



Mackinac Center for Public Policy comment in support:

Labor Organization Annual Financial Reports: Form Revisions

RIN: 1245-AA10

Changes to Union Reporting Forms Promote Transparency, But Should Go Further

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The Mackinac Center for Public Policy supports the Department of Labor's (the "Department's") Notice of Proposed Rulemaking regarding updates to union transparency reports, RIN 1245-AA10, issued October 13, 2020.

The Mackinac Center for Public Policy is a nonprofit research and educational institute that advances the principles of free markets and limited government. Through our research and education programs, we challenge government overreach and advocate for free market approaches to public policy that free people to realize their potential and their dreams.

We strongly support the Department's efforts to benefit union workers and the public through the implementation of greater transparency requirements in financial disclosures. These efforts will not only inform union members, but will serve as powerful protection against corruption and inappropriate spending.

Although we support the Department's rule as proffered, we believe that a few amendments and additions would result in even more effective disclosure requirements. Implementation of these minor changes and additions would only serve to strengthen the proposed rule.

Background

The Labor-Management Report and Disclosure Act of 1959 was originally enacted in response to "breach[es] of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct."¹ Since its adoption, the Department has made significant efforts to respond to these concerns through reforms to the financial disclosure process, particularly with respect to LM-2 forms.² Although these reforms have been beneficial, recent events have shown that the LM2 form, as currently constituted, can still conceal fraud and abuse.

¹ 29 U.S.C. §401(b)

² See, e.g. <https://www.govinfo.gov/content/pkg/FR-2003-10-09/pdf/03-25487.pdf>, (2004 LM2 reform rule).

A recent example of concealed fraud can be seen in the multiple recent scandals surrounding the United Auto Workers union. Federal criminal cases have revealed illegal spending by high-ranking UAW officials, including millions of dollars in member dues spent on villas, expensive dinners, alcohol, cigars, golf equipment and rounds of golf.³ This illegal spending has resulted in federal embezzlement, money laundering, and mail and wire fraud charges.⁴ These charges were concealed as line items in bills associated with annual conferences, despite many of the expenditures occurring well outside of conference dates.⁵

These scandals are not the only example of rampant misuse of member dues being concealed under current LM2 reporting. Since reforms were enacted in 2004, there have been 1496 indictments for labor racketeering, resulting in 1235 convictions and total fines of \$484 million.⁶ Fraud, forgery, and embezzlement have run rampant throughout the country, costing union members thousands of dollars in misappropriated dues.⁷ These examples demonstrate the need for improved LM2 disclosures that promote the importance of full, complete, and meaningful disclosure by labor organizations.

Investigator Comments

We commend the Departments' decision to canvas its investigators to obtain greater clarity regarding potential changes that would help to better safeguard union members.⁸ This canvassing resulted in a number of conclusions that merit further discussion.

The investigators concluded that the \$5,000 itemization threshold is helpful. This threshold promotes the ability of union members to see how their dues money is being spent. In addition, as noted by the investigators, this itemization has been “the best of the seven [2003 changes to the LM2], and has been helpful for discovering information that, without itemization, would not have been known.”⁹

In addressing subdividing “political spending and lobbying” and “representational activities” into multiple categories, investigators noted that such efforts would increase transparency. Some, however, were concerned that “the \$5,000 itemization occurs only within each category so that disbursements of more than \$5,000 might not be itemized if the disbursement fell under more than one category. Functional reporting aids in understanding the purposes of labor union spending but it can cloak individual transactions because of the \$5,000 itemization threshold.”¹⁰

3 See, e.g., <https://www.detroitnews.com/story/business/autos/2019/09/12/uaw-presidents-gary-jones-dennis-williams-implicated-in-federal-probe/2302410001/>; <https://www.detroitnews.com/story/business/autos/2020/11/16/feds-want-ousted-uaw-leader-joe-ashton-serve-almost-three-years/6308889002/>; <https://www.detroitnews.com/story/business/autos/general-motors/2017/11/02/uaw-training-center-investigation-expands-big-detroit-three/107251546/>; <https://www.detroitnews.com/story/news/local/detroit-city/2019/04/24/federal-corruption-investigation-uaw-focuses-trinket-deals/2806274002/>; <https://www.freep.com/story/money/cars/2020/11/17/joe-ashton-uaw-gm-sentence/6326452002/>.

