

December 11, 2020

Submitted Via Federal eRulemaking Portal

Andrew Davis
Chief of the Director of Interpretations
and Standards
Office of Labor Management Standards
U.S. Department of Labor
200 Constitution Avenue
Room N-5609
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Dear Mr. Davis: Re RIN 1245-AA09

WithumSmith+Brown is a diverse CPA firm with over 1,600 employees and offices in many major U.S. cities. Our firm services clients spanning nearly every industry; among those clients are labor organizations and employee benefit plans located throughout the United States. Our Firm is the independent auditor for many labor organizations, and, in this capacity, we also frequently prepare, review, or assist in the preparation of, the annual reports required by the Labor-Management Reporting and Disclosure Act of 1959, as amended. Our clients include many international and national labor unions and as well as local unions as well. We believe that our experience with both very large and small labor organizations provides us a unique view of the impact of the proposed changes on reporting entities of all sizes.

We write to respond to the Department of Labor's notice of proposed rulemaking. (85 FR 64726 dated October 13, 2020 as published in the *Federal Register*) This proposal revises the existing Form LM-2 and introduces a new filing, Form LM-2 Long Form ("LF") that would be required for labor organizations with annual receipts in excess of \$8,000,000. Because we teach reporting on LM forms to hundreds of labor organization officers and employees each year, we understand the amount of confusion and misunderstanding that labor organizations currently have with the existing instructions and have offered suggestions to revise the existing instructions, which will improve understanding, compliance and consistency.

The Department's goals of improving the transparency and accountability of labor organizations to their members, the public and the government; increasing the [useful] information available to members; and, making the data included in these reports more understandable and accessible are goals we embrace. We have inserted the word 'useful' because we do not embrace the theory that an increase in the volume of information automatically improves its understandability or usefulness to a reader. We will use the term 'useful' throughout our comments because it signifies the barrier, as we see it, in reaching a successful understanding of the instructions and the concepts for those charged with completing and signing LM forms.

Our comments regarding the Department's proposed changes follow. Since many of the proposed changes impact both the existing Form LM-2 and the LM-2 LF, we will comment on the proposals that relate to both LM-2 and those that are unique to the LM-2 LF as LF. We have inserted our suggestions for changes that we believe will provide members, the public and the government with useful and meaningful information without undue hardship, both in human resources and monetary cost, on those responsible for reporting under the LMRDA.

STRIKE FUNDS – LF

The proposal for LF filers includes identifying the existence and the amount of a labor organization's strike funds. We do not see the benefit of this reporting expansion and believe it unnecessarily puts labor organizations at a competitive disadvantage. Our first concern here is that we only see a benefit for employers bound by a collective bargaining agreement, as they would have information that they could use to their competitive advantage

if they know that the union representing their employees does or does not have a significant strike fund (for those that do segregate these funds.) This puts labor organizations at a competitive disadvantage in their ability to decide to call a strike vote regarding collective bargaining issues including wages, benefits or workplace safety issues. Additionally, this proposed question and requirement to disclose the amount of strike funds on hand would be inconsistently applied because some labor organizations have not segregated part of its treasury into a strike fund while others have decided to do so. Besides, the cash held by labor organizations, whether specifically for strike purposes or for general purposes (as determined by the officers and membership) is already reported on the LM-2, so members are currently able to understand the fiscal health of their union by reviewing cash and investment holdings. This information conveys what members need to know regarding the financial health of their union to sustain a strike action. We support deleting this question and the requirement to disclose the amounts held as strike funds.

