



July 29, 2019

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Via www.regulations.gov

On behalf of the Competitive Enterprise Institute (CEI), I respectfully submit the following comments in response to the Department of Labor (DOL) Office of Labor-Management Standards' (OLMS) Notice of Proposed Rulemaking (NPRM) on Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization Is Interested, Form T-1, RIN 1245-AA09 (May 30, 2019).

Founded in 1984, the Competitive Enterprise Institute is a non-profit research and advocacy organization that focuses on regulatory policy from a pro-market perspective.

OLMS 2019 Proposed Rule “Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization Is Interested, Form T-1”

The Competitive Enterprise Institute supports the Department of Labor’s proposed adoption of Form T-1, which requires labor unions with total annual receipts of \$250,000 or more, under certain circumstances, to file financial disclosure reports on trusts in which unions have an interest. Reporting requirements are triggered if either a) the union selects a majority of the members of the trust’s governing board or b) more than 50 percent of the trust’s funds are contributed by labor unions.

The proposed rule advances the intent of Congress, which passed the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) with broad bipartisan support to address widespread union corruption. The LMRDA imposed financial reporting requirements on labor unions and established a bill of rights for union members. Congress imposed these requirements because it believed it would discourage self-dealing by union officials, enable union members to hold union leadership accountable, and promote union democracy.

However, a loophole exists in union financial reporting requirements. Unions are not currently required to disclose how they spend funds in trusts that are created for the benefit of members, such as training funds, strike funds, and apprenticeship program budgets. This undermines the intent of the LMRDA. It deprives union members of a full understanding of how their union spend funds intended for the general welfare of members, and therefore limits members’ ability to hold union officials accountable.

Expanding union financial reporting requirements to reach union trust funds fulfills the Congressional intent for the coverage of the LMRDA to be applied broadly in order to promote union democracy and union financial integrity.

This is a necessary agency action for the Department of Labor to undertake in order to fully promote and enforce the LMRDA. Further, in the plain text of the LMRDA, Congress clearly delegated authority to the Secretary of Labor to issue rules and regulations that prescribe reporting obligations “concerning trusts in which a labor organization is interested.”¹

Union Corruption

Despite the objective of the LMRDA to address widespread union corruption, it persists in large numbers. Over the past decade, documents from the Department of Labor obtained by the *Detroit Free Press* “show embezzlement from hundreds of union offices nationwide.”² To see the breadth of the problem, one need only peruse the Web page maintained by the Office of Labor Management Standards, entitled, “Criminal and Civil Enforcement Actions,” which lists instances of embezzlements of union funds among other violations of the LMRDA.³

Increasing union financial transparency by adopting Form T-1 could deter or lead to early discovery of some of the following instances of embezzlement of union funds. Consider the following examples:

- The Federal Bureau of Investigations uncovered a \$4.5 million bribery scandal involving the United Auto Workers Union and Fiat Chrysler executives. To facilitate the scheme, Chrysler executives conspired with union officials who had access to funds allocated for the UAW-Chrysler National Training Center. Chrysler executives bribed union officials with jewelry, vacations, and custom-made watches to gain advantages during collective bargaining negotiations. The stolen funds used to bribe union officials came from the UAW-Chrysler National Training Center that was meant to train union members.⁴
- Nepotism and no-bid contracts drained millions of dollars from a health and welfare fund operated by the Laborers’ International Union of North America. The fund’s trustees were associated with the Genovese crime family and improperly gave family jobs at the fund. In total, the fund paid relatives \$3 million over nine years. For example, the fund paid the son-in-law of a board member \$119,000 a year to manage a scholarship program that gave out \$28,000 a year. A daughter of that board member earned \$112,000 as a “confidential secretary” whose job was to check voicemail messages. One year she checked just 109 messages—at a cost to union members of over \$1,000 per call.⁵
- The Secretary-Treasurer of the International Brotherhood of Boilermakers Local 684 was convicted of embezzling over \$20,000 from a fund that was used to assist sick and distressed union members. Some of the funds spent by the union official were used to go on a cruise.⁶

Rights Extended to Union Members by the LMRDA are Undermined by a Lack of Union Financial Transparency

The LMRDA grants basic democratic rights to union members in the private sector and in federal employment. Union members were given the right to nominate candidates for union offices, vote to remove officers, and participate in setting dues payments, among other rights.⁷

The LMRDA was passed to protect the rights and interests of union members against abuses by union officials. However, these rights cannot be fully exercised without an informed membership that is provided with timely information on how union officials spend dues and disburse funds under their control. The failure to require labor organizations to financially disclose how funds from union-controlled trusts—which are created for the benefit of membership—are spent undermines the democratic standards established by the LMRDA.

Congress declared in the drafting of the LMRDA:

The members of a labor organization are the real owners of the money and property of such organizations and are entitled to a full accounting of all transactions involving such money and property.⁸

Therefore, it is of the utmost importance to afford workers the right to access information regarding how labor unions disburse all funds, including from union-dominated trusts. Without such information, union members are left ill-informed and cannot adequately exercise their democratic rights under the LMRDA.

Government Policy Establishes the Need for Union Financial Transparency

While our organization is generally skeptical of government intervention in private affairs, federal labor law grants labor unions considerable coercive powers over workers it represents and, as such, it is critical for workers and the public to have the ability to inspect the financial performance of union finances. And there is a very real possibility that labor unions may use this power against the interests of individual workers.

