200 • Kent, WA 98032
Phone: (253) 945-8800 • Toll Free: (800) 573-8333 • Email: pnwrc@nwcarpenters.org

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Via Federal eRulemaking Portal
<http://www.regulations.gov>

The Honorable Eugene Scalia, Secretary
United States Department of Labor
200 Constitution Ave. NW
Washington, D.C. 20210

Amy DeBisschop, Director
Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
United States Department of Labor, Room S-3502
200 Constitution Ave. NW
Washington, D.C. 20210

**Re: Comments to Proposed Rule re: Labor Organization Annual Financial Reports:
LM Form Revisions, 85 Fed. Reg. 64726 (Oct. 13, 2020)**

Dear Secretary Scalia and Ms. DeBisschop,

I write on behalf of the Pacific Northwest Regional Council of Carpenters (“the Council”) to submit comments in opposition to the Department of Labor’s (“DOL”) proposed rule that would change the reporting requirements for labor organizations in their annual financial reports. In short, the Council opposes the proposed rule because it would provide anti-union actors with critical information about confidential union finances and activities that would otherwise remain confidential and that could put union representatives’ safety at risk. The rule also adds significant burden and expense to compliance without any corresponding benefit. To be sure, the enforcement and anti-corruption goals cited as justification for the rule are laudable. However, the fact of the matter is that corrupt actors will simply misrepresent their activities in more detail, while the vast majority of honest, hard-working unions will be forced to expend significant additional resources and money to meet these new requirements. Accordingly, the Council advocates for its abandonment in favor of maintaining the current reporting requirements, which appropriately inform regulators, union members, and the public about union activities while protecting unions’ ability to pursue their member-focused missions.

I. Statement of Interest.

The Pacific Northwest Regional Council of Carpenters is an affiliate of the United Brotherhood of Carpenters and Joiners of America (“UBC”), which is one of North America’s

largest construction trades unions. The Council covers six states in the Pacific Northwest including Washington, Oregon, Alaska, Idaho, Montana and Wyoming. It represents over 28,000 members in the construction industry in a wide variety of carpentry-related trades, from carpenters to drywall applicators, millwrights to construction divers, pile drivers to scaffold erectors. These are the men and women who build America, often risking their physical safety – sometimes even their lives – to construct the infrastructure that our Nation depends on. In exchange for those risks, all they seek in return is the opportunity to earn their fair share of the American Dream and the ability to support themselves and their families.

The Council’s mission is not limited to directly representing its members in negotiations with employing contractors. It is much broader and includes maintaining labor standards within the construction industry, developing the most skilled construction labor force, advancing worker health and safety, diversifying the construction industry, and promoting high-road family-jobs for all Americans. Another goal is ensuring that the Council’s signatory contractors, who are committed to upholding such standards, can compete on a level playing field which, in turn, helps to ensure greater employment for Council members. The Council is gravely concerned with the impact of the Department’s new proposed rule because it will undermine all those interests by providing anti-union forces with confidential information about union activities and by significantly increasing the burden and cost of reporting without any corresponding benefit.

II. The Proposed Rule Would Potentially put Peoples’ Lives at Risk and Would Impede Unions’ Ability to Advance their Members’ Interests.

The proposed rule is considering eliminating the confidentiality provisions of the LM-2 and requires that Unions separately report their strike fund resources. Both of these provisions are extremely troubling as they will provide anti-union (and potentially criminal) actors with confidential information about union activities that can undermine union’s ability to advance their members interests and, potentially, put the safety of union organizers and representatives at risk.

a. The confidentiality provisions of the LM-2 must be maintained.

The proposed rule seeks comment on whether to “modify, narrow or eliminate” the confidentiality provisions of the current LM-2.¹ Under those confidentiality provisions, unions are permitted to maintain the confidentiality of: 1) information that would identify individuals who the union pays under \$5,000 annually to organize non-union shops – referred to as “salts,” 2) information that would reveal the union’s organizing strategies; 3) information that would provide parties in negotiations with a union a tactical advantage in those negotiations; 4) information contained in confidential settlement agreements, and 5) information the disclosure of which would endanger the health or safety of an individual.² These protections are critical and must be maintained.

Importantly, removing those confidentiality provisions would do nothing to advance the proposed rule’s enforcement objectives or provide any information that is of legitimate concern to the public or members. Rather, it would serve only to provide antiunion forces information with which to target organizational activities and labor standards activities. Many unions, such as the

¹ 85 Fed. Reg. at 64730-31 and 64742-44

² *Id.*

Council, employ individuals to work in nonunion shops in order to unionize them. This is a fully legal organizing strategy. However, a “salt” who works on behalf of the union to unionize a particular employer does so at significant risk to his or her own safety. Requiring the identity of “salts” and the amount of funds expended would eliminate or limit the effectiveness of that strategy. Such identifying information is of no relevance to the public and minimal relevance to members. It likewise provides no additional information that would assist in enforcement activities at the review of the LM-2 stage.