4 *Id.*

5 See *United States of America v Vance Pearson*, Case 2:19-mj-30488-DUTY, pgs 14-15 (Sept. 12, 2019).

6 <https://www.unionfacts.com/article/crime-and-corruption/>.

7 See, e.g., <https://nlpc.org/category/union-corruption-update/>.

8 <https://www.federalregister.gov/documents/2020/10/13/2020-21685/labor-organization-annual-financial-reports-lm-form-revisions>.

9 *Id.*, at Section B(I).

10 Labor Organization Annual Financial Reports: LM Form Revisions, 85 Fed. Reg. 64731 (Oct. 13, 2020).

Investigators agreed additional that membership categories, including “agency fee payers” or “retirees” are helpful in determining the composition of a union’s membership.¹¹

The investigators further commented that the confidentiality exemption should be eliminated. The current threshold is susceptible to abuse, and allows unions to disguise wrongful activity by claiming disclosure will interfere with their organizational strategy. One investigator specifically noted that some unions were not itemizing market recovery payments, resulting in six-figure disbursements being concealed.¹² That same investigator noted this was an “area ripe for abuse and potential embezzlement.”¹³

Comments on the Departments Proposed Rule

1. LM-2 and Itemization Thresholds

Although we support the reforms proposed for the LM2-LF, we do not see a need to limit the application of that form to unions with receipts in the amount of \$8,000,000 or above. The issues identified by the Department’s proposed rule apply equally to unions with receipts of \$250,000 or more, and the additional reporting requirements are not so unduly burdensome as to justify exempting those organizations from the additional reporting. Indeed, many of the most relevant changes discussed above merely require subdividing data that is already reported by unions with receipts of over \$250,000. Members of these unions deserve the same information as members above \$8,000,000 in receipts, and the additional reporting burdens (if any) should not outweigh the benefits of transparency. For that same reason, we oppose increasing the LM-2 threshold to \$300,000. We also oppose these reforms being applied solely to unions with gross receipts of \$8,000,000 or more. As such, we intend that all of our remaining suggestions apply to unions with receipts of \$250,000 or above, and that all changes are implemented to the existing LM2 form.

We also support an itemization reporting threshold that is below \$5,000.00, as this would be even more beneficial in promoting transparency. Given the explosion of technological advancements since 2003, a lower threshold reporting requirement, such as \$1,000.00, could yield even more helpful information without significant additional administrative burden. A lower itemization threshold would provide union members and the Department’s investigators even more information which can be used to ensure that dues are being spent appropriately.

2. Related Organizations, Conflicts of Interest and Confidentiality

We support the Departments proposal to create reporting requirements that would disclose potential conflicts of interest. The proposed rule, if adopted, would assist union members in determining whether their union is under

11 *Supra* note 8, at §(1)(b) (“Another investigator felt [membership categorization] was helpful to estimate dues receipts and very useful in union election cases.”); see also: <https://beta.regulations.gov/document/LMSO-2020-0002-0004> at p 7 (“Membership categories are helpful...specifically in that the categories many times include agency fee payers and assist in determining the active dues paying members as it corresponds to dues receipts...”); *Id.*, at 10 (“Schedule 13 should include a mandatory field for reporting the number of retired members, similar to the agency fee payer field.”); *Id.*, at 9 (“This is very useful in election investigations. It can help to identify how many members are actually likely to be eligible to vote if apprentices and retirees are taken out of the picture.”).

12 *Id.*, at p 8 (“For example, there are some unions in the Minneapolis area that do not itemize market recovery payments, which can be in the \$100,000 range, because they allege it hurts their organizing strategy while other unions report these payments.”).

13 *Id.*

trusteeship, as well as potential conflicts of interests for union officials. This ensures that union members are able to hold their elected officials accountable, while also allowing the Department's investigators to more effectively discover and discourage fraud. It also promotes transparency by allowing union members to know who is in control of their union.

The conflict of interest provisions of the proposed rule are similarly helpful. By requiring a union to report whether union officers are receiving compensation from other labor-affiliated organizations, union members are better able to evaluate potential conflicts of interest that may compromise their officials. It also helps union members to evaluate whether an officer is not fully devoting his or her time to the union whose members elected him or her.

