

July 29, 2019

U.S. Department of Labor
Office of Labor-Management Standards

Re: RIN 1245-AA09, Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization Is Interested, Form T-1

The Freedom Foundation is a nonprofit organization organized under 26 U.S.C. § 501(c)(3). Founded in 1991 in Olympia, Wash., the organization's mission is to promote individual liberty, free enterprise and limited, accountable government. In recent years, the Foundation has opened offices in Oregon and California and devoted much of its attention to supporting reforms to make labor unions more transparent and accountable to their members and taxpayers.

Because of the Foundation's expertise on labor union operations — developed through dozens of lawsuits, legal complaints, legislative skirmishes and interactions with tens of thousands of union-represented workers — the Foundation strongly endorses the Office of Labor-Management Standards' (OLMS) proposal to require labor organizations to file annual Forms T-1 disclosing the financial dealings of certain trusts in which they are interested.

Such transparency is critical to helping union-represented employees understand the operations of their unions and detect any potential mismanagement or misconduct on the part of union officials. Further, the development of union-operated trusts funded with public dollars means taxpayers have an increasing interest in the honest and efficient operation of union trusts. Lastly, the additional transparency brought about by this proposed rule would discourage misconduct from occurring in the first place.

Taxpayers' Interest in Union Trust Transparency

Increasingly, unions representing home care aides serving Medicaid-eligible clients with disabilities are forming trusts to administer various employee benefits provided with Medicaid dollars.

One of the best examples of this phenomenon is Service Employees International Union Local 775 (SEIU 775) in Washington state, which represents the state's approximately 40,000 individual providers (IPs).¹ Per state law, SEIU 775 negotiates with the governor's designees in the Office of Financial Management over IPs' wages and benefits.²

¹ RCW 74.39A.240(3) defines "individual provider" as: "...a person, including a personal aide, who, under an individual provider contract with the department [of social and health services] or as an employee of a consumer directed employer, provides personal care or respite care services to persons who are functionally disabled or otherwise eligible under programs authorized and funded by the medicaid state plan, medicaid waiver programs[,] chapter 71A.12 RCW, RCW 74.13.270, or similar state-funded in-home care programs."

² See RCW 74.39A.270.

The most recent collective bargaining agreement (CBA) between SEIU 775 and the State of Washington obligates state taxpayers to pay into four union-operated trusts that administer various employment benefits for IPs.³ Contributions are based on a set rate for every hour worked by an IP, as determined by the CBA. As Washington's Medicaid programs are funded 50-50 by state and federal dollars, both federal and state taxpayers have an interest in ensuring the hundreds of millions of dollars provided to these trusts are used appropriately.

However, as private entities, none of the trusts are currently subject to the state's Public Records Act⁴ and are beyond the reach of the Washington State Auditor. Two of the trusts currently file Forms 5500 with the Department of Labor (DOL) and would presumably be exempt from the current proposal, but the other two do not already file such disclosures and, as such, are subject to no financial transparency requirements.

The four state-funded trusts administered by SEIU 775 include:

1. SEIU Healthcare NW Health Benefits Trust
 - a. EIN 20-1842198
 - b. Provides health and dental benefits to eligible IPs.
 - c. Taxpayer-funded pursuant to Article 9 of the CBA.
 - d. Files Forms 5500.
 - e. Total annual revenue: \$236 million, according to its most recent Form 5500 filed with DOL.
2. SEIU Healthcare NW Training Partnership
 - a. EIN 51-0673005
 - b. The only entity permitted by law to offer IPs' state-required training and continuing education courses.
 - c. Taxpayer-funded pursuant to RCW 74.39A.009, RCW 74.39A.360, and Article 15 of the CBA.
 - d. Does not file Forms 5500.
 - e. Total annual revenue: \$27 million, according to its most recent Form 990 filed with the Internal Revenue Service (IRS).⁵
3. SEIU 775 Secure Retirement Trust
 - a. EIN 47-4321390
 - b. Provides retirement benefits to eligible IPs.
 - c. Taxpayer-funded pursuant to Article 21 of the CBA.
 - d. Files Forms 5500.
 - e. Total annual revenue: \$16 million, according to its most recent Form 5500 filed with DOL.
4. Carina
 - a. EIN 32-0530631
 - b. Manages a referral registry to connect clients seeking care to IPs seeking work.

³ Collective bargaining agreement between the State of Washington and Service Employees International Union Healthcare 775NW, 2019-2021. Available online from the Washington State Office of Financial Management at: https://ofm.wa.gov/sites/default/files/public/labor/agreements/19-21/nse_homecare.pdf

⁴ Chapter 42.56 RCW.

⁵ A copy of the Form 990 is available online at: <https://www.freedomfoundation.com/wp-content/uploads/2019/07/SEIU-Training-Partnership-IRS-990-2016.pdf>

- c. Taxpayer-funded pursuant to Article 14.5 of the CBA.
- d. Does not file Forms 5500.
- e. Total revenue: Not available, as Carina has not yet filed a Form 990 with the Internal Revenue Service.

Similar unions representing groups of employees like home caregivers, child care providers and other “partial-public employees” compensated with public funds are increasingly seeking to establish similar employment benefits trusts funded with tax dollars.⁶ While some may fall under the Employee Retirement Income Security Act and file Forms 5500, others do not, leaving a significant transparency gap and creating an environment in which misconduct by those labor officials charged with administering the funds is harder to detect. Adopting the proposed rule would help close this loophole to the benefit of both the employees in whose name the trust funds are managed and the taxpayers financing the benefits.

