

DEPARTMENT OF LABOR**Office of Labor-Management Standards**

RIN 1215-AB52

Union Officials: Guidelines for Fiduciary Responsibilities Under Section 501 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 501

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

ACTION: Request for information from the public.

SUMMARY: This notice is a request for information from the public to assist the Department of Labor ("Department") in determining whether to issue guidelines concerning the fiduciary obligations of union officers, agents, shop stewards and other representatives under section 501(a) of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. 501. That section states, in general terms, that these persons occupy "positions of trust" within their labor organizations and must act in the best interests of their union. The LMRDA does not describe in detail the nature and scope of the fiduciary duties as applied to union officials. The Department also seeks comments on the nature and scope of such fiduciary obligations.

The comments from interested parties, including unions, union members, union officers, agents, shop stewards, and other representatives, public interest groups, and the public will help determine whether the Department should issue specific guidelines describing the minimum standards officers, agents, shop stewards, and other union representatives must meet to fulfill their fiduciary responsibilities under section 501 of the LMRDA. In addition, the comments should help delineate what issues concerning the fiduciary responsibilities of union officials should be addressed, if it is decided that the Department should issue such guidelines, and what specific standards should be included in the guidelines. These guidelines and standards could further the Department's interest in ensuring that breaches of fiduciary obligations not be permitted to occur or remain undisclosed.

DATES: Comments must be received on or before October 28, 2005.

ADDRESSES: You may submit comments, identified by RIN 1215-AB52, by any of

the following methods: E-mail: *OLMS-REG-1215-AB52@dol.gov*.

FAX: (202) 693-1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for FAX receipt by the Office of Labor-Management Standards ("OLMS").

Mail: Mailed comments should be sent to Kay 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-5605, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination, commenters should take this into consideration when preparing to meet the deadline for submitting comments.

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: 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-5605, Washington, DC 20210, *olms-public@dol.gov*, (202) 693-1233 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:**I. Background***A. Statutory, Regulatory and Administrative Framework*

Section 501 of the Labor-Management Reporting and Disclosure Act (LMRDA) imposes a fiduciary obligation on officers, agents, shop stewards, and other representatives of a labor organization. That section provides:

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the

organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared in this section shall be void as against public policy.

29 U.S.C. 501(a). The section, then, requires the union "officers, agents, shop stewards and other representatives" to do the following for their labor organization:

(1) To hold its money and property solely for the benefit of the organization and its members;

(2) To manage, invest, and expend [the union's money and property] in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder;

(3) To refrain from dealing with such organization as an adverse party;

(4) To refrain from dealing with such organization in behalf of an adverse party in any matter connected with his duties;

(5) To refrain from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization; and

(6) To account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization.

In addition, the section specifically prohibits the labor organization from excusing its officers, agents, shop stewards and other representatives from these duties with any general exculpatory provisions or resolutions. While section 501 describes the fiduciary requirements in these general terms, it does not provide any specific guidance to union officers, agents, shop stewards, and other representatives or to union members concerning what specific actions or arrangements will be considered a violation of the fiduciary requirements established therein.

Section 501(b) further describes the mechanism for enforcing the fiduciary responsibilities set out in section 501(a). The section states:

When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate

relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

29 U.S.C. 501(b). Several aspects of the enforcement procedures provided in this section should be noted. First, the section is enforced by a private right of action by the individual union member. Second, the member must first go to the union to ask the union to sue, recover damages or secure an accounting before bringing any action in court. Only after the union has refused or failed to take any remedial action may the member bring a lawsuit in court. Third, the member must show "good cause" to obtain "by leave of the court" the right to bring the legal action. Finally, the court may grant attorney's fees and expenses to the member.

The Secretary's Interpretative Regulations at 29 CFR 401 *et seq.* do not contain any provision relating to Section 501. In addition, the Department of Labor's Interpretative Manual stated until 2005 that "because the Secretary of Labor does not have authority to enforce Section 501(a) of the LMRDA, it is the policy of [the Office of Labor-Management Standards] to refrain from giving advisory opinions on the scope of the fiduciary obligations set forth in section 501(a) and the procedure for enforcement set forth in section 501(b)."

