DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 12157–AB34

Labor Organization Annual Financial Reports, Forms LM–2, LM–3, LM–4.

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

ACTION: Policy statement; interpretation.

SUMMARY: On December 22, 2002, the Department of Labor (Department) proposed revisions to Forms LM–2, LM–3, and LM–4, which are used by labor organizations to file annual financial reports required under Title II of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), 29 U.S.C. 401 *et seq*., with the Employment Standards Administration's Office of Labor-Management Standards (OLMS). A portion of the proposed rule stated the Department's intent to revise its interpretation of an aspect of the definition of ''labor organization * * * deemed to be engaged in an industry affecting commerce'' under the LMRDA. After receiving and considering comments, the Department published its final rule on October 9, 2003.

The interpretation in the final rule stated that intermediate bodies that are subordinate to a national or international labor organization that includes a labor organization will be covered by the LMRDA, even if the intermediate body's constituents are solely public sector local labor unions not covered by the Act. This interpretation of the LMRDA was challenged in federal district court by labor unions affected by the interpretation, and the court granted summary judgment in favor of the labor unions. *Alabama Education Ass'n* v. *Chao,* 2005 WL 736535 (D.D.C. Mar 31, 2005). On appeal, the U.S. Court of Appeals for the District of Columbia Circuit reversed the grant of summary judgment. *Alabama Education Ass'n* v. *Chao,* 455 F.3d 386 (D.C. Cir. 2006). The court of appeals held that the Department's interpretation was reviewable under deference principles established under *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837 (1984), and that the statutory definition of ''labor organization * * * deemed to be engaged in an industry affecting commerce'' is ambiguous and subject to more than one permissible interpretation, including the Department's interpretation. 455 F.3d at 393, 396. The court also concluded, however, that the Department had failed to provide a ''reasoned analysis supporting its change of position'' and remanded the rule to the Department to provide such analysis. *Id.* at 396–397. The Department issues this Policy Statement in response to the court's remand order.

DATES: Effective Date: January 26, 2007.

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SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Background

Congress enacted the LMRDA after an extensive investigation of ''the labor and management fields * * * [found] that there ha[d] been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct.'' 29 U.S.C. 401(b). Congress intended the Act to ''eliminate or prevent improper practices'' in labor organizations, to protect the rights and interests of employees, and to prevent union corruption. 29 U.S.C. 401(b), (c). As part of the statutory scheme designed to accomplish these goals, Congress required labor organizations to file annual financial reports with the Secretary of Labor. 29 U.S.C. 431(b). Congress sought full and public disclosure of a labor organization's financial condition and operations in order to curb embezzlement and other improper financial activities by union officers and employees. See S. Rep. No. 86–187 (1959), reprinted in I NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, at 398–99. Under the Act, labor organizations must file reports containing information such as assets, liabilities, receipts, salaries, loans to officers, employees, members or businesses and other disbursements ''in such detail as may be necessary accurately to disclose [their] financial condition and operations for [the] preceding fiscal year.'' 29 U.S.C. 431(b).

''Labor organizations'' subject to the financial reporting requirements of the LMRDA are defined in the Act. Section 3(i) of the LMRDA , 29 U.S.C. 402(i), defines a ''labor organization'' as (1) any organization ''engaged in an industry affecting commerce * * * in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment,'' or (2) ''any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization other than a State or local central body.'' The first clause of Section 3(i) applies to entities that exist, at least in part, to deal with employers concerning terms and conditions of employment. The second clause of the definition applies to conferences, general committees, joint or system boards or joint councils—entities that are known as ''intermediate'' labor organizations. See 29 CFR 451.4(f).

Section 3(j) of the LMRDA, 29 U.S.C. 402(j), sets forth the circumstances under which labor organizations will be ''deemed to be engaged in an industry affecting commerce'' under the Act. In particular, Section 3(j)(5) of the Act provides that an intermediate labor organization is deemed ''engaged in an industry affecting commerce'' if it is ''a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.'' 29 U.S.C. 402(j)(5).

Although ''employer'' is defined broadly in the Act, the United States, States and local governments are expressly excluded from this definition. 29 U.S.C. 402(e). Thus, an organization is not covered under the first clause of Section 3(i), which requires that the organization deal with a statutory ''employer,'' if it deals only with federal, state or local governments. However, an ''organization'' covered by the second clause of the definition (a ''conference, general committee, [etc.] subordinate to a national or international'') need not deal with employers at all. 29 U.S.C. 402(i). Instead, such an intermediate labor body is covered by the Act so long as it is subordinate to a national or international labor organization and is ''engaged in an industry affecting commerce.'' Id.

The LMRDA authorizes the Department to promulgate rules and regulations to enforce the Act's financial reporting requirements. Under the Act,

Congress broadly delegated authority to the Secretary ''to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this subchapter and such other reasonable rules and regulations * * * as [s]he may find necessary to prevent the circumvention or evasion of such reporting requirements.'' 29 U.S.C. 438; *American Fed'n of Labor and Congress Of Indus. Orgs.* v. *Chao,* 409 F.3d 377, 386 (D.C. Cir. 2005) (''[t]here is no serious dispute'' that Congress ''delegated authority to the Secretary to promulgate rules to enforce Section 208 [29 U.S.C. 438]''). The Secretary also has express authority to enforce the Act's reporting requirements by initiating a civil action. 29 U.S.C. 440. The Department's interpretation of Section 3(j)(5), which ''clarifies the meaning of 'labor organization * * * engaged in an industry affecting commerce[,] * * * comes within its express authority in § 208 to promulgate rules'' under the LMRDA. Alabama Education, 455 F.3d at 393.