The additional reporting requirements associated with the NPRM's conflict of interest provisions do not represent a significant additional administrative burden. As written, the proposed rule requires reporting for those officers and employees paid \$10,000.00 or more by two separate labor organizations. This reporting is already captured in the Internal Revenue Services' Form 990, which requires non-profits to disclose officer compensation of "related organizations," such as parent or subsidiary entities.¹⁴ Requiring this disclosure on LM-2 forms should not cause significant additional burden on unions, as much of this information is already collected by unions as part of their ordinary activities.

We also support the elimination of the \$5,000 itemization confidentiality exemption. The current system is susceptible to abuse, and allows unions to disguise wrongful activity by claiming disclosure will interfere with their organizational strategy. As the Department's investigator noted, this is an "area ripe for abuse and potential embezzlement."¹⁵ Elimination of the confidentiality exemption would lessen the potential for wrongdoing and criminal activity.¹⁶

As currently constituted, the confidentiality exemption allows unions to avoid itemizing the costs of transactions, compensation for officials working at a non-union facility, and other information that could provide an advantage to employers. Certainly, some information, such as information that would put an individual's safety at risk, or information otherwise protected by law, should continue to be exempt. Much of the information currently exempt from disclosure, however, conceals union spending that would allow members to be more well-informed about how their union is operating. Members should be able to easily determine whether their union is spending the majority of dues revenue on recruiting new members and organizing new facilities, and whether that spending is appropriately proportional to the amount being spent on representational activities. As such, unions should be required to itemize the aforementioned transactions, as member's interests in transparency should outweigh any minor harm that disclosure may cause.

3. Financial Disclosures

The Mackinac Center also supports the Department's efforts to promote transparency through additional financial disclosures. Currently, the LM2 does not require unions to report their union strike funds, which can be used to conceal fraud or illegal activities.¹⁷ Given the importance of safeguarding the dues of union members, this oversight should not be permitted to continue.

14 <https://www.irs.gov/pub/irs-pdf/i990.pdf>

15 *Infra*, note 24.

16 One investigator noted that the confidentiality exemption "has been a hindrance in case targeting because it allows unions to hide transactions under the guise that it will hurt their organizational strategy." <https://beta.regulations.gov/document/LMSO-2020-0002-0004>

17 <https://www.federalregister.gov/documents/2020/10/13/2020-21685/labor-organization-annual-financial-reports-lm-form-revisions>; see also <https://www.justice.gov/usao-ndoh/pr/former-president-steelworkers-union-local-5000-charged-stealing-hundreds-thousands>; see also <https://dailycaller.com/2020/10/20/exclusive-trump-administration-rare-warning-american-federation-government-employees-united-steelworkers/>.

All unions above the \$250,000.00 threshold should be required to report both whether they have a strike fund, and the amount contained therein. Members of these unions are equally benefitted by additional transparency as our members of unions above the \$800,000.00 threshold as currently proposed in the NPRM. In addition, requiring the value of strike funds to be reported allows members to evaluate whether their unions have the financial wherewithal to support them during a proposed strike. Without this information, union members could vote to strike, only to later discover that their union lacks the funding to financially support them.¹⁸

This information could also be used to evaluate the costs of a strike, which will assist members in evaluating the costs and benefits of voting to strike. Finally, awareness of the value of a strike fund will better allow members to determine whether a dues increase is necessary, particularly in those instances in which the union maintains a well-funded strike fund. Similarly, union members can use this information to determine whether the amount they have paid in dues is justifiably offset by potential strike relief.¹⁹

4. Financial Disclosures for Officials

For similar reasons, we support the Department's efforts to add clarity to spending by union officials. Union members should be aware of how officials are spending their dues, in order to be able to hold those officials accountable. The recent UAW scandal discussed above demonstrates precisely how important additional reporting requirements are for not only assisting investigators, but for helping to prevent fraud from occurring in the first place.²⁰

Additional reporting regarding indirect disbursements to officials, such as travel and lodging expenses, will help prevent and uncover potential fraud. Even if no fraud is occurring, this additional information will help union members to better understand the total compensation of the union's officers, which can help them hold these officials accountable by requiring responsible spending. We further support disclosure of any disbursement when the payment is made either "directly by the union, or through a union credit card," as proposed by the Department.²¹ We note, however, that any such spending should also be reported for any of the official's guests, to prevent a potential loophole that would encourage fraud.