In addition to organizational activities, many unions – including the Council – also engage in area standards enforcement. This includes monitoring and uncovering contractors who engage in misclassification of workers. Such contractors regularly pay their workers in cash, or not at all.³ They do not pay taxes, workers compensation, or unemployment insurance.⁴ Area standards work also includes infiltrating and exposing labor brokers who engage in human trafficking to provide cheap labor to the construction industry.⁵ Many of those labor brokers are affiliated with drug cartels and other organized crime entities.⁶

Clearly, the representatives and union informants who undertake these activities put themselves at great risk to maintain area standards and assist law enforcement. Revealing this information about legitimate area standard activities would not only undermine the effectiveness of those activities, it would also place the individuals involved at serious risk of harm. Simply put, the confidentiality of the classes of information noted above must be maintained under all circumstances. Doing otherwise would not only undermine legitimate area standards activities, it would risk people’s safety.

The other aspects of the confidentiality rule are likewise important to allow unions to operate effectively while maintaining appropriate confidentiality. Organizing strategy and negotiating tactics are legitimately confidential matters, and there is no benefit to anyone but the unions’ adversaries in releasing such information. Likewise, confidential settlement agreements are necessary in many settings for the appropriate resolution of internal union matters. Again, no benefit can come from releasing such information. Accordingly, the confidentiality provisions in their entirety and in their current form must remain intact.

b. Unions should not be required to disclose their strike fund resources.

The proposed rule also proposes requiring unions to separately state and disclose the amount of strike funds apart from political action committee funds and subsidiary organizations.⁷ This reporting requirement would have an obvious (and recognized) negative impact on union negotiations. An employer armed with knowledge of the amount of strike funds a particular union

³ Russell Ormiston, Dale Belman and Mark Ehrlich, *An Empirical Methodology to Estimate the Incidence and Costs of Payroll Tax Fraud in the Construction Industry*, 2-5 (2020).

⁴ Lisa Xu and Mark Airlick, *Economic Consequences of Misclassification in the State of Washington*, Harvard Law School Labor and Work Life Program, 9 (December 2019).

⁵ See, e.g., Press Release, Hennepin County Attorney, Ricardo Batres pleads guilty to labor trafficking, November 2019, available at, <https://www.hennepinattorney.org/news/news/2019/November/batres-guilty-plea> (last visited Dec. 14, 2020); see also, Adam Herbets, Fox 13 Investigations: Construction 'Coyotes' Costing Utah Taxpayers Millions, Fox 13, Salt Lake City, November 18, 2019, available at: <https://www.youtube.com/watch?v=2wWw5V1iwRs&feature=youtu.be> (last visited December 14, 2020).

⁶ *Id.*

⁷ 85 Fed. Reg. at 64375.

has amassed would have an unfair advantage in negotiations because the contractor would know how long it could “wait out” a particular union in the event that negotiations were to breakdown and a strike became necessary. The department recognizes as much, noting that along with the “potential cost to individual members associated with public disclosure,” the proposed rule may “lead to less favorable contracts, harming the members.”⁸

The justification of the proposed rule change is that it will allow for increased opportunity to detect financial fraud.⁹ However, the rule does not explain how additionally detailed reporting of strike funds would provide for enhanced detection. Those funds must already be reported as a part of a larger pool of money. Breaking down those categories of funds into smaller pots will not increase enforcement effectiveness for the simple reason that a corrupt actor will simply hide the money in a different corner or lie about the amounts in a different way. Conversely, the proposed rule will have a significant potential negative affect on the effectiveness of union negotiations and their ability to advance the interest of their members. Accordingly, reporting amounts of strike funds separately from the funds paid to PACs and subsidiary organizations should be rejected. The potential cost to members and unions’ ability to advance their interests far outweighs any marginal increase in enforcement effectiveness.

III. The Proposed Rule Significantly Increases the Burdens and Costs of Compliance without any Corresponding Benefit.

The proposed rule imposes significant additional administrative burdens and costs on unions without any corresponding benefit. This includes the addition of four additional schedules to the LM-2 and the creation of an LM-2 long form. The rationale for the proposed amendments—enhanced enforcement of the LMRDA and providing additional information to union members and the public—do not justify these additional administrative burdens.

First, as for improved enforcement, it is important to note that the vast majority of unions are legitimate and trustworthy custodians of their members’ resources. They use those resources to advance member interests, nothing more, nothing less. Imposing such extensive additional reporting requirements on those legitimate actors drains member resources for no good reason. Second, it is also important to note that the current reporting requirements are sufficient to allow the Department to uncover union corruption. The Department recognizes as much in the proposed rule.¹⁰ Finally, contrary to the assumptions of the proposed rule, the proposed additional reporting requirements will not inevitably uncover additional corruption. That is because the small minority of corrupt actors will simply attempt to hide their corruption within the additional categories and reporting obligations of the proposed revisions. Aside from the anecdotal reports of a small number of investigators, there is no quantification of the increased ability to detect fraud by the proposed rule.