While section 501 is enforced by a private right of action by the union member, the Secretary possesses the power to conduct investigations for any violation or potential violation of the LMRDA (with the exception of Title I), including breaches of fiduciary responsibilities in section 501. The Secretary may also make known her findings from any such investigation to "interested persons or officials." Section 601 of the LMRDA provides that:

The Secretary shall have power when he believes it necessary in order to determine whether any person has violated or is about to violate any provision of this Act (except title I or amendments made by this Act to other statutes) to make an investigation and in connection therewith he may enter such places and inspect such records and accounts and question such persons as he may deem necessary to enable him to determine the facts relative thereto. The Secretary may report to interested persons or officials concerning the facts required to be shown in

any report required by this Act and concerning the reasons for failure or refusal to file such a report or any other matter which he deems to be appropriate as a result of such an investigation.

29 U.S.C. 521(a). To date, the Department has not, as a matter of policy, addressed the question of what constitutes a breach of fiduciary duty under section 501. The Department has focused on investigations of embezzlement and theft made illegal under section 501(c) of the Act, and investigations of delinquencies of reports by union officers and employees required by section 202 of the Act, among other matters relating to the conduct of union officers and employees. 29 U.S.C. 432. However, as a result of further examination of the investigative powers given to the Secretary under section 601, the Office of Labor-Management Standards amended its Interpretative Manual to state in new entry 510.002 that the policy of the office was "to investigate, at its discretion, allegations of violations by union officers and other representatives of their fiduciary responsibilities under section 501(a) of the LMRDA." In addition, the new policy indicated that "[t]he results of such investigations will be made known to interested persons as appropriate."

Section 501(c) establishes criminal penalties for the embezzlement of union assets. The section provides:

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

29 U.S.C. 501(c). The Department of Labor will not address the provisions of section 501(c) through this particular request for information or any subsequent interpretative regulations or guidelines issued as a result of the information gathered here. Instead, any guidelines issued pursuant to this request for information will be the Department's interpretation of what actions would constitute a failure to meet the fiduciary responsibilities of section 501. *See, e.g., BLE International Reform Committee v. Sytsma*, 802 F.2d 180, 190 (6th Cir. 1986) (Although Secretary's interpretative regulations are not binding, the courts have generally given the regulations considerable weight).

B. Legislative History

The Senate version of the LMRDA (S. 1555) did not consider the fiduciary

responsibilities of union officials in the same manner as the House version of the bill, which included a section identical to the current section 501(a). The Senate bill, S. 1555, provided only that union members could sue for recovery of funds when a union officer or employee had already been convicted of embezzlement, theft, or a conversion of funds. The bill did not apply the common law notion of a fiduciary relationship to the relationship between union officers and employees and the union. This omission was criticized in the minority views to Senate Report No. 187. The minority, and in particular Senator Goldwater, stated:

The committee bill professes to recognize the fiduciary nature of the union official's relation to his union and its members, but makes no provision to establish such relationship, to impose the duties of a fiduciary on union officials, or to give union members any remedy for a breach of the fiduciary obligation.

In virtually every State in the Nation, the officers and directors of corporations are made fiduciaries by statute and held to the strictest accountability in their handling of corporate funds and property. Moreover, any profit or gain which accrues to them by virtue of their official position, even if no damage to the corporation or stockholder results, is held in constructive trust for the benefit of the corporation and its stockholders. Under these statutes, stockholders are given the right to enforce the fiduciary obligation through a suit in the courts. The same obligations and remedies attach to the officers and directors of nonprofit and eleemosynary corporations—churches, hospitals, charitable institutions, etc. Union officials alone seem to be free from what has become a normal, in fact a universal, obligation of officials similarly situated. * * * It is our intention to offer on the floor of the Senate amendments designed to fill this unjustifiable vacuum.

