

U.S. Department of Labor Rejects Bush Administration LM-2 Union Reporting Changes

October 12, 2009

In a generally anticipated move, the U.S. Department of Labor's Office of Labor-Management Standards (OLMS) will publish a rule tomorrow rescinding the Bush administration's most recent changes to the LM-2 union report filed under the Labor-Management Reporting and Disclosure Act (LMRDA). This development confirms the Obama administration's interest in reducing the administrative burden on unions, and may signal the beginning of a focus shift to certain aspects of employer reporting under the LMRDA. In particular, many believe that OLMS will soon enhance scrutiny on employer and consultant reporting of so-called "persuader" activity.

The LM-2 requires unions to annually disclose a wide variety of information to OLMS concerning revenues, expenses, and membership. In 2003, one of the Bush administration's first major initiatives concerning union reporting obligations focused on improving union transparency through enhanced LM-2 reporting requirements. A revised LM-2 report created additional accounting and recordkeeping requirements for unions, and required itemization of every individual disbursement of \$5,000 or more. Some union LM-2 forms expanded by dozens, if not hundreds, of pages as a result of the revision. Shortly thereafter, OLMS enhanced enforcement of both union official LM-30 and employer LM-10 reporting requirements. Many employers found themselves filing annual LM-10 reports for the first time in 2005, notwithstanding the fact that the LMRDA's reporting requirements had existed virtually unchanged for more than 50 years.

The Bush administration finalized additional revisions to the LM-2 in January 2009. Almost immediately, OLMS, now under the Obama administration, postponed the effective date of the new LM-2 form. Prior to the 2008 presidential election, John Lund, who now is the head of OLMS, wrote extensively on the LM-2 changes, generally disfavoring the Bush revisions as an unnecessary and unhelpful reform that placed too great a burden on unions without providing a corresponding benefit to union members or the public.

As of October 13, 2009, OLMS officially rescinds the most recent LM-2 changes. OLMS states that the 2009 Bush revisions "were issued without an adequate review of the Department's experience under the relatively recent revisions to Form LM-2 in 2003," and that "the Department may have underestimated the increased burden that the rule would place on reporting labor organizations." The rescission does not impact the LM-2 changes put into effect in 2003, or existing LM-10 and LM-30 reporting requirements.

The Obama administration's rollback of the updated LM-2 report does, however, signal that the administration is moving forward with its LMRDA agenda. It is anticipated that OLMS soon will shift its focus to the employer and consultant reporting of persuader activities engaged in during union organizing campaigns and collective bargaining. The AFL-CIO has targeted the LM-10 employer report and the LM-

20 and LM-21 consultant report for enhanced reporting and oversight. If the Obama administration proceeds with expanded LM-10, LM-20, and LM-21 reports, the altered requirements would greatly impact the relationship between employers and their outside consultants and counsel during union organizing and collective bargaining.

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