Next, for informing union members of the expenditures within their union, the membership already has the right to secure a detailed accounting of the expenditures of a union under Section 201(c) of the LMRDA, which requires unions to provide their members the opportunity to examine the books and records necessary to verify what is reported in the LM-2. Thus, union members are

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 64279 (citing “just a handful of examples” of union corruption uncovered with current reporting requirements).

already able to confirm what is reported by their unions without the need for the additional detail proposed in a publicly accessible format.

Finally, the general public has no legitimate interest in this additional detail. Rather, it can only serve the purposes of anti-union actors who will attempt to use this additional information to harass and criticize unions at best, or actively impede their efforts on behalf of the membership at worst. Few, if any, other sectors of the American economy is regulated as closely as unions, and no other business entity would be willing to report openly to the public such detailed information about its activities and expenditures.

Conversely, the administrative burdens and costs of compliance imposed on unions are significant. The proposed rule vastly underestimates the additional amount of time that will be required to not only report the additional information, but to segregate and maintain that additional information. Several of these additional categories are discussed in detail below, but the additional administrative costs and burdens of the rule militate in favor of abandoning the rule whole cloth. It is impossible to understand how the Department arrived at its estimate of additional burden; those estimates are arbitrary and unsupported by the experience of the unions completing the LM-2.

a. Requiring unions to report contributions in excess of \$5,000 will create an administrative and recordkeeping nightmare because it will require the Council to provide an itemized report of most of its members' dues contributions.

The proposed rule will require unions to report an itemized schedule of contributions from individuals and entities totaling \$5,000 or more annually.¹¹ For many unions, including the Council, this would require an itemized schedule of most of its members' dues contributions. It is not at all unusual that Council members' dues meet or exceed the \$5,000 threshold. With over 28,000 members, it is easy to see how this requirement would create an enormous reporting and record keeping nightmare. Additionally, it would also result in the public disclosure of private information pertaining to the earnings of those members, information that most people justifiably prefer to keep private. There would be no protection for that information under the proposed rule, potentially exposing these members to any variety of financial scams. All of this, without any significant upside. This proposed addition must be eliminated.

b. Requiring unions to separately report political activities and lobbying will impose significant additional administrative costs and burdens and will be redundant of disclosures that are already required elsewhere.

The proposed rule will require unions to submit separate schedules for political activities and lobbying expenses.¹² Again, this information would require significant, and difficult, segregation of such expenses. Distinguishing between the two categories is, as the Department recognizes, not a simple or clear-cut matter.¹³ Additionally, the time and expense of lobbying is generally already required by the political entities who are the subject of lobbying efforts and by the Lobbying Disclosure Act of 1995, 2 U.S.C. § 1601, *et seq.* Thus, the separate report in the LM-2

¹¹ *Id.* at 64743-44.

¹² *Id.* at 64737 and 64742.

¹³ *Id.* at 64743.

would be redundant of information that is provided elsewhere, further undermining any need for the reporting required by the proposed rule. This is simply another example of the unnecessary expense imposed by the proposed rule without a corresponding benefit to any of the identified interests.

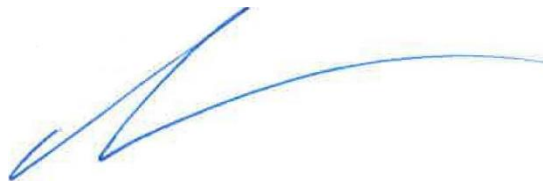
c. Requiring unions to separately report contract negotiation/administration and organizing activities will impose additional costs without any benefit.

A final example of the unjustified costs of the proposed rule is the proposal to require two separate schedules for contract negotiation/administration and organizing activities.¹⁴ This same proposal was previously rejected by the Department in recognition of the difficulty of cleanly delineating those two categories.¹⁵ It is impossible to understand why that is being reversed now. There is no justification for such proposal, it will increase the administrative burden and costs of compliance without added benefit to the identified interests, and it will potentially provide anti-union actors with additional information regarding the union's decisions about how to allocate its resources. That proposal should be rejected.

IV. The Proposed Rule Should be Scrapped in Favor of Retaining the Current Reporting Requirements.

As explained in detail above, the administrative burdens and costs of the proposed rule far outweigh any marginal improvement in enforcement. The general public has little interest in such information, and increased disclosure will only assist anti-union segments of the public to advance their agenda using information that in any other industry would be considered proprietary. And members already have the tools necessary to oversee the use of their dues. Additionally, the proposed rule could put the safety of union representatives, salts, and informants at risk. Accordingly, the DOL should scrap the proposed rule and maintain the current reporting regime under the LMRDA. That regime adequately allows for enforcement of the LMRDA, protects unions' ability to advance their members' interests, and safeguards important, confidential information.

Sincerely,



Matt Malmsheimer,
Counsel for the Pacific Northwest Regional Council of
Carpenters, on behalf of

Evelyn Shapiro
Executive Secretary-Treasurer
Pacific Northwest Regional Council of Carpenters

¹⁴ *Id.* at 64737 and 64741.

¹⁵ *Id.* at 64741.