Labor unions' impact on the lives of individuals they represent cannot be understated. A collective bargaining agreement negotiated by a labor union severely affects and practically controls all of an individual's employment conditions, including access to negotiated social benefits like pensions, strike funds, training funds, and legal services.

Government has granted labor unions the privilege of exclusive representation, which empowers them to represent, and for a collective bargaining agreement, to cover all workers in a bargaining unit regardless of membership status. In certain states, a non-member of the union can even be forced to financially assist a union or risk penalty.

In addition, collective bargaining agreements are contracts between unions and employers; individual employees are not considered a party to the contract. This results in unions possessing near-total control over when to file grievances and how to interpret and enforce a collective bargaining agreement. Most union contracts specifically prohibit employees from filing a grievance when they feel their rights have been infringed upon. For non-members, the government-granted authority to unions is of more consequence, since they must abide by the terms and conditions of a collective bargaining agreement despite having no input in contract negotiations or union leadership.

This immense power held by unions over both members and non-members justifies financial disclosure requirements. One of the few checks on this power is members' ability to vote out union leadership that does not serve the members' interests. This check on union abuse of power is diminished without a full accounting on how union officials disburse funds.

It is also important to recognize that inherent to the process of collective bargaining is trade-offs. A union will make concessions on certain work conditions and demands in others. During negotiations, a union may make concessions on worker pay, but demand and receive greater employer contributions to a union-controlled trust fund. This may or may not be in the best interest of membership, but it is impossible for union members to know if they are kept in the dark on how the union operates the trust.

Congress was wise to apply the provisions of the LMRDA broadly. Much of labor unions' authority stems from government, not voluntary support from workers. And since union members are the real owners of union finances and property, they should be entitled to an accounting of how union leadership spends their funds. Further, providing union members and the public with annual and detailed recording of union financial transactions can help prevent embezzlement by union officers and help union members choose leaders who are fiscally responsible and work for the best interest of union members.

Union Agents' Fiduciary Responsibility

Adopting Form T-1 would buttress and enhance the LMRDA's Section 501, which places fiduciary responsibilities on union officers and other agents of labor organizations. Such a responsibility is imposed on these individuals because they "occupy positions of trust in relation to such organization and its members as a group."⁹ Therefore, it is union officials' responsibility to administer trusts solely in the interest of the beneficiaries and guard against depletion of union funds by illegal activity.

A congressional committee report that led to the LMRDA is enlightening on the intended scope of the fiduciary duties placed on union officers. The report reveals that Congress sought to extend the fiduciary principle to "to all activities of union officials and other union agents or representatives."¹⁰ This clearly includes how union officials operate and disburse funds from trusts in which unions are interested.

Adopting Form T-1 is a useful tool that reinforces union officials' fiduciary duties by potentially deterring misuse of union trust funds, and sheds light on whether union officials are properly managing funds in union trusts.

Conclusion

Government grants many privileges to labor unions, but those privileges come with responsibilities. A primary responsibility is to ensure the proper use of funds under union control. Reporting requirements in Form T-1 can help deter union officials from embezzling or misusing union-controlled funds meant to benefit union membership.

This rule contributes to ensuring union officers act as responsible stewards of funds intended to benefit the men and women they represent. A worthy goal considering union members are the real owners of the money of the union and should be entitled to a full accounting of their funds.

Respectfully submitted,

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¹ 29 U.S.C. 438

² Phoebe Wall Howard, "Embezzlement plagues union offices around U.S., records show," *Detroit Free Press*, January 7, 2018, <https://www.freep.com/story/money/cars/2018/01/07/union-theft-embezzlement-theft-significant-reflects-national-business-tr/1005763001/>.

³ U.S. Department of Labor, "Criminal and Civil Enforcement Actions," accessed July 22, 2019, https://www.dol.gov/olms/regs/compliance/enforcement_1.htm.

⁴ Tresa Baldas, "Source: More indictments coming in FCA-UAW bribery scandal," *Detroit Free Press*, January 29, 2018, <https://www.freep.com/story/news/local/michigan/detroit/2018/01/29/uaw-fiat-chrysler-union-officials-screw-over-autoworkers-and-worked-chrysler-scandal-perver/1063930001/>.

⁵ Steven Greenhouse, "Laborers' Union Tries to Oust Officials of Benefits Funds," *New York Times*, June 13, 2005, <https://www.nytimes.com/2005/06/13/nyregion/laborers-union-tries-to-oust-officials-of-benefits-funds.html>.

⁶ Nick Boykin, "Former labor union Treasurer sentenced to 14 months for embezzlement," *Tribune Broadcasting*, February 22, 2018, <https://wtkr.com/2018/02/22/former-labor-union-treasurer-sentenced-to-14-months-for-embezzlement/>.

⁷ U.S. Department of Labor, "Union Member Rights and Officer Responsibilities under the LMRDA," accessed July 22, 2019, <https://www.dol.gov/olms/regs/compliance/members.htm>.

⁸ H.R. Rep. No. 741 on H.R. 8342, 86th Congress, 1st Session 7-9 (1959).

⁹ 29 U.S.C. 501

¹⁰ H.R. Rep. No. 741, 86th Congress, 1st Session 81 (1959).