S. Rep. No. 187, 86th Cong., 1st Sess., reprinted in 1959 U.S. Code Cong. and Admin. News 2318, 2376-77.

As indicated above, the provisions that comprise the current 29 U.S.C. 501 were contained in the House version of the LMRDA (H.R. 8342). House Report No. 741 described the reasons for the fiduciary responsibilities in section 501. The House Report stated:

The committee bill also contains provisions dealing with breaches of trust and other questionable transactions, which, although not seriously criminal, nevertheless are incompatible with a strong and honestly run labor movement.

For centuries the law of fiduciaries has forbidden any person in a position of trust subject to such law to hold interests or enter into transactions in which self-interest may conflict with complete loyalty to those whom he serves. Such a person may not deal with

himself, or acquire adverse interests, or make any personal profit as a result of his position. The same principle has long been applied to trustees, to agents, and to bank directors. It should be equally applicable to union officers and employees. The ethical practices code of the American Federation of Labor and Congress of Industrial Organization states:

It is too plain for extended discussion that a basic ethical principle in the conduct of union affairs is that no responsible trade union official should have a personal financial interest which conflicts with the full performance of his fiduciary duties as a worker's representative.

Section 501 of the committee bill provides that the officers, agents, shop stewards, and other representatives of labor organizations occupy positions of trust in relation to such organization and its members as a group.

H.R. Rep. No. 741, 86th Cong., 1st Sess., reprinted in 1959 U.S. Code Cong. and Admin. News 2424, 2433.

The intent of the fiduciary responsibilities in section 501 was further explained in the Supplementary views to House Report No. 741. There, five members of the House stated:

Union officials occupy positions of trust. They hold property of the union and manage its affairs on behalf of the members. It is the duty of union officers just as it is the duty of all similar trustees to put their obligations to the union and its members ahead of any personal interest.

The committee bill sets forth this principle unequivocally and declares that union officers and agents occupy positions of trust in relationship to labor organizations and their members. * * * We affirm that the committee bill is broader and stronger than the provisions of S. 1555 which relate to fiduciary responsibilities. S. 1555 applied the fiduciary principle to union officials only in their handling of "money or other property" (see S. 1555, sec. 610), apparently leaving other questions to the common law of the several states. Although the common law covers the matter, we considered it important to write the fiduciary principle explicitly into Federal labor legislation. Accordingly the committee bill extends the fiduciary principle to all the activities of union officials and other union agents or representatives.

H.R. Rep. No. 741, 86th Cong., 1st Sess., reprinted in 1959 U.S. Code Cong. and Admin. News 2424, 2479-80.

The Conference Committee adopted the House version of section 501, which applied the broad legal concept of a fiduciary relationship to the relationship between union officers, agents, shop stewards, and other representatives of the union and its members, verbatim.

Contemporary commentators suggested that the fiduciary

responsibility sections had the potential to be among the most important provisions of the LMRDA. One wrote:

The significance of these provisions transcends their literal commands. They represent the judgment of Congress, which almost certainly will never be reversed, as to the minimum ethical and legal standards by which the behavior of union leaders must be measured.

Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 894 (1960).

Archibald Cox, who played a role in the development of this legislation as a Congressional staff member, expressed concern that the enforcement of the standards by individual members set out in section 501 might not be sufficient to assure that union officials would live up to their fiduciary responsibilities. Cox wrote:

On the other hand, there is the danger, often expressed in the past, that individual employee's suits are neither an effective sanction nor a practical remedy. Workers are unfamiliar with the law and hesitate to become involved in legal proceedings. The cost is likely to be heavy, and they have little money with which to post bonds, pay lawyer's fees and print voluminous records. Time is always on the side of the defendant. Even if the suit is successful, there are relatively few situations in which the plaintiff or his attorney can reap financial advantage. Most men are reluctant to incur financial cost in order to vindicate intangible rights. Individual workers who sue union officers run enormous risks, for there are many ways, legal as well as illegal, by which entrenched officials can "take care of" recalcitrant members.

Archibald Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 853 (1960).

