



DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 458

The Reorganization and Delegation of Authority for the Procedures Involving the Election of Officers in Federal Sector Labor Organizations; Filing Threshold for Simplified Annual Reports; and Instructions Regarding the Reports for Labor Organization Officer and Employee, Labor Organization Annual Report, Trusteeship, and Terminal Trusteeship

AGENCY: Office of Labor-Management Standards.

ACTION: Final rule; technical corrections.

SUMMARY: The Office of Labor-Management Standards (OLMS) is making a number of technical corrections to its regulations and LM form instructions. OLMS is revising the instructions for the Form LM-30, Labor Organization Officer and Employee Report. OLMS is also amending a 2003 final rule on labor organization annual reports in order to incorporate the previously updated filing threshold for smaller labor organizations with gross annual receipts totaling less than \$250,000, make a technical correction to the instructions for the Form LM-2 Labor Organization Annual Report, Item 36 (Dues and Agency Fees), as well as to update the instructions for the Form LM-15, Trusteeship

Report, and Form LM–16, Terminal Trusteeship Report. In addition, OLMS is amending a 2013 technical amendment implementing Secretary’s Order No. 02-2012, which delegated appellate authority over certain federal sector labor organization officer election matters to the Administrative Review Board.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Andrew R. Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-5609, Washington, DC 20210, olms-public@dol.gov, (202) 693-0123 (this is not a toll-free number), (800) 877-8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Background

The Form LM–30 final rule that is the subject of these corrections appeared in the **Federal Register** on October 26, 2011 (76 FR 66441); the final rule revised the Form LM–30, Labor Organization Officer and Employee Report, its instructions, and related provisions in the Department’s regulations. The rule implemented section 202 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 432,

whose purpose is to require officers and employees of labor organizations to report specified financial transactions, arrangements, and holdings to effect public disclosure of any possible conflicts of interest with their duty to the labor organization and its members. The Form LM-30 and instructions are referenced in 29 CFR part 404. See 29 CFR 404.3 (Form of Annual Report).

These corrections also amend a final rule published in the **Federal Register** on October 10, 2003 (68 FR 58374), concerning labor organization annual reports. In that rule, the Department increased the filing threshold for Form LM-2 filers from \$200,000 to \$250,000 in gross annual receipts. See 68 FR 58383. However, the rule did not make a corresponding amendment to the text of 29 CFR 403.4(a)(1) (Simplified annual reports for smaller labor organizations), which permits smaller labor organizations to file the simplified Form LM-3 if they do not have gross annual receipts that meet the filing threshold for the Form LM-2.

Furthermore, the 2003 rule mandated electronic filing of the Form LM-2 for labor organizations with \$250,000 or more in gross receipts. See 68 FR 58407. The instructions for the Form LM-2 were properly revised to reflect this requirement, but the rule did not update the instructions for the Form LM-15, Trusteeship Report, or the instructions for the Form LM-16, Terminal Trusteeship Report, both of which still contain references to the old paper format of the Form LM-2. Pursuant to Title III of the LMRDA and the Department's regulations at 29 CFR part 408, the instructions for the

Forms LM-15 and LM-16 detail a parent organization's obligation to complete the Form LM-2 on behalf of a subordinate organization that it has placed in trusteeship.

Moreover, today's corrections fix an omission in Section III of the instructions for the Form LM-16, by making clear that the treasurer of the parent union, in addition to the president (or corresponding principal officers), is required to sign the subordinate union's Form LM-2 report, pursuant to 29 U.S.C. 461(a). The Forms LM-16 and LM-16 and instructions are referenced in 29 CFR part 408. See 29 CFR 408.3 (Form of Initial Report) and 29 CFR 408.7 (Terminal Trusteeship Information Report).

Additionally, these amendments correct a technical error in the instructions for Form LM-2 Labor Organization Annual Report, Item 36 (Dues and Agency Fees), by clarifying an example concerning the reporting by a parent body and its subordinate for dues retained by the parent body from dues checkoff as payment for supplies purchased from the parent body by its subordinate. The Form LM-2 and instructions are referenced in 29 CFR part 403. See 29 CFR 403.3 (Form of Annual Financial Report – Detailed Report).

