INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL–CIO

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ONE AGENDA

7234 Parkway Drive
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Organizing Since 1887

Denise M. Boucher
Director of the Office of Policy, Reports and Disclosure
Office of Labor-Management Standards
United States Department of Labor
200 Constitution Avenue, NW
Room N-5609
Washington, D.C. 20210

RE: Labor Organization Officer and Employee Reports (RIN 1215-AB74 or RIN 1245-AA01)

Dear Ms. Boucher:

The International Union of Painters and Allied Trades ("IUPAT") represents hard working men and women who focus their skills in the finishing trades as painters, drywall finishers, wall coverers, glaziers, glass workers, floor covering installers, sign makers, display workers, convention and show decorators, and in many more occupations. Our diverse union is made up of the International Union headquartered in Washington, D.C., 34 District Councils, and over 400 local unions throughout the United States and Canada. Almost every affiliate of our union as well as most of the officers and employees of our labor organization were adversely impacted by the previous Administration's regulations altering the financial reports that large labor organizations file (Form LM-2) and the conflict of interest reports that union officers and employees must file (Form LM-30). IUPAT appreciates the steps the current Administration has taken to mitigate some of the needless burden that these earlier LMRDA regulations imposed on unions and their officers and employees. We view the recent Notice of Proposed Rulemaking issued by the Department of Labor, Office of Labor-Management Standards to revise the Form LM-30[1] as intended to continue these efforts.

The Form LM-30 implements section 202 of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") which requires officers and employees of labor organizations to file publicly-available reports covering possible conflicts between their personal financial interests and their duty to their labor organization and its members. The current version of the form was promulgated in 2007.[2] Following the promulgation of the

[1] Notice of Proposed Rulemaking: Labor Organization Officer and Employee Reports, 75 Fed. Reg. 48416 (August 10, 2010).
[2] Final Rule: Labor Organization Officer and Employee Report, Form LM-30, Form LM-30, 72 Fed. Reg. 36106 (July 2, 2007).

current form, fundamental questions arose over the complexity of the form and its instructions and the scope of the reporting obligations it requires. IUPAT has grave concerns regarding the current Form LM-30. We believe it calls for unnecessary reporting of many financial transactions and arrangements that pose no threat of a conflict of interest. It imposes a crushing burden on our officers and employees. And it also discourages involvement in union activities to the detriment of both the union and its employer partners.

IUPAT commends DOL for reconsidering the current Form LM-30. The August 10th proposal makes several significant improvements that we whole-heartedly support. There are, however, some areas of the proposal that seriously concern us and that DOL must reconsider if it intends to reduce the net burden of the Form LM-30 and ensure some balance between the benefits of disclosure and the burden on the regulated community.

DOL has proposed changes that will greatly improve many aspects of the reporting currently required by the Form LM-30. For instance, DOL proposes to rescind the requirement to report union-leave and no-docking payments,[3] and to generally exempt union stewards from LM-30 reporting.[4] In the IUPAT's experience, union-leave and no-docking payments pose no threat of a conflict of interest. They primarily serve the interest employers have in prompt and fair resolution of grievances and other workplace issues so that work continues and morale remains high. IUPAT supports DOL returning to its historical position that prevailed for over 40 years prior to the 2007 Final Rule that such payments are not reportable.

IUPAT also supports the proposed exemption of arms-length transactions with bona fide credit institutions made in accordance with usual business practices.[5] Currently, union officials must report many ordinary transactions in which they are treated no differently from any other member of the public, such as home mortgages or other loans made at market rates. Our union agrees with DOL that such personal financial transactions made at arm's-length and at market rates should remain private because they pose no real conflict of interest and are therefore not matters intended to be captured by the LM-30.

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[3] *Supra* note 1, at 48421.

[4] *Id*. at 48423. We understand that union stewards will still have to report in the unusual circumstances when the steward is a constitutional position, the individual serving in the position is also an employee of the union under circumstances distinct from his status as a steward, or the steward position is a paid union position.

[5] *Id*. at 48425.