The Department's LMRDA Rulemaking

The Department issued a Notice of Proposed Rulemaking on December 27, 2002, that proposed revisions to the forms labor organizations use to file annual financial reports required by the LMRDA. Labor Organization Annual Financial Reports, 67 FR 79,280 (Dec. 21, 2002) (NPRM). As part of this rulemaking, the Department stated its intent to modify its interpretation of Section 3(j)(5). As noted, the Section provides that an intermediate labor organization is deemed ''engaged in an industry affecting commerce'' if it is:

> A conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

Before the December 2002 NPRM, the Department interpreted the clause, ''which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, '' in Section 3(j)(5) as modifying ''conference'' and other listed intermediate bodies. Under that interpretation, Section 3(j)(5) applied only to intermediate bodies that were subordinate to a national or international labor organization and were themselves composed, in whole or in part, of private sector local labor organizations.

In contrast, in the NPRM's proposed interpretation, the ''which includes'' clause, modifies ''national or international labor organization.'' Under this interpretation, intermediate labor bodies need not themselves include private sector members to be covered under the LMRDA; rather, they need only be subordinate to a national or international labor organization that includes a union that represents private sector workers.

The Department's prior interpretation of Section 3(j)(5) came into question following the decision in *Chao* v. *Bremerton Metal Trades Council,* 294 F.3d 1114 (9th Cir. 2002). In *Bremerton,* the Ninth Circuit held that the Bremerton Metal Trades Council (''BMTC''), a joint council, met the LMRDA definition of ''labor organization'' because it was subordinate to the Metal Trades Department, an international labor organization engaged in an industry affecting commerce. *Bremerton,* 294 F.3d at 1118. In so holding, the court relied on the fact that the BMTC was subordinate to a parent organization that met the LMRDA definition of ''labor organization.'' *Id.* The court reasoned that ''[w]e must decide not whether the Bremerton Council bargains directly with any private employers but, instead, whether the Metal Trades Department, the organization to which the Bremerton Council is subordinate, is engaged in an industry affecting commerce.'' *Id.* at 1117. Thus, in contrast to the Secretary's interpretation at the time, *Bremerton* adopted an analysis under Section 3(j)(5) that looked not to the composition of the intermediate body itself, but rather to whether the national or international to which it is subordinate is engaged in an industry affecting commerce.

The *Bremerton* case brought to the Department's attention an alternate view of the meaning of the ''which includes'' clause in Section 3(j)(5). In the 2002 NPRM, the Department proposed to revise its instructions on financial reports for labor organizations to include this interpretation of Section 3(j)(5), reflecting *Bremerton's* analysis. See NPRM, 67 FR 79,284 (proposing to adopt a rule that ''an intermediate labor organization that has no dealings itself with private employers and no members who are employed in the private sector may nevertheless be a labor organization engaged in commerce * * * if [it] is 'subordinate to a national or international labor organization which includes a labor organization engaged in commerce.'')

Following a 90-day comment period, the Department on October 9, 2003, issued its final rule dealing with labor organization reporting requirements, in which it adopted the revised interpretation of Section 3(j)(5). Labor Organization Annual Financial Reports, 68 FR 58374 (Oct. 9, 2003) (Final Rule). In the preamble to the Final Rule, the Department addressed comments from three labor organizations—the National Education Association (NEA), the American Federation of Teachers (AFT) and the AFL–CIO—each of which opposed the Department's interpretation of Section 3(j)(5). The Department concluded that the comments opposing the Department's interpretation failed to provide a persuasive argument supporting the Department's return to its pre-2002 view of the ''which includes'' clause of Section 3(j)(5).

After being notified by OLMS of the Department's revised interpretation of Section 3(j)(5), and the corresponding need to file reports, 38 intermediate labor organizations representing public sector employees, primarily public school teachers, challenged the new interpretation in federal district court. The court granted summary judgment in favor of the plaintiff labor organizations. *Alabama Education Ass'n* v. *Chao*, 2005 WL 736535 (D.D.C. Mar. 31, 2005). The Department appealed that decision, and the U.S. Court of Appeals for the D.C. Circuit, reversed the lower court's ruling. *Alabama Education Ass'n* v. *Chao*, 455 F.3d 386 (2006). The court of appeals held that the Department has statutory authority ''to clarif[y] the meaning of 'labor organization * * * engaged in an industry affecting commerce' '' and thus the Secretary's interpretation of Section 3(j)(5) is ''reviewable under *Chevron*'' principles of deference. 455 F.3d at 393. The court further ruled that Section 3(j)(5)'s ''which includes'' clause contains a ''patent ambiguity'' and that the Secretary's interpretation was a