C. The Nature of the Fiduciary Obligation

Because the fiduciary responsibilities of union officials are enforced by a private right of action by individual union members, the courts have addressed the scope of the standards set out in section 501 on a case-by-case basis. Each case is decided on the particular facts of the alleged violation. As a result, the case law surrounding the fiduciary responsibilities of union officials under section 501 can be complex. Examination of the case law, however, reveals some general principles.

Section 501 imposes the broadest possible fiduciary duty on union officials. See *United States v. Bane*, 583 F.2d 832, 834-35 (6th Cir. 1978), cert. denied, 439 U.S. 1127 (1979); see also, *Johnson v. Nelson*, 325 F.2d 646 (8th

Cir. 1963) (Section 501 should receive a broad interpretation). The purpose of the section is to deal with the misuse of union funds and union property in every manifestation by union officials. See *Hood v. Journeymen Barbers, Hairdressers, Cosmetologists and Proprietors International Union* 454 F.2d 1347, 1354 (7th Cir. 1972).

Therefore, the section can be applied not only to the monetary interests of the union and its members, but to any area of the union official's authority. See *Stelling et al. v. International Brotherhood of Electrical Workers, Local 1547*, 587 F.2d 1379, 1386-87 (9th Cir. 1978), cert. denied, 442 U.S. 944 (1979); see also, *United Food and Commercial Workers, Local 911 v. United Food and Commercial Workers International Union*, 119 F. Supp. 2d 724, 734 (N.D. Ohio 2000) (loss of members' democratic rights); *Nelson v. Johnson*, 212 F. Supp. 233, 284-88 (D. Minn. 1963), aff'd, 325 F.2d 646 (8th Cir. 1963) (examination of legislative history supports a broad interpretation of section 501).

In general, union officials will not violate their statutory fiduciary duties under section 501 if they act: (1) With proper authorization from the union; (2) without any personal gain; and, (3) in accordance with the constitution and bylaws of the labor organization. See *Tile, Marble, Terrazo Union Finishers, Shopworkers and Granite Cutters International Union v. Ceramic Tile Finishers Union, Local 25*, 972 F.2d 738, 744-45 (7th Cir. 1992). Congress did not intend authorization by the union to be a complete defense to claims under section 501. See *Morrissey v. Curran*, 650 F.2d 1267, 1273-74 (2d Cir. 1981). While the courts will often defer to the actions of union officers, they will give no deference to an expenditure of union funds when it is unauthorized or, even if authorized, when it bestows a direct, personal benefit on the union officer. In either of these instances, the courts will determine whether the expenditure is so unreasonable as to constitute a breach of the statutory fiduciary duties under section 501. See, e.g., *Talbot v. Robert Mathews Distributing Co.*, 961 F.2d 654, 666 (7th Cir. 1992); *Council 49, American Federation of State, County and Municipal Employees Union v. Reach*, 843 F.2d 1343, 1347 (11th Cir. 1988). Section 501 can be violated, for example, when union officials approve receipt of "excessive benefits, significantly above a fair range of reasonableness." *Morrissey v. Curran*, 650 F.2d at 1275.

The courts have found a myriad of schemes and arrangements to have violated the statutory fiduciary duties

under section 501. For example, a court found that a union officer's alleged actions of taking money from employers and using the money to operate social organizations that helped the officer solidify his political control of the union would, if proven, violate the section's requirement that union officials deal with employers at arm's length. *Chathas v. Local 134, International Brotherhood of Electrical Workers*, 233 F.3d 508, 514 (7th Cir. 2000).

Procedurally, the actions brought by union members under section 501 are analogous to corporate shareholder suits. See *Phillips v. Osborne*, 403 F.2d 826, 831 (9th Cir. 1968). The requirement under section 501(b) that a request to sue be made to the union before the member brings suit is designed to prevent the filing of harassing and vexatious suits that are without merit. See *Sabolsky v. Budzanoski*, 457 F.2d 1245, 1253 (3d Cir. 1972), cert. denied 409 U.S. 853 (1972) (3d Cir. 1972).

The Department seeks comment on whether officers, agents, shop stewards, and other representatives of a labor organization, as well as union members and the public, would benefit from additional, specific guidance, beyond that contained in the relevant court cases, concerning what actions or arrangements constitute violations of section 501(a), 29 U.S.C. 501(a).