DOL is also moving in the right direction by eliminating reporting of payments from trusts in which the filer's union is interested, and by curtailing the reporting of payments from other unions.[6]

While the NPRM proposes many positive changes to the current LM-30 regulations, there is one significant aspect of the NPRM that will produce additional burdens on many LM-30 filers. The burden of this proposed change is compounded by the proposed rule's failure to make any changes to the definition of certain terms adopted in the 2007 Final Rule. Perhaps the most problematic aspect of the previous Administration's LM-30 rulemaking was the way it defined the term "labor organization" to determine a union officer's or employee's obligation to report various payments from, holdings in, or transactions with employers or businesses. Before the previous Administration's regulations, the LMRDA, its regulations, and the LM-30 instructions were silent as to whether a union official's "*labor organization*" is the immediate level of the union that he served or if it also included any parent or subordinate bodies. The 2005 proposed rule defined labor organization broadly to include any subordinate or superior level of the union.[7]

In response to comments challenging this broad definition and acknowledging that the legislative history "does not make clear whether the obligation is limited to a particular component of the union or not,"[8] the 2007 Final Rule greatly narrowed the definition of "labor organization." It eliminated any requirement for union officers and employees to report matters related to any higher level affiliate of their union.[9] It also created essentially two separate definitions of "labor organization" such that union officers were required to report in relation to affiliates of the union beneath the one they served while union employees were not required to do so.[10] In an effort to craft "a rule that achieves a balance between disclosure and undue burden,"[11] the 2007 Final Rule further narrowed the scope of a union officer's obligation to report in relation to subordinate affiliates by exempting them from reporting on three types of transactions:

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[6] *Id*. at 48427 – 48429. IUPAT acknowledges payments from the union to an officer or employee of a staff-union would be reportable.
[7] *Supra* note 2, at 36121.
[8] *Id*. at 36123.
[9] *Id.*
[10] *Id.*
[11] *Id.*

1) Any interest in or payment from businesses that deal with the subordinate affiliates of the official's level of the union or trusts in which they are interested;

2) Any interest in or payments received from businesses a "substantial part" of which consists of dealing with employers whose employees are represented by a subordinate affiliate of their union or that such affiliates are actively seeking to represent; and

3) Payments and other financial benefits received by their spouses or minor children as bona fide employees from a business or employer involved with a subordinate affiliate of their union.[12]

IUPAT does not believe that the 2007 Final Rule struck a proper balance between disclosure and undue burden. Given that the LM-30 is subject to potential criminal penalties, IUPAT believes that the ambiguity DOL conceded in 2007 as to whether Congress intended to include subordinate affiliates in the definition of labor organization should be resolved in favor of limiting the reporting obligation. This resolution also recognizes the reality that officers of IUPAT's International Union and our District Councils do not have the degree of control over the affairs of subordinate affiliates such that they could improperly direct the activities or finances of a subordinate affiliate in exchange for gifts or payments from employers or businesses involved with such lower levels of the union. We believe that mandating so-called "top-down" reporting misconstrues the true nature of our union democracy in which International and District Council officers are dependent on delegates from subordinate levels of the labor organization to elect them to office. These delegates from subordinate bodies are able to exercise far more influence over the higher-level officials they are empowered to elect or vote out of office than the higher-level officials have over these subordinate officials' handling of day-to-day affairs in their respective councils and locals. Simply put, IUPAT believes that both labor organization officers and employees should have to report only in relation to matters involving the level of the union hierarchy that they serve and not any subordinate affiliate. The proposed rule does not do this. Instead, it eliminates the concessions made to "top-down" reporting in the 2007 Final Rule. It would "require union employees to report the same interests and payments that union officers are required to report."[13] It would also force union officers and employees to report in

[12] *Id.*
[13] *Supra* note 1, at 48429.

relation to subordinate affiliates' transactions that the 2007 Final Rule carved out of "top-down" reporting.[14]

DOL asserts that this massive expansion of the definition of "labor organization" is justified by citing "longstanding policy articulated in section 241.100 of the LMRDA Interpretative Manual to officers and employees of national, international and intermediate unions."[15] This provision of the Interpretative Manual, however, only suggests that union officers could be responsible for reporting in relation to a subordinate affiliate when they derive "income" from a business that deals with a subordinate affiliate. Even if this one type of transaction does constitute the "historical understanding" of the scope of the term labor organization, it still falls far short of justifying what DOL is now proposing. It does not speak to other types of transactions that DOL previously deemed not necessary to disclose after hearing the reasoned arguments in response to an earlier proposed rule on the LM-30 in 2005. IUPAT asserts that the broadest reading of the historical definition as articulated in the Interpretative Manual is that union officials must report as to only the level of the union they serve, except in instances where they own or derive income from a business that deals with a subordinate affiliate.