FORM LM-2 LF FOR LABOR ORGANIZATIONS WITH ANNUAL RECEIPTS IN EXCESS OF \$8,000,000

The Department proposes an extended version of Form LM-2 which adds additional questions and schedules. Most of the schedules relate to the itemization of receipts not currently itemized on the LM-2. Whereas we understand the Department's desire to obtain additional information from the nation's largest labor organizations, we disagree that the additional information requested is useful or meaningful. The Department's position that itemized receipts will deter potential fraud seems counter-intuitive since there appears to be an issue, as discussed by the Department, with improper conduct by some in the labor community in spite of the significant disclosures already in place for reporting expenditures. Further, we are concerned about the competitive disadvantage caused by the disclosure of the names of employers who remit dues checkoff to labor organizations. Further, the itemized amounts attributed to an employer would indicate the number of dues paying employees on the employer's payroll. We don't see how, in the case of a national or international union, providing itemized receipts will yield useful and meaningful information regarding PCT payments from affiliated organizations. Further, the itemized disclosure of rents paid by tenants in buildings owned by labor organization can create tenant issues regarding the competitive nature of rental agreements which would put the labor organization at a competitive disadvantage for future rent negotiations. Tenants renewing or entering into a new lease will have access to the landlords Form LF to see exactly what other tenants are paying. Finally, for certain labor organizations that have individual dues paying members who pay in excess of \$5,000 per year, disclosing the personal information about these members, including their home address and individual amounts paid, raises serious privacy concerns. We support removing the initiative to expand itemized reporting of receipts beyond that included in the Form LM-2.

LM-2 FILING THRESHOLD

The proposal includes a modest increase to the existing LM-2 filing threshold from \$250,000 to \$300,000. We offer two suggestions in this area. First, we believe the threshold for an LM-2 report should be higher. In the Department's own words, "Unions have grown larger and more complex than ever imagined when the LMRDA was created". Imposing the most strict reporting requirements on small organizations is burdensome and does not serve the membership given the effort and cost of compliance. An organization with \$300,000 in receipts has few, if any, full-time employees and should be spending the majority of its time and funds servicing its membership, not on compliance with government filing requirements. In our opinion, an organization with more than \$500,000 in receipts has the resources to establish a detailed system of accounting that provides for consistent and accurate compliance with the detailed reporting requirements for labor organizations including staff to keep the books and records necessary to accurately complete the LM-2 report. LM-2 takes a lot of time to complete and requires the ability to capture huge amounts of information that is challenging for labor organizations smaller than \$500,000 in receipts. We understand that examples exist of wrong-doing in labor organizations smaller than \$500,000, but the same is true for those under \$100,000 in receipts. Still, there is recognition by the Department that a filing difference should exist for labor organizations of different sizes. The focus of the Department's comments and examples seem to be much more on labor organizations over \$500,000 in annual receipts, which supports our suggestion for a higher threshold for LM-2 filings.

Second, we encourage the Department to consider a reporting rule that allows a labor organization who temporarily exceeds the receipts threshold to still file an LM-3 under certain conditions. The level of detail required to file the existing LM-2 versus an LM-3 is enormous and it causes tremendous hardship to suddenly discover that a one-time transaction has triggered a significantly different and burdensome filing obligation – an obligation most LM-3 filers are not well prepared to make. A labor organization that has a one-time transaction, such as the sale of a building, incurs an enormous reporting burden when this single transaction puts the union’s receipts over the filing threshold in an isolated year; especially when it occurs towards the end of the fiscal year when few, if any, transactions have been captured with the detail required for an LM-2 report. The Employee Benefit Security Administration has a rule that permits employee benefit plans who rise above a 100 participant threshold to file a shorter annual report, provided the rise in participant count is temporary. As an additional example, the Internal Revenue Service (IRS) has a guideline for filers of Form 990 that allows organizations to consider the average gross receipts of the three immediately preceding tax years when considering whether the filer meets the gross receipts test to be eligible to file Form 990-N. We request that the Department consider a similar concept that includes consideration of the last three filing years, along with an overall receipts limit that considers the total receipts in a year that includes a significant one-time transaction, such as twice the LM-2 filing threshold as one example.

PURCHASES AND SALES OF INVESTMENTS AND FIXED ASSETS

The proposal changes the reporting of purchases and sales of investments and fixed assets in several ways.

