

Congress of the United States
Washington, DC 20515

July 11, 2008

Kay H. Oshel
Director of the Office of Policy, Reports and Disclosure
Office of Labor-Management Standards
U.S. Department of Labor
200 Constitution Avenue NW, Room N-5609
Washington, DC 20210

RE: Notice of Proposed Rule Making – Office of Labor Management Standards
RIN 1215-AB62

Dear Ms. Oshel:

We write to comment on the Department of Labor's Notice of Proposed Rulemaking (NPRM) on union financial reporting under the Labor Management Reporting and Disclosure Act (LMRDA). The NPRM proposes two major modifications to the existing LMRDA regulations: (1) changes to Form LM-2, the annual reporting form on the finances of labor organizations with \$250,000 or more in receipts each year, and (2) the establishment of procedures to revoke the right of smaller unions to file their annual financial reports through a simplified Form LM-3.

We urge the Department to withdraw the NPRM. In short, the NPRM proposes increasing financial reporting burdens on labor organizations for the sake of increasing burdens. The proposed changes are not supported by sufficient legal or factual rationales, and they fail to further the purposes of the LMRDA.

This rulemaking is just the latest in a series of ill-conceived revisions to various union financial reporting rules during this Administration, and is the second major revision to Form LM-2 in only five years. In 2003, the Department's new regulations dramatically expanded and complicated the Form LM-2. Labor organizations spent and continue to dedicate substantial resources to meet those new reporting requirements. Because the financial reporting requirements adopted in 2003 did not comport with generally accepted accounting principles or with how labor organizations kept records to ensure their financial integrity, unions were forced to develop new recordkeeping procedures, engage in extensive staff training, and purchase new accounting software to satisfy those requirements.

Now, the Department proposes to make further changes to Form LM-2 requiring new and greater levels of detailed reporting. The Department makes this proposal without conducting any review of whether the 2003 revised LM-2 form has been effective or beneficial to union members.

For each proposal in this NPRM, the Department either provides no concrete examples of the need for the particular change or provides no logical explanation for how the change would address any concrete problem. We are left with no evidence that the proposed changes to Form LM-2 will provide useful information to union members or provide them with information that they have actively sought. On the contrary, the greater detail is likely to render the financial reports themselves less readable and less useful to rank-and-file union members.

One effect of the proposed changes, however, is clear. The recordkeeping and reporting burden on unions will increase significantly. While we leave it to labor organizations themselves to detail the specific extent of that increasing burden, we are concerned that the NPRM's estimate of the new burden appears to lack a solid evidentiary foundation.

Although labor organizations have already spent millions of dollars to comply with the Administration's 2003 revision to Form LM-2, they again will have to expend considerable personnel and resources to revise their software, recordkeeping procedures, and staff training in order to comply with the newest round of revisions. Considering the lack of a legal or factual basis for the latest round of changes, the true purpose of the NPRM would appear to be forcing labor organizations to waste their members' resources.

The NPRM also advances a misguided proposal that makes it more likely that smaller local unions will face dramatic increases in their financial recordkeeping and reporting obligations. The officers of small local unions often work full-time for a represented employer while simultaneously performing their duties as union officers. Their resources are small, and their access to professional assistance—including lawyers and accountants—can be limited.

In recognition of these concerns, the LMRDA requires the Secretary of Labor to issue "simplified reports for labor organizations" for whom filing a "detailed report would be unduly burdensome," and, therefore, the Department permits smaller unions to comply with their LMRDA reporting requirements by filing a simpler Form LM-3. For the same reasons that make it difficult for them to file a more detailed report, smaller unions sometimes struggle with filing a correct and timely simplified report. Yet, under the NPRM, if smaller unions make minor mistakes or file an untimely form in good faith, their right to file Form LM-3 would be targeted for revocation, and, consequently, these smaller unions would be forced to file the massively more complex and detailed LM-2.

It is absurd to expect a small organization, which, because of its size and resources, is delinquent or deficient in meeting a less demanding level of financial reporting requirements, will be able to comply with a far more burdensome and detailed level of requirements. Moreover, smaller unions do not even collect the type of detailed financial information that they would be required to report in a Form LM-2 filing for the prior fiscal year, if their right to file Form LM-3 is revoked under the procedures proposed by the Department. But compliance does not appear to

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be the goal of this proposal. Instead, like other changes in the NPRM, this proposal seeks to impose extraordinary costs on labor organizations that operate in good faith, and it places the goal of burdening unions above sound public policy.

The Department's regulations should further the purposes of the authorizing statute, and not other purposes that the Administration finds desirable or advantageous to its own goals. This is a bedrock principle of administrative law that the Administration has failed to abide by in rulemakings under the LMRDA. In the case of this proposed rule specifically, the Department has failed to demonstrate that its proposed changes will be effective and efficient in providing union members with useful information about their union's finances. Accordingly, this NPRM should be withdrawn.

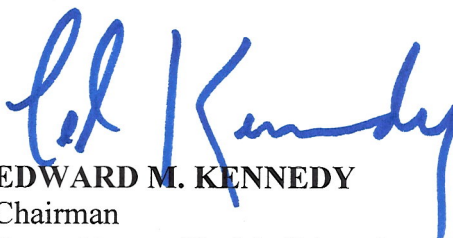
Sincerely,



GEORGE MILLER

Chairman

Committee on Education and Labor
U.S. House of Representatives



EDWARD M. KENNEDY

Chairman

Committee on Health, Education, Labor, and Pensions
U.S. Senate