In proposing to define labor organization so broadly, DOL's proposed rule is straying from its stated goal to "consider and balance the interests of labor organizations, their members and the public, including the benefits served by disclosure, the burden placed on reporting entities, and preserving the independence of unions and their officials from unnecessary government regulations."[16] DOL's proposal is devoid of any analysis of the burden such a definition creates, especially when it is combined with other key terms as defined by the 2007 Final Rule. In general, the LM-30 requires union officials to report payments from, interests in and transactions with an employer whose employees the official's *labor organization* represents or is *actively seeking to represent*; a business a *substantial part* of which consists of dealing with an employer whose employees the official's *labor organization* represents or is *actively seeking to represent*; or a business that deals with the filer's *labor organization* or a trust in which the filer's *labor organization* is interested. Thus, in addition to the term "labor organization," the terms "actively seeking to represent" and "substantial part" are

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[14] *Id*. at 48429 – 48430.
[15] *Id.* at 48430.
[16] *Id.* at 48416.

critical to determining the scope of, and burden associated with, a union official's LM-30 filing obligation. The August 10th proposal amends only the term "labor organization" and, as noted, it makes it broader.

While the proposal does not offer a new definition for "substantial part," it does eliminate the current exclusion from "top-down" reporting of benefits from businesses a "substantial part" of which consist of dealing with employers whose employees are represented by a subordinate affiliate of an LM-30 filer's union or that such affiliates are actively seeking to represent. The 2007 Final Rule defined "substantial part" to mean just 10 percent or more of a company's business[17] and also rejected limiting the reporting obligation to instances where a union official "possesses actual knowledge that the vendor's volume of business with a relevant employer was greater than the reporting threshold."[18] Thus, as the LM-30 obligation stands today, union officials must take affirmative steps to investigate whether a business from which they or their spouse or minor child receive a benefit meets the 10% threshold.[19] The NPRM does not propose to narrow or in any way amend this burdensome definition of "substantial part," but it would make this term applicable to "top-down" reporting in a way it does not presently apply.

The 2007 Final Rule also gave an absurdly broad definition to "*actively seeking to represent*" such that it means:

> [T]hat a labor organization has taken steps during the filer's fiscal year to become the bargaining representative of the employees of an employer, including but not limited to:
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> Sending an organizer to an employer's facility;
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> Placing an individual in a position as an employee of an employer that is the subject of an organizing drive and paying that individual subsidies to assist in the union's organizing effort;
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> Circulating a petition for representation among employees;

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[17] *Supra* note 2, at 36133.
[18] *Id.* at 36134.
[19] *Id.*

> Soliciting employees to sign membership cards;
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> Handing out leaflets;
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> Picketing; or
>
> Demanding recognition or bargaining rights or obtaining or requesting an employer to enter into a neutrality agreement (whereby the employer agrees not to take a position for or against union representation of its employees), or otherwise committing labor or financial resources to seek representation of employees working for the employer.[20]

Just as it does not propose to alter the 2007 definition of "substantial part," the NPRM does not offer a new definition of "actively seeking to represent." The NPRM's failure to address either of these expansive definitions combined with the NPRM's proposed expansion of "labor organization" creates an even more absurd "top-down" reporting standard for union officials than the 2007 rules created. It means that IUPAT's International and District Council officers and employees have to determine if a business that gives something to them, their spouse, or their child (under 21 years of age) derives 10 percent or more of its business from an employer whose employees a local of their union is "actively seeking to represent." This would include any employer that any of our more than 400 local unions solicit cards from, send an organizer to, leaflet, or "otherwise commit[ ] labor or financial resources" to organize. There is no exception no matter how brief, informal, or nominal these efforts may be. Higher level union officials are at the mercy of local affiliates that do not have any kind of systematic records to provide them with the information they will need to comply with this reporting regime. DOL's burden analysis does not appear to take any of this into consideration.

To prevent the cascading burden of the definitions discussed above from drowning our International and District Council officers and employees, as well as the local affiliates from which they would seek the required information, IUPAT urges that any Final Rule define "labor organization" as the level of the union an official serves directly. It should not include any subordinate affiliates unless DOL revisits the definitions of "substantial part" and "actively seeking to represent." We

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[20] *Id.* at 36141.

appreciate and support the many positive changes offered in the August 10th proposal. But if DOL does not reconsider the definition of "labor organization," it will undermine labor organization officials and the unions and workers they serve by placing them under an impossible burden that is not justified or proportionate to the transactions DOL seeks to disclose.

Sincerely and fraternally,

George Galis
General Secretary-Treasurer

cc: GP Trumka
GST Shuler
GP Williams
AGP Hayn
GA Sloan

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f/Labor Organization and Employee Reports 10082010