The proposal creates separate schedules for investments and fixed assets. The reason for this change, as discussed in the proposal, is to allow for the electronic reconciliation of investment transactions and fixed asset transactions for the reporting period. If this is the goal, the proposed change will not achieve the desired result. Many labor organizations are required to report additional information in existing Item 69 regarding non-cash transactions; amortization of bond premium and discounts, certain mutual fund transactions as well as information about the change in the cost and fair value of investments meeting certain conditions. All of these items will prevent the desired result to electronically reconcile these transaction areas. We do agree that segregating the investment transactions from the fixed asset transactions will make reconciliation easier, but the separation falls short of permitting an electronic reconciliation for many filings.

The proposal identifies that a desired result of this change is facilitating better transparency with respect to the performance of investments. This conclusion is not possible with the LM-2 - either in its current or proposed state. The reason this falls short relates to an existing LM-2 reporting rule that is not addressed by the proposal. The Form does not report the fair value of the union’s investments unless the value happens to be less than the union originally paid for the investment. This method, called the lower of cost or market, was changed by the accounting community decades ago because it does not fairly present the fair value of investments. The existing reporting rule no longer represents the way any organization in the United States reports their investments except those that keep their books on a cash basis. It is not consistent with Generally Accepted Accounting Principles (GAAP). The LM-2 rules have not changed this reporting inconsistency which regularly causes a reporting difference between LM-2 Statement A and many labor organization’s audited financial statements. This difference causes confusion with union members and it is completely avoidable. The Department should change the reporting of investments to represent fair value at the end of the reporting period. Only this information will allow members or anyone else to reach any reasonable conclusion about the performance of investments. If the Department wants members to know the cost of investments, which can be useful information, require disclosure of the aggregate cost of investments in the additional information section of the filing. We recommend modifying this reporting requirement.

The proposal requires itemized reporting of all individual purchase and sales transactions for investments and fixed assets. The proposal, as written, will substantially increase the volume of transactions reported and the overall size of future LM-2 reports. Some national and international unions have significant investment holdings and these large portfolios are often actively traded. We have serious concerns that the volume of information, intended to be helpful to readers based on the proposal, will instead be overwhelming and cause members to turn away from looking at the filing. We do not agree that reporting every transaction is useful or meaningful

information, as excess volume dilutes the usefulness the Department seeks. The proposal includes a discussion by the Department regarding the reporting of the “sum of itemized and non-itemized purchase and sales transactions” which is not included anywhere in the proposed instructions for proposed LM-2 or LF; therefore, we are unable to comment specifically regarding what these comments mean. Perhaps the Department means that both the transaction detail and a summary will be presented but neither the proposed form or the proposed instructions speak to this point. If the Department is concerned about arms-length transactions or whether the labor organization sold or purchased the investment below market prices then all transactions conducted through a recognized national exchange should be exempted, in the aggregate, from detail reporting as these transactions involve a registered public exchange where fair value and arms-length transactions are assured. This would greatly reduce the volume of transactions reported and, in our view, help readers digest the remaining information. This change will, in our view, leave the kinds of itemized transactions which are at the center of the Department’s concern. The remaining transactions make much more sense reporting on a detailed basis, including the name and address of the other party involved in the transaction since these did not occur through a public market.

If the final rule requires the itemized transactions for all investment purchases and sales, labor organizations will encounter difficulty importing electronic data maintained by a third party for purposes of providing all necessary transactions to the Department via electronic transmission. Most notable are the security transactions maintained by a labor organization’s investment custodian. Many large unions have tens of millions of dollars in aggregate investment transactions that are not processed in detail within the labor organization’s own accounting system. A bridge will be required to allow for significant numbers of transactions to be transmitted to the Department. This will require significant time and money to implement and as stated earlier, the benefit desired by the Department doesn’t seem to outweigh the cost of compliance.

The proposal requires the reporting of certain additional information in the case of an automobile purchase or sale, including the name and address of the purchaser or seller of the vehicle. While we do not have concerns about reporting the name and address of the purchaser or seller in instances where the transaction involves and business entity, we do however have a concern about reporting personal information about an individual purchaser or seller, such as a home address, given how vulnerable the public has become regarding identify theft and related privacy crimes. We suggest the Department consider the privacy concerns before finalizing this element.