Opportunities to Improve Aspects of the Proposed Rule

1. Under the proposed rule, a trust in which a labor organization is interested would have to file a Form T-1 if it “(1) selects or appoints the majority of the members of the trust’s governing board, or (2) contributes more than 50 percent of the trust’s receipts.” The Freedom Foundation would recommend extending the reporting requirement to trusts in which the labor organization(s) select or appoint 50 percent or more of the members of the governing board.

Requiring trusts to file Forms T-1 only when a union appoints *more* than half of the governing board members could allow some trusts to skirt transparency requirements by reducing union appointees to an even half, while still permitting the labor organization to exercise *de facto* control over the trust via a single sympathetic or politically aligned employer appointee.

In our experience, at least in the context discussed above in which union-operated trusts are funded with public dollars, relationships between union and government officials are often based on strong political ties. Further, unlike private employers, public officials have little financial incentive to contain costs or ensure proper use of trust funds. In short, the adversarial relationship between private employers and unions that often exists in the private-sector and promotes accountability of all parties is too often absent in dealings between public officials and labor organizations.

Obviously, the line must be drawn somewhere, and it would difficult to defend extending reporting requirements to trusts when labor organizations appoint fewer than half the members of the governing board. Further, given the history of DOL’s regulation of labor organization trusts, the Foundation understands the necessity of crafting a legally defensible proposal. But we believe the appropriate position is one which maximizes the applications of the regulation within legal limits.

⁶ In its 2014 decision in *Harris v. Quinn*, the U.S. Supreme Court referred to home care aides and others who are considered public employees only for the purpose of state collective bargaining laws as “partial-public” and “quasi-public” employees.

2. Regarding the itemization of major disbursements and major receipts on the Form T-1, OLMS's proposal would set the threshold at \$10,000 or more in the aggregate. However, the Freedom Foundation believes the threshold can justifiably and should be set at \$5,000. The ability to obscure improper payments of up to \$9,999.99 per year to a single source is still significant. Just as disclosure requirements of payments of \$10,000 or more discourages misconduct, so would the extension of itemization requirements to payments of \$5,000 or more.

Again, the line obviously must be drawn somewhere. But in all other similar contexts, the threshold for itemization has been set at \$5,000. Forms LM-2 filed by labor organizations with OLMS must itemize all receipts and disbursements exceeding \$5,000.⁷ Similarly, Forms 5500 require that trusts disclose service providers who received compensation from the trust exceeding \$5,000 in the aggregate.⁸ Consequently, a similar threshold for itemization of trust transactions on the proposed Form T-1 is both reasonable and consistent with what similar disclosures managed by DOL already require.

3. The Foundation sees no strong reason, on policy grounds, to exempt trusts that file Forms 5500 from also having to file Forms T-1. To the extent the forms require the disclosure of similar information, the added burden of filing a second form is diminished. To the extent the two forms require disclosure of different information, the ability of the Form 5500 to satisfy the intent of the Form T-1 is diminished.
4. Similarly, the Foundation sees to strong policy reason to accept audits instead of completed Forms T-1. Either the audit must disclose the same information as the Form T-1, in which case the reporting labor organization would have little reason to choose one option over the other, or the audit must disclose less information than required on a Form T-1 and the regulation's goal of promoting transparency suffers.
5. The proposed instructions to accompany the Form T-1 contain several errors and ambiguities that the Foundation recommends addressing.
 - a. Under "I. Who Must File," paragraph 3 states, "Any contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions."

It may be helpful to add the term "employer" before the first reference to "contributions." Counting employer contributions made pursuant to a collective bargaining agreement when determining whether a labor organization must file a Form T-1 is a critical part of the proposed rule and should be emphasized/clarified in the instructions.

⁷ U.S. Department of Labor. "Instructions for Form LM-2 Labor Organization Annual Report." November 2010. Available online at: <https://www.dol.gov/olms/regs/compliance/EFS/LM-2InstructionsEFS.pdf>

⁸ U.S. Department of Labor. "Instructions for Form 5500 Annual Return/Report of Employee Benefit Plan." 2018. Available online at: <https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2018-instructions.pdf>

- b.** Under “I. Who Must File,” the last sentence of paragraph 4 contains a typographical error: “The affiliates must continue to identify the trust in their Form LM-2 Labor Organization Annual Report, and, including a statement that the parent labor organization will file a Form T-1 report for the trust.” (Emphasis added)
- c.** Under “II. When to File,” the fourth bullet point refers to “September 30, 2010.” It should refer to “September 30, [YEAR].”
- d.** Under “III. How to File,” the second paragraph incorrectly lists OLMS’s public email address as “OLMSPublic@dol.gov.” The correct email address is “OLMS-Public@dol.gov.”
- e.** Under “VIII. Completing Form T-1,” “Introduction,” “Items 1 Through 20,” “1. File Number,” the first two sentences refer to “Form LM-2.” The references should be to “Form T-1.”
- f.** Under “VIII. Completing Form T-1,” “Introduction,” “Items 1 Through 20,” “2. Period Covered,” paragraph two refers to “Item 69.” It should refer to “Item 25.”

We hope this information is helpful to OLMS’s efforts to advance this important and worthwhile proposal.

Sincerely,



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