5. Subdivision of Reporting Categories

A. Political Spending

The proposed subdivision of "Political Activities and Lobbying" and "Representational Activities" into sub-categories²² is beneficial, as it provides both the public and union members with a greater level of detail into how dues are being spent. This is particularly true when coupled with a lower itemization threshold, such as the \$1,000.00 threshold suggested above. A lower threshold would also address the concerns of the investigators who noted that additional

18 <https://www.wsws.org/en/articles/2019/09/19/pers-s19.html>

19 *Id.*

20 *Supra* note 3.

21 <https://www.regulations.gov/document?D=LMSO-2020-0002-000>.

22 The proposed rule subdivides "Representational Activities" into "Contract Negotiation and Administration" and "Organizing", while "Political Activities and Lobbying" would be divided into "Lobbying" and "Political Activities." *Supra* note 8. at Cash Disbursements, Items 50-51. We support both sub-categorizations.

functional categories could lead to some currently reported disbursements to become cloaked.²³

IRS Form 990 already incorporates this proposed change, as it separates electoral politics from lobbying activity. Form 990 also provides helpful definitions to distinguish the two activities. Lobbying is defined as “[a]ll activities intended to influence foreign, national, state, or local legislation,”²⁴ while political campaign activities is defined as “[a]ll activities that support or oppose candidates for elective federal, state, or local public office.”²⁵

Subdividing political spending in this way not only promotes transparency, but also consistency. Historically, there have been significant discrepancies between the political spending major unions report on their LM2 forms and their Form 990 filings.²⁶ Requiring reporting based on identical definitions should eliminate these discrepancies, allowing union members and the public to better understand how union dues are being spent.

Although the above definitions are helpful, and should be included in a final rule, we further recommend that the Department require reporting of additional information relating to contributions to policy groups. Although such data is currently reported, it is reported inconsistently, making it difficult for union members and the public to easily review this spending. As an example, the SEIU has reported contributions to Planned Parenthood as “other receipts” in its 2005 LM2, but reported these contributions as political activities in 2007 and 2008. Similar inconsistencies can be seen with its donations to the Planned Parenthood action fund, contributions to which portions were classified as ‘gifts’ in 2013, but political spending in 2012, 2013,²⁷ 2017, and 2019. The same inconsistency appears with the National Education Association. In 2008, donations to the Planned Parenthood Federation of America were classified as political activities.²⁸ In 2009 and 2011, however, those donations were categorized as other receipts.²⁹

Such inconsistencies make it much more difficult for union members to easily track spending that could be considered to be political. As such, we recommend that the Department clarify that donations to entities attempt to educate on matters of public policy, or attempting to influence public opinion on a particular policy position be classified either as political activities, or other receipts. This guidance will insure that these contributions are being reported consistently both within a particular union, and across the larger labor movement.

B. Categories of Membership

We echo the investigators’ comments that reporting “agency fee payers” and “retired” members is beneficial. To further promote transparency, we recommend the Department add a “represented” line to Schedule 13, to educate members in right-to-work states about the number of represented employees who chosen to opt-out of union

23 *Id.* (“On the other hand, investigators noted that the \$5,000 itemization occurs only within each category so that disbursements of more than \$5,000 might not be itemized if the disbursement fell under more than one category. Functional reporting aids in understanding the purposes of labor union spending but it can cloak individual transactions because of the \$5,000 itemization threshold.”).

24 <https://www.irs.gov/pub/irs-pdf/i990.pdf>

25 *Id.*

26 Compare AFL-CIO 2018 LM2 Report and 2018 990, in which the union reported spending over \$24 million on political activities and lobbying, but only reported \$179,337 on political campaign expenditures. AFL-CIO LM-2 for FY 2018, file number 000-106 <https://olmsapps.dol.gov/query/orgReport.do>; https://990s.foundationcenter.org/990_pdf_archive/530/530228172/530228172_201806_990O.pdf. See also, NEA 2017 LM2 Report and 2017 990, in which the union reported \$53,306,556 in political activities and lobbying on its LM2, but only \$9,290,634 on its Form 990. See NEA LM-2 for FYI 2017, file number 000-342 <https://olmsapps.dol.gov/query/orgReport.do>, https://990s.foundationcenter.org/990_pdf_archive/530/530115260/530115260_201708_990O.pdf.