REPORTING TIME SPENT BY OFFICERS AND EMPLOYEES

The proposal removes the existing requirement that officers and employees provide an estimate of how they spend their time over five different functional areas. Some labor organizations went through very expensive and time consuming transitions when this was first introduced to implement well-documented and consistent time reporting and currently have systems established to capture, review and report this information. The proposed LM-2 included with the proposed instructions has not been adjusted to remove the reporting of officer and employee payments by function on the detailed summary page as proposed by the Department. This should be corrected in the final rule.

Many labor organizations believe that being accountable to the membership for the time they invest in different areas is sharing useful and meaningful information and allows members the ability to ask questions about how individuals spend their time while conducting official union business. We request that the department reconsider its proposal to remove this reporting requirement. Perhaps more clear instructions and examples for those that struggle to accurately report will help convert this information to be more useful across the reporting community. Our experience is that members find this information valuable when they know it is available. The way the existing form allocates the officers and employees salary and related expenses based on these time estimates is helpful for members in identifying if their priorities are receiving the proper level of time and effort. Removing the time allocations and the resulting allocation of officer and employee salary and expenses will distort the union’s effort in servicing the membership as well as time spend in the other functional areas. Since most local union invest the majority of their time to membership related activities, removing this reporting, as well as the way the existing form allocates costs on the Detailed Summary page, will significantly reduce the amount of money reported for

representational activities. We do not believe this change helps the membership understand how officers and employees spend their time which is critical in assessing where the union has placed its priorities.

INDIRECT DISBURSEMENTS FOR TEMPORARY LODGING OR CERTAIN TRANSPORTATION COSTS

The proposal eliminates a long-time reporting requirement for certain travel related disbursement for officers and employees. Currently, certain travel expenses are reported by function, rather than reporting these costs by officer(s) or employee(s). This reporting identifies the vendor who was paid indirectly (union credit card or other third party payment) subject to itemization depending on the amount of the transaction(s).

We support this change as it more fully represents the costs incurred by an officer or employee in fulfilling their official union responsibilities. The existing reporting requirement is awkward to manage from an accounting point of view and requires extra work by labor organizations in accurately completing their LM-2. The proposal will simplify the process of gathering information for the LM-2 and will also correct an often misunderstood area that creates frequent compliance problems with the existing reporting rules. This change is overdue. The Department should make sure that any changes made to reporting on Forms LM-2 or LF are also made for Form LM-3. The LM-3 reporting rules in this area are the same as the LM-2. Causing a reporting difference between these form will create a hardship on unions and almost certainly create confusion and non-compliance by filers.

OFFICER AND EMPLOYEE BENEFITS

The proposal includes the Department's discussion about reporting benefits provided by the labor organization to individual officers and employees. We noted that the proposed LM-2 and LF and the proposed instructions do not mention this requirement. We are unsure whether the Department changed their mind or didn't update the proposed Forms or instructions. If the intent is to adopt this requirement, will this information be reported in a separate column exclusively for benefits or elsewhere? It will require much more work for the labor organization to report this information individually because none of this detail is captured in accounting systems. We also have serious privacy concerns because a reader might be able to identify whether an employee or officer is receiving medical insurance from the labor organization which raises privacy concerns under HIPAA. The costly nature of health insurance will make it obvious which officers and employees have health insurance. Additionally, the membership will lose valuable disbursement information currently available as to how much these benefits cost the labor organization and who is being paid by the labor organization to provide the benefits as reported currently on Schedule 20. We do not think this proposed change adds value or transparency and is concerning regarding the communication of protected health information that may be revealed.