Finally, these corrections amend a final rule published in the **Federal Register** on February 5, 2013 (78 FR 8022), concerning technical amendments implementing Secretary's Order No. 02-2012 (77 FR 69378), which delegated appellate authority over certain federal sector labor organization officer election matters to the Administrative Review Board (ARB). That rule, in part, amended 29 CFR 458.65 by removing the references to "Assistant Secretary," and adding in their place, the term "Director" in

paragraphs (b) and (c). Upon review, the reference in paragraph (b) should have been replaced with a more general reference to the enforcement procedures outlined in 29 CFR 458.66 through 458.92, as final decisions on challenged elections may be made by different officials depending on the applicable procedure. In addition, the reference in paragraph (c) should have been replaced by the term “Administrative Review Board” instead of the term “Director.”

The rule also amended 29 CFR 458.70 by removing the references to “Assistant Secretary,” and adding, in their place, “Administrative Review Board” in two places. However, in the last sentence of 29 CFR 458.70, the rule did not replace the term “he,” which refers to the Assistant Secretary, with the more appropriate term “it,” for the ARB. Today’s corrections make that change, consistent with the use of the term “it” in 29 CFR 458.91 and 458.93 in reference to the ARB, so that the sentence now reads as follow: “The Administrative Review Board may order the remedial action set forth in the stipulated agreement or take such other action as it deems appropriate.”

Need for Corrections

These amendments are necessary to correct the language in the Form LM–30 instructions concerning the scope of “the filer,” as encompassing the union official as well as his or her spouse and minor child.¹ The Form LM–30 and the general instructions for Parts A, B, and C, as well as the language in Part II (Who Must File) of the instructions, make

¹ Note: the amendments to the instructions were published as appendices to the final rule and are not reproduced in the CFR.

clear that “you” also refers to the official’s spouse and minor child, not just the union official, and that this applies to the entire form. Further, this requirement derives directly from the statute. However, the specific instructions for Parts A and B simply refer to “you,” without mentioning spouse or minor child. This would not pose an issue, due to the aforementioned form and general instructions, but the instructions for Part C refer to “you, your spouse, or your minor child.” This difference in language may cause confusion as to whether the scope of Parts A and B includes the union official’s spouse and minor children.

These amendments are also necessary to correct the language in 29 CFR 403.4(a)(1) to reflect the revised \$250,000 filing threshold that was put in place pursuant to the October 2003 final rule on labor organization annual reports. As published, the final regulations did not update the filing threshold in 403.4(a)(1), which may prove to be misleading.

These amendments are also necessary to correct the language in the Form LM–15 and Form LM–16 instructions concerning a parent organization’s obligation to file and sign the Form LM–2 annual report of a subordinate organization that it has placed in trusteeship. The instructions refer to the outdated paper format of the Form LM–2 and omit, in one section of the Form LM–16, the statutory requirement for the parent organization’s treasurer to also sign the subordinate’s Form LM–2. As published, these instructions may prove to be misleading.

Additionally, these amendments are necessary to correct an error in an example provided in the instructions for Form LM-2 Labor Organization Annual Report, Item 36 (Dues and Agency Fees). The instructions state that any amounts of dues checkoff retained by the parent or intermediate body other than per capita tax must be explained in Item 69 (Additional Information). As an example of such reporting by a parent body concerning dues checkoff retained for its subordinate body, the instructions state correctly that a parent body would explain in Item 69 (Additional Information) \$500 retained from the dues checkoff as payment for supplies purchased from that body by the subordinate union. However, the example also states that the \$500 should not be reported as a receipt or disbursement by either the parent or subordinate body. These amendments are necessary to correct the example, by clarifying that the \$500 would not be reported by the subordinate body as a receipt or disbursement. The parent body, however, would report the \$500 as a receipt, in this case in Item 39 (Sale of Supplies).

Finally, these amendments are necessary to correct the language in 29 CFR 458.65(b) to reflect the appropriate enforcement procedures and in 29 CFR 458.65(c) and 458.70 to make appropriate references for the ARB, pursuant to Secretary's Order No. 02-2012. As published, the final regulations erroneously replaced the term "Assistant Secretary" with the term "Director" in 29 CFR 458.65, which may prove to be misleading. In the last sentence of 29 CFR 458.70, the final regulations did not properly replace the term "he" with the term "it" in reference to the ARB, which may prove to be misleading.