27 Contributions were reported under both categories in 2013.

28 Contributions can be seen via the Department’s payor/payee search tool. <https://olmsapps.dol.gov/olpdr/#Union%20Reports/Payer/Payee%20Search/>.

29 *Id.*

membership. This will create additional transparency, as union members would be able to easily determine how many employees are represented by the unions, but not paying dues. Union members can then calculate how much they are paying to represent non-member employees in right to work states or in the public sector.

We also recommend that the Department require the reporting of standardized membership categories, such as “full-time,” “part-time,” “student,” “associate,” “apprentice,” and “retiree” members, to better inform union members and the public about the year-to-year makeup of a union’s membership.³⁰ To the extent that a union does not have members that fall within any of these categories, a report of “zero” would prevent any reporting confusion. These categories would also assist investigators when calculating estimated dues receipts, and in election cases.³¹ This change would allow unions to continue to report non-traditional members, but would provide a more accurate picture of the union’s makeup.

Furthermore, a revised LM2 should distinguish between public and private membership. These memberships may have distinct interests, particularly in the realm of negotiating tax policy and regulations. Distinguishing between these membership categories will help members to determine whether their union’s interest is primarily driven by promoting public policy that supports their interest, or is antithetical thereto.

C. Other Subdivisions

We also support the Department’s efforts to divide “Representational Activities” into “Contract Negotiation and Administration” and “Organizing.” The benefits of such a subdivision are obvious, as union members will have a better understanding of what portion of their dues are devoted to representing them versus organizing new members.

For the same reason, we support subdividing the “Sale of Investments and Fixed Assets” and the “Purchase of Investments and Fixed Assets” into two separate items each. We further recommend that the Department require additional information about these transactions, such as the purchaser and/or seller, and the date of the purchase and/or sale.

6. Recommended Additions to the Department’s Proposed Rule

Although we applaud the Department’s efforts to improve the transparency and effectiveness of LM2 forms, we note that a number of additions would further strengthen the proposed rule. Currently, unions are not obligated to report information that is crucial to ensuring their members are fully informed. This includes information about how union members can resign their membership, qualifications or restrictions on the ability to resign membership, existing opt-out windows, the date of the most recent updates to the union’s constitution and bylaws, whether the union has a whistleblower policy and where that policy can be located, and the amount of dues that must be paid to the applicable parent union. Each of these items should be added to the LM2 and LM2-LF.

³⁰ In some instances, unions are reporting membership that is inflated by members who are not traditional, full dues paying members. The National Education Association, for example, include community allies as members, despite the fact that community allies are merely members of the public that support the union’s mission. See, e.g., <https://www.nea.org/join-our-movement/become-a-community-ally>.

³¹ *Supra* note 8 at §(1)(b) (“Another investigator felt [membership categorization] was helpful to estimate dues receipts and very useful in union election cases.”); see also: <https://beta.regulations.gov/document/LMSO-2020-0002-0004> at p 7 (“Membership categories are helpful...specifically in that the categories many times include agency fee payers and assist in determining the active dues paying members as it corresponds to dues receipts....”); *Id.*, at 10 (“Schedule 13 should include a mandatory field for reporting the number of retired members, similar to the agency fee payer field.”); *Id.*, at 9 (“This is very useful in election investigations. It can help to identify how many members are actually likely to be eligible to vote if apprentices and retirees are taken out of the picture.”).

These additions would both promote transparency and ensure that union members are aware of the mechanics involved in exercising their right to resign membership. It also helps members to evaluate their union's policies against the policies of similarly situated unions, and advocate for changes that would be beneficial to membership. Similarly, requiring the disclosure of the dues that must be paid to a parent union helps educate potential members while simultaneously providing more accurate information about dues to existing members. This eliminates the need to review multiple LM2s just to determine the total dues paid by a member of a subordinate union.

Conclusion

The Mackinac Center fully supports the Department's efforts to modernize LM2 forms, particularly with the additions suggested herein. All of these changes promote transparency, which benefits not only the Department and its investigators, but also union members and the general public. We look forward to the final adoption of this rule, which will better inform union members and help to reduce corruption and fraud.