D. Interest of the Department of Labor

While Congress chose to enforce the fiduciary responsibilities of union officers through private actions brought by individual union members, the Department of Labor maintains an interest and a role in assuring that union officers adhere to their fiduciary responsibilities. Several sections of the LMRDA indicate a nexus between the interests of the Department and the goals of section 501.

Section 601 of the LMRDA provides that the Secretary shall have the power to undertake an investigation when she believes it necessary to determine whether any person has violated or is about to violate any provision of the LMRDA, including section 501(a). 29 U.S.C. 521(a). Further, the Secretary may report to interested persons or officials any matter that she deems to be appropriate as a result of such an investigation. *Id.* These "interested persons and officials" may include: (1) The members of the specific union whose officers or employees were the subject of the investigation; (2) the specific union whose officers or employees were the subject of the investigation; (3) a court that is hearing

a private lawsuit under section 501; (4) the Congress or appropriate Congressional Committees; and (5) the general public. Thus, the Congress specifically gave the Department the authority to investigate potential violations of section 501 and to publish the results of those investigations. More specific standards concerning what constitutes a violation of the fiduciary responsibilities in section 501 would be useful to Department investigators during such an investigation to determine whether a violation has occurred and whether a report should be made.

Beyond this general authority to investigate, the failure of union officers to adhere to their statutory fiduciary duties could affect areas where the Department exercises enforcement authority. These areas include union elections, the imposition of trusteeships, deterrence and detection of embezzlement, and full financial disclosure by unions and union officers and employees.

For example, union officers could improperly use union assets or employers' monies to solidify their control of the union and to increase their chances at reelection. See, e.g., *Chathas v. Local 134, International Brotherhood of Electrical Workers*, 233 F.3d 508 (7th Cir. 2000). The Department has an interest in this kind of breach of fiduciary duty because one of the purposes of the election provisions of the LMRDA is to offset the inherent advantage over potential rank and file challengers possessed by incumbent union leaders. *International Organization of Masters, Mates & Pilots v. Brown*, 498 U.S. 466, 478 (1991); *Reich v. Local 396, International Brotherhood of Teamsters*, 97 F.3d 1269, 1273 (9th Cir. 1996).

Two courts have held that a union official who takes actions or makes financial arrangements that improperly use pension or benefit funds violates section 501. See *Morrissey v. Curran*, 650 F.2d at 1274 (section 501 applies to expenditures of pension fund); *Hood v. Journeymen Barbers, Hairdressers, Cosmetologists and Proprietors International Union*, 454 F.2d at 1355 (failure of pension committee to observe requirements of pension agreement and maintain adequate reserves violated section 501); but see *National Labor Relations Board v. Amax Coal Co.*, 453 U.S. 322 (1981) (employer appointed trustee of a joint trust is not a representative of the employer, but instead owes an exclusive fiduciary duty to the trust fund participants and beneficiaries).

In addition, the Department recently has been engaged in an ongoing process to improve the administration of the LMRDA. During this time, the Department has acted to update and improve reports that had remained unchanged for many years. Through these initiatives the Department is attempting to increase information available to union members and unions regarding their various rights and obligations under the LMRDA. The Department's reforms advance the LMRDA's stated purpose that "labor organizations, employers and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations." 29 U.S.C. 401(a).

For example, the new, more detailed reporting requirements with respect to the Form LM-2 reports work to increase transparency concerning union finances by providing more information to the union members in the union's annual financial reports. Labor Organization Annual Financial Reports, 68 FR 58374 (Oct. 9, 2003). Similarly, the Notice of Proposed Rulemaking to revise the Form LM-30, which discloses certain financial interests and transactions involving union officers and employees and their spouses and their minor children, is also aimed at improving disclosure to the rank-and-file union member (found in the proposed rules elsewhere in this issue). The goal of these initiatives is to make more detailed and transparent financial information available to union members and the public as the Congress intended with the passage of the LMRDA.