Corrections to Forms LM-30, LM-15, LM-16, and LM-2

1. Part A (**Represented Employer**) of the Form LM-30 instructions, at 5, is changed to read: Complete Part A if you, your spouse, or your minor child (1) held an interest in, (2) engaged in transactions or arrangements (including loans) with, or (3) derived income or other benefit of monetary value from, an *employer whose employees your labor organization represents or is actively seeking to represent*.

2. Part B (**Business**) (a) of the Form LM-30 instructions, at 7, is changed to read: Complete Part B if you, your spouse, or your minor child held an interest in or derived income or other benefit with monetary value, including reimbursed expenses, from a business (1) a *substantial part* of which consists of buying from, selling or leasing to, or otherwise *dealing* with the business of an employer whose employees your labor organization represents or is actively seeking to represent, or (2) any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or with a trust in which your labor organization is interested. Report payments received as director's fees, including reimbursed expenses.

3. In Section III (**WHAT FORMS TO FILE**) of the LM-15 instructions, at 2, the second paragraph of the subsection entitled "**Labor Organization Annual Report**" is changed to read: Any Form LM-2 filed on behalf of a trustee organization must include the signatures of the trustees in addition to the signatures of the president and treasurer or corresponding principal officers of the organization which established the trusteeship. To add signature blocks to the Form LM-2 in the electronic filing system, click on the "Add

Signature Block” button on the bottom of page 1. If paper filing is permitted, trustees should sign and date the Form LM–2 in the space below the officers’ signatures in Items 70 and 71.

4. The last two sentences in Section III (**WHAT FORMS TO FILE**) of the LM–16 instructions, at 1, are changed to read: The Form LM–2 must contain the signatures of the trustees, in addition to the signatures of the president and treasurer or corresponding principal officers of the parent union. To add signature blocks to the Form LM–2 in the electronic filing system, click on the “Add Signature Block” button on the bottom of page 1. If paper filing is permitted, trustees should sign and date the Form LM–2 in the space below the officers’ signatures in Items 70 and 71.

5. Amend instructions for Form LM-2 Labor Organization Annual Report, Item 36 (Dues and Agency Fees) to remove the term “either” in the third sentence of the second paragraph and adding “the reporting” in its place. The sentence would read as follows:

For example, if the intermediate body or parent body retained \$500 of the reporting organization’s dues checkoff as payment for supplies purchased from that body by the reporting organization, this should be explained in Item 69, but the \$500 should not be reported as a receipt or disbursement on the reporting organization’s Form LM-2.

List of Subjects

29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements.

29 CFR Part 458

Administrative practice and procedure, Government employees
Labor unions, Reporting and recordkeeping requirements

For reasons stated in the preamble, 29 CFR parts 403 and 458 are corrected by the following amendments:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012.

§ 403.4 [Amended]

2. In § 403.4, in paragraph (a)(1), remove the term “\$200,000” and add in its place “\$250,000”.

PART 458—STANDARDS OF CONDUCT

3. The authority citation for part 458 continues to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 02-2012, 77 FR 69378, November 16, 2012.

4. In § 458.65, revise paragraphs (b) and (c) to read as follows:

§458.65 Procedures following actionable complaint.

* * * * *

(b) The challenged election shall be presumed valid pending a final decision thereon as hereinafter provided in §§ 458.66 through 458.92, and in the interim the affairs of the organization shall be conducted by the officers elected or in such other manner as its constitution and bylaws may provide.

(c) When the Chief, DOE supervises an election pursuant to an order of the Administrative Review Board issued under § 458.70 or § 458.91, he shall certify to the Administrative Review Board the names of the persons elected. The Administrative Review Board shall thereupon issue an order declaring such persons to be the officers of the labor organization.

§ 458.70 [Amended]

5. In § 458.70, amend the last sentence by removing the term “he” and adding in its place “it”.

Signed in Washington, DC, this 9th day of May, 2016,

Michael J. Hayes

Director, Office of Labor-Management Standards

Billing code: 4510-CP

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