OFFICERS OR EMPLOYEES RECEIVING IN EXCESS OF \$10,000 BY MULTIPLE LABOR ORGANIZATIONS

Officers who receive multiple salaries and expenses from more than one labor organization has been a required disclosure on Form LM-3 for some time, but is not required on Form LM-2. The proposal adds this question on Form LM-2. The problem we see rests with obtaining the amount of salary, allowances and expenses paid by another labor organization. There is no requirement to provide this information to another labor organization. An even larger issue exist where the other labor organization(s) may not provide this information in time for the filer to include in their report. The other labor organization may not be filing on time and hasn't compiled the information needed by the filer. How can the filer accurately report when the other labor organization files late or doesn't provide the filer with this data or provides the information too late? An alternative solution would be to identify the name of the individual, and the name and file number of the other labor organization(s) and allow an interested party to use the public information section of the DOL website to look at this information whenever they wish. This would remove the burden on the filer and still provide all the information necessary to locate the other labor organization(s).

LOSS/SHORTAGE OF FUNDS

The proposal suggests a revision to this question which requires the labor organization to report if a loss or shortage of funds was discovered during the reporting period. The proposal would expand this question to include whether the labor organization experienced or discovered a loss. The basis for the change is attempting to cause a person who prepares or signs the form (who may also be taking advantage of the labor organization) to self-report their improper activities; thus providing the Department with an additional charge for failure to report their own embezzlement. We believe the likelihood of self-reporting to be remote at best and the proposed wording puts the officers responsible for signing the form in a no-win situation. It is terrible when a person decides to steal from any organization. Some theft is immediately discovered but often, theft of union assets is discovered well after the fact. Yet, a signor is expected to sign the proposed LM-2 under penalties of perjury when they might not have any idea a theft has occurred? This seems unfair and problematic as it can be impossible for a signor to know this information. The benefit of self-reporting (the additional charge as described by the Department) is not greater than the potential harm that can occur to an officer signing the LM-2 who did not know and had no reason to know that a theft was occurring at the time. This is an unreasonable expectation by the Department in our view.

We support removing the expansion of this question.

REPORTING EINS FOR VENDORS

The proposal seeks comment on whether the Form LM-2 should require the reporting of the EIN of a vendor receiving more than \$5,000 during the year. We do not think this is a good idea. The IRS does not require that organizations obtain the EIN for all vendors, only select vendors. We are aware that many EINs reported to payors for services are not accurate. The IRS assesses penalties annually for health plans, for example, due to mismatch issues (the information about the vendor does not match IRS records). The number of mismatches annually is concerning and this would likely carry over to LM-2 reports as well. How can an officer required to sign the LM-2 know whether the EIN supplied by a vendor is accurate? We believe this is an unreasonable request, fraught with issues that cannot reasonably be resolved by labor organizations.

SCHEDULE 32 FOREIGN TRANSACTIONS – LF

The proposal includes a request for public comment on the creation of an additional schedule providing specific disclosure of all foreign transactions with any single entity or individual exceeding \$5,000 annually. The Department provided no specifics on the information it would require in Schedule 32, so we assume it will be similar to the information already included in other schedules of the LM-2. For this reason, we do not believe this provides useful and meaningful information as all such receipts or expenditures are already reported in others parts of the LM-2. If the amount is in excess of \$5,000 it is likely already itemized with details regarding the name, address and purpose of each item. This requirement would duplicate information which is already available in the filing which is unnecessary.

ACCOUNTS RECEIVABLE AND ACCOUNTS PAYABLE ITEMIZATION DETAIL

The proposal increases the monetary value of items that must be individually reported on existing Schedules 1 and 8, Accounts Receivable and Accounts Payable, from \$5,000 and 90 days old to \$7,500 and 90 days old. We support efforts to streamline reporting when the aggregate information is sufficient to draw conclusions about the financial condition of the labor organization. We also support consideration to increasing these amounts for LF filers beyond this amount since their financial transactions are so much larger than LM-2 filers. With a minimum filing level of \$8,000,000 in receipts for the proposed LF, the proposed increase to \$7,500 for LM-2 filers would be \$240,000 for LF filers as both these amounts are 3% of the minimum filing requirement for each filing. We don't believe the disclosure amount should be \$240,000 for LF filers, however, we do believe that the size of the organization should be considered when setting reporting thresholds. We recommend that the Department consider a \$50,000 threshold for reporting amounts due to or owing by a labor organization that are over 90 days for LF filers.

The Department's proposal to raise the amounts reported in detail on existing Schedules 1 and 8 should be considered in other parts of Form LM-2 as well. We also proposed this concept during the last revision to the LM-2. The Department has proposed raising the filing threshold for an LM-2 to \$300,000 from \$250,000 and, as indicated above, is also proposing an increase for detailed reporting on existing Schedules 1 and 8. Consideration should be given to increasing the threshold for itemizing transactions on all the functional schedules from \$5,000 to \$7,500 for LM-2 filers and to a higher limit, such as \$50,000 for LF filers. The relationship between the cost of providing the information and the value of the information should always be a consideration and, in our opinion, requires contemplation of raising the itemization thresholds for both the LM-2 and proposed LF filings in several areas of the filing, including accounts payable and accounts receivable.

SPLITTING POLITICAL AND LOBBYING ACTIVITIES

The proposal splits the existing Political and Lobbying Schedule into 2 separate schedules. As the proposal documents, there was enough feedback when the initial proposal for the new LM-2 was released in the early 2000's that the Department chose to consolidate these activities into a single schedule. We know in practice that the lines between these two functional areas aren't always clear and determining which schedule to place certain expenditures in can be a challenge. We have noted Many labor organizations report similar situations differently. And, they both might be correct. This is particularly true for public sector labor organizations but the issue is not unique to these unions. The only certainty we see coming from the proposal is less information being available to members. Dividing the existing schedule into two new schedules will reduce the amount of information available to members because the itemization threshold of \$5,000 is unique to each schedule. Take, for example, a printing invoice for a "Get Out The Vote" pamphlet and a brochure on workplace safety legislation being debated by state legislators. The total invoice is for \$8,500 which currently is an itemized transaction in existing Schedule 16 as the total is over \$5,000. Under the proposal, neither could be reported as the amounts attributed to this vendor on each of the proposed schedules is under \$5,000. Unless the labor organization has other transactions with this vendor, the LM-2 will report less information under this proposal, not more. This seems contrary to the Department's reasoning for many of the proposed changes and will create inconsistency in reporting which currently doesn't exist.

SPLITTING REPRESENTATIONAL ACTIVITIES

The proposal splits the existing *Representational Schedule* into two new schedules: *Contract Negotiation and Administration* and separately, *Organizing*. As mentioned above, there was enough feedback when the initial proposal for the new LM-2 was released in the early 2000's that the Department chose to consolidate these activities into a single schedule. We know in practice that the lines between these two isn't always clear and determining which schedule to place certain expenditures on can be a challenge. Whether this can be overcome will be revealed in time though we do see many examples where labor organizations may choose to categorize these disbursements differently. And, they both might be correct. The only certainty we see coming from the proposal is less information being available to members. Dividing the existing schedule into two new schedules will reduce the amount of information available to members because the itemization threshold of \$5,000 is unique to each schedule. Take, for example, a legal invoice for collective bargaining discussions as well as research on a new organizing strategy. The total invoice for legal services is \$9,800, which currently is an itemized transaction in existing Schedule 15 as the total is over \$5,000. Under the proposal, neither would be reported because the amount attributed to this vendor on each of the proposed schedules is under \$5,000 each. Unless the labor organization has other transactions with this vendor, the LM-2 will report less information under this proposal, not more. This seems to run contrary to the Department's reasoning for many of the proposed changes and will create inconsistency in reporting which currently doesn't exist.

INSTRUCTION CLARIFICATION

The proposal includes a commentary that the Department's field investigators felt the instructions for completing the LM-2 did not need additional clarification. We disagree with this conclusion and a review of CAP closing letters include example after example of labor organizations that do not understand the current instructions. When you work with the instructions, utilize the OLMS Interpretations Manual regularly, and have access to Department memos and information, it is easy for Department field investigators to know what is required and what

is not. Officers responsible for signing the LM filings and preparers of the annual reports need easier to understand instructions that provide contemporary examples and new language that clarifies the expectations of the Department. We have identified just a few suggestions to make the current instructions easier to follow, which will improve reporting consistency and compliance. We offer to meet with the Department to discuss all of our suggestions in this area.

LM-2 filers are required to complete Schedule 1 and 8 regardless of the basis of accounting they use internally. A quick review of LM-2's filed on the OLMS website reveals that this reporting requirement is often misunderstood. Many cash basis filers or Other Comprehensive Basis of Accounting ("OCBOA") filers ignore this requirement completely because the instructions are not specific. We have also discovered a number of CAP Closing Letters that fail to point out this filing error which may indicate confusion within the Department. Adding a statement in the instructions up front that clearly says "All LM-2 filers must complete these schedules regardless of the basis of accounting used to complete Statement A" will greatly improve readability, understanding, and compliance. Additionally, labor organizations need useful and meaningful explanations and examples of the types of transactions and information the Department expects to be reported by filers.

Form LM-2 filers need more guidance as to what should be reported in existing Schedule 18 – Administration vs. Schedule 19 – Overhead. This can be accomplished by clarifying language and an expansion of the examples used in the instructions. We respond to dozens of questions each year regarding the difference in these two schedule. One OLMS field investigator also commented on this same issue. We believe additional clarification would enhance reporting and ensure better consistency and compliance.

The current instructions inform filers who should sign the annual report but does not address common situations where labor organizations merge and a final report is submitted for the terminating union and where the labor organization does not have an officer in the President or Treasurer positions or functioning in those capacities. We suggest the Department consider adding some clarifying language to guide filers under these circumstances.

EDUCATION AND OFFICIAL GUIDANCE

We have been preparing and teaching the preparation of Form LM-2 for decades. During this time period, we have learned that many areas of the instructions provided with the Form LM-2 are vague and, in practice, there are far more areas for interpretation than many other government filings. Whether the reporting requirements ultimately change or not, we suggest that significant efforts be invested by the Department to ensure that the instructions for future filings are clear and specific. When the Department of Labor's Employee Benefits Security Administration (the "EBSA") sought to improve the reporting for employee benefit plans, not only did they revise the forms (and simplified and streamlined the data required to be reported), they launched a comprehensive outreach program and included the employee benefit plans and their outside professionals in an attempt to ensure better compliance. The proposed changes are not streamlined nor simplified. We believe that outreach programs initiated by the Department would bring an immediate improvement in the completeness, accuracy and timeliness of filings.

IMPLEMENTATION PERIOD

The timeline included in the *Federal Register* provides for a 30-day implementation period with an effective period beginning with the first fiscal year starting thereafter. Given the enormity of the proposed changes and the massive internal policy, procedures and accounting system changes that will be necessary to comply with the proposed changes, we believe that an 18-month implementation period is appropriate prior to any effective date for these new rules. Labor organizations will need to re-tool and make all the necessary changes required to be in place prior to the start of the reporting period effected by the new reporting rules. The time period we've suggested may seem generous, however, the changes, as proposed, would significantly affect the daily operations of all larger labor organizations. The Department acknowledges that larger labor organizations will be the most affected by these changes. If the ultimate changes are significantly less in scope than the proposed changes, then less time will be required. However, if the proposed rules in investments and fixed assets, itemization of additional receipts for LF filers and benefits reporting remain, more time will be needed.

Andrew Davis
Chief of the Director of Interpretations
and Standards
U.S. Department of Labor
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 **CONCLUSION**

Our Firm regularly contacts the Department for assistance or clarification of existing reporting requirements. Our experience has been that the men and women who have participated in these discussions within the Department are very “common sense” oriented public servants who understand the obstacles of the real world and the limitations that can exist in organizations. That said, some of the proposal provisions are far away from this “common sense” philosophy. We encourage the Department to take sufficient time to carefully consider all the concerns raised by respondents. Thank you for this opportunity to respond.

Sincerely,
WithumSmith+Brown

BY:



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