This request for information is part of that effort. The request and any subsequent guidelines should help union officers and employees voluntarily comply with the statute. Like the previous initiatives, it is intended to increase the information available to union members as well as union officers, agents, stewards and other representatives. In this instance, it increases the information available to union officers and members regarding what actions or financial arrangements constitute a violation of the fiduciary standards in section 501.

This increased information should help both union officers and union members. For example, well-intentioned union officers, agents, stewards and other representatives may find more specific guidelines concerning what actions or financial arrangements might constitute a violation of the fiduciary standards in section 501 to be helpful in shaping their own conduct on behalf of their members. This, in turn, may deter fraud and self-dealing by union officials.

In addition, members may come to possess a better sense of what actions or arrangements taken by their officers could be inappropriate. The members, then, could question or protest these questionable actions or arrangements at union meetings. As Archibald Cox noted at the outset of the LMRDA, union members may not be aware of such legal matters and may not pursue even valid claims under section 501. These members may need the assistance of more detailed guidelines in discerning what actions or arrangements constitute a violation of the fiduciary standards in section 501. However, even if the members do not pursue any claim under section 501, the more specific guidelines concerning what may constitute a violation of the fiduciary standards may enable the members to better monitor the financial affairs of their union and make more informed choices concerning the leaders of their union.

II. Information Sought

The Secretary seeks public comment concerning whether the Department should issue specific guidelines describing the minimum standards for union officers and employees to meet their fiduciary responsibilities under section 501 of the LMRDA. In addition, if the Department does decide to issue such guidelines, the Secretary seeks public comment regarding what issues concerning the fiduciary responsibilities of union officers and employees should be addressed in the guidelines and what specific standards should be included. In particular, the Secretary is seeking written submissions on the following topics:

1—Should the Department issue guidelines defining the types of positions that are indicated by the phrase “officers, agents, shop stewards, and other representatives of a labor

organization” found in section 501(a) of the Act?

2—Should the guidelines include guidance about what specific actions an individual who is subject to section 501(a) standards should consider taking in order to help the individual remain in compliance with the law? These actions might include seeking professional advice from independent authorities such as certified professional appraisers and actuaries or submitting resolutions for membership ratification.

3—What actions or conduct, or types of action or conduct, should be included in the guidelines as violations of section 501(a)?

4—Should the guidelines indicate that it should be considered a breach of the responsibility of an individual fiduciary to fail to report the improper actions of another fiduciary?

5—Should the guidelines include a definition of what a “reasonable amount of time” is when applied to the demand to sue provision in section 501(b)?

6—What type of training and guidance do union officers and other union officials currently receive from their union or from other sources to help them carry out their duties in compliance with section 501(a)?

7—Do unions have a Code of Ethics that outlines the fiduciary responsibilities of officers, agents, shop stewards and other representatives?

8—If they do, are these Codes of Ethics distributed by the International or parent labor organization to all officers and employees at every level within the organization?

9—Do unions have internal controls and procedures designed to prevent fraud, embezzlement, self-dealing, and other conflicts of interest that are followed by individuals who serve in a fiduciary capacity? If so, what are they?

10—Do all unions issue an annual report? If so, do such annual reports contain an internal control report, that: (1) States the responsibility of union

management for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and (2) contains an assessment, as of the end of the issuer's fiscal year, of the effectiveness of the internal control structure and procedures of the issuer for financial reporting?

11—The Secretary also seeks comments on what specific arrangements or transactions by union officers and employees related to the following subject areas should be said to constitute a breach of fiduciary obligations:

- Compensation plans of union officers or employees.
- Payment of travel, entertainment, or like expenses.
- Payment of political or election expenditures.
- Failure to pay union taxes or other expenses.
- Overpayment for contracts or expenses.
- Purchase, sale, or lease of goods or property.
- Creation or amendment of union administered pension funds systems.
- Conflicts-of-interest for union attorneys.
- Contacts with a rival union.
- Votes for benefits for the officers, shop stewards and other representatives.
- Failure to follow proper constitutional procedures in internal union affairs.

Signed at Washington, DC, this 19th day of August, 2005.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

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