

December 14, 2020  
Andrew D. Auerbach  
Acting Director  
Office of Labor-Management Standards  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

RE: Comments on U.S. Department of Labor Rulemaking entitled, “Labor Organization Annual Financial reports; LM Form Revisions”

Dear Mr. Auerbach,

On behalf of the Rhode Island Center for Freedom & Prosperity (“the Center”), I am submitting comments regarding the U.S. Department of Labor’s rule entitled, “Labor Organization Annual Financial reports: LM Form Revisions,” which was published in the Federal Register on October 13.<sup>1</sup> The proposal would create a new LM-2 Long Form for certain unions and update the existing LM-2 for all others required to file annually with the Department of Labor (DOL). The Center believes the changes DOL proposes are important updates to union reporting and will, as a result, provide union members with the information they need to hold their unions to account and ensure their dues are spent as they intend.

As Rhode Island’s leading free-enterprise public policy research and advocacy organization, our Center is nonprofit and nonpartisan. The Center is dedicated to providing concerned citizens, the media, and public officials with empirical research data, while also advancing market-based solutions to major public policy issues in the state. Among other things, the Center works to protect workplace freedom by allowing employees a choice whether to be represented by labor unions. The Center is committed to union transparency and recently issued *RI Political Spending: A Web of Corruption*, a report that lays out research of union political spending in Rhode Island in the 2018 election and since 2000.<sup>2</sup> The report also provides multiple examples of what it calls a “web of corruption” where quid pro quo political favors coincided with union political cash.

### DOL’s Proposed Rule Promotes Increased Transparency and Benefits the American Worker

The Center supports robust reporting as required under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA).<sup>3</sup> We agree with DOL’s assessment that “LMRDA’s various reporting provisions are designed to empower labor organization members by providing them the means to maintain democratic control over their labor

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<sup>1</sup> 85 Fed. Reg. 64,726.

<sup>2</sup> <https://rifreedom.org/2020/07/union-political-spending/> (Website last visited December 11, 2020.)

<sup>3</sup> Pub. L. 86-257.

organizations and ensure a proper accounting of labor organization funds.”<sup>4</sup> Union members are better able to make informed choices regarding the union’s leadership and work if they have easy access to such information, through the reporting LMDRA requires. The Center believes it is past time for DOL to update its reporting, considering the significant changes to the size, scope of work, and more sophisticated financial transactions unions engage as compared to the last time the Department’s reports were updated in 2003. Although the 2003 updates were important, as the administrative record in this rulemaking extensively details, investigators and union members do not have access to all the information they need to prevent corruption and hold unions accountable.

Given the technological advances that have occurred since 2003, as DOL notes, the Office of Labor-Management Standards (OLMS) Electronic Forms system (EFS) “makes it simpler to complete LM reports than it was at the time of previous updates to the Form LM-2.”<sup>5</sup> Among other things the system allows labor organizations to import financial data, performs all calculations for the LM reports, and checks for errors. These enhancements to the DOL reporting mean that more information can be reported without significantly burdening the filers. And the LMDRA weighs heavily in favor of more disclosure, not less, in order to eliminate or prevent improper practices on the part of labor organizations.”<sup>6</sup>

Moreover, for over three decades, the U.S. Supreme Court has ruled numerous times in favor of worker freedom – freedom to belong to a union and freedom not to.<sup>7</sup> For union workers to be able to make informed choices about whether to affiliate with a union, transparency of labor operations must be as robust as possible. DOL’s proposed changes, along with the Center’s recommendations outlined in this comment, would make great strides in giving union workers in Rhode Island and across the country the detailed information they need to exercise their right to determine whether to join or continue to be a member of a union.

Reviewing the Department’s proposed changes, one thing stands out: these are not additional reporting requirements that are suggested just because they sound like good ideas to the agency officials proposing them. DOL did its homework, took its time, and carefully considered how best to modify the LM-2 and new LM-2 Long Forms to ensure that they provide the best spotlight onto union financing. Notably, the agency even proposed to delete one requirement, regarding functional reporting, that most of its field personnel thought provided no real value to investigators or union members trying to understand how a union operates.<sup>8</sup>

The Center appreciates the Department’s work over the summer of 2019 when it went to DOL field investigators with its ideas for proposed reporting changes and sought their

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<sup>4</sup> 85 Fed. Reg. 64,726.

<sup>5</sup> 85 Fed. Reg. 64,730.

<sup>6</sup> 29 U.S.C 401(c)?

<sup>7</sup> *Communications Workers of America v. Beck*, 487 U.S. 735 (1988); *Janus v. American Federation of State, County, and Municipal Employees Council 31, et al.*, 138 S. Ct. 2448 (2018).

<sup>8</sup> Fed. Reg. at 64,732-734.

feedback. The proposed rule details the recommendations from the field, including the changes the Department seeks to make as a result.<sup>9</sup>

### Center Recommendations Would Further Bolster Transparency

The Center encourages the agency to consider making a few more changes to provide further transparency of labor organization finances and operations. The Center recommends the Department require the LM-2 report whether the organization has a strike fund, as it would require on the LM-2 Long Form. Strike funds help meet the basic needs of striking workers and, as a result, union members would benefit from knowing whether they are financially sound. The Center does not believe the financial strength of a strike fund is any less relevant to a member of a small union than it is to a member of a larger one.

The Center also would encourage the Department make the following modifications to its proposed rule.

- Schedule 13 should include lines reporting on its total membership, as well as lines reporting how many of its members are public union members and how many are private – for uniformity and ease of comparison, the Center believes all membership numbers should be reported on a fiscal year basis.
- For Schedules 14-19, the thresholds should be lowered from \$5,000 to \$1,000.
- Item 21 for the LM-2s of state and national LM-2 labor organizations should provide greater transparency by requiring the reporting of average dues for all affiliates – national, state, and, local.
- Include on the LM-2 report information on how members can stop paying dues and terminate their membership.
- Require the reporting of the amount of any confidential settlement disbursed by the union.
- Require that Worker Centers and all organizations that have organized workers file the LM forms.

The Center believes these requested changes would further help make unions accountable to its membership and provide union members with the information they need to make informed decisions about affiliating with the union.

The Center appreciates DOL's outreach regarding several issues on which it would like to hear from commenters.<sup>10</sup> The Center believes DOL should eliminate the confidentiality exemption for transactions of \$5,000 or more. As noted by DOL field personnel, the confidentiality exemptions run counter to the transparency goals the Department seeks through the reporting changes it proposes.<sup>11</sup> The Center also supports requiring unions to

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<sup>9</sup> Id. at 64,730-734

<sup>10</sup> Id. at 64,745.

<sup>11</sup> Id. at 64,732.

report vendor EIN numbers for transactions of \$5,000 or more. Such a requirement should help investigators track vendors and identify when union funds are being diverted to suspect businesses. Considering that member dues make up most labor organization funds; a formal whistleblower policy should be required. Employees who see the day-to-day operations of a business are best positioned to know when an organization is engaging in illegal conduct. A whistleblower policy is critical to making labor organization employees feel comfortable that they will be protected when reporting illegal activities of their employer.

### DOL Should Quickly Promulgate and Make Effective Upon Publication Enhanced LMDRA Reporting Requirements.

It is critical that the Department move quickly to finalize the proposed rule and make it effective immediately upon publication. Rhode Island may well be one of the smallest states in the country. But, sadly, that has not stopped it from seeing its share of union corruption. Here are just a few examples<sup>12</sup>:

- Richard D'Antuono, who served as Business Manager/Secretary Treasurer of the Operative Plasterers and Cement Masons (OPCM) Local 40 (located in Cranston, R.I.), was sentenced on May 11, 2018 in the U.S. District Court for the District of Rhode Island to three years imprisonment followed by three years supervised release for one count of embezzling union funds, one count of embezzling from an employee benefit fund, and aggravated identity theft. D'Antuono was also ordered to pay restitution in the amount of \$319,795 and a special assessment of \$300.
- Adam Conheeny, former police officer and former Treasurer of Fraternal Order of Police (FOP) Lodge 8 (located in Newport, R.I.), was sentenced on December 20, 2018 in the U.S. District Court of Rhode Island to three months of imprisonment followed by two years of supervised release. On May 24, 2018 Conheeny admitted that between August 2009 and December 2014, he used an FOP debit card, wrote checks from a union account payable to himself, and withdrew cash from an FOP bank account for his own personal use, totaling approximately \$31,413. He previously paid \$20,000 in restitution.
- Christopher Hayes, former Rhode Island Police Department Sergeant and former President of Fraternal Order of Police (FOP) Lodge 8 (located in Newport, RI) was sentenced on July 21, 2017 in the United States District Court for the District of Rhode Island to six months of imprisonment followed by six months of home confinement, three years of supervised release, 300 hours of community service, and ordered to pay \$71,523 in restitution. On May 1, 2017, Hayes pled guilty to one count of wire fraud and admitted to the court that between August 2009 and December 2014, he used an FOP debit card to pay for his own personal expenses; wrote checks payable to himself from the FOP bank account; withdrew cash from the FOP bank account for personal use; and made online

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<sup>12</sup> <https://www.dol.gov/agencies/olms/enforcement/criminal/2018>;  
<https://www.dol.gov/agencies/olms/enforcement/criminal/2017> (Websites last visited December 11, 2020.)

payments to his personal credit card from the FOP bank account, converting approximately \$71,523 in union funds for his own personal use.

The Center thanks DOL for the work it has done over the last two years to propose the creation of the LM-2 Long Form and changes to the LM-2 form. These changes are urgently needed so that union members have a better ability to see and understand how their dues are being spent. Increased transparency would help the Department root out corruption. Importantly, it also would empower union workers to make more informed decisions relating to their participation in unions and to monitor union activities so that they can better-protect their hard-earned dollars.

Thank you for your consideration of these comments. Please work expeditiously to finalize this rule and make it effective upon publication in the Federal Register.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Stenhouse". The signature is written in a cursive, flowing style with a prominent flourish at the end.

Michael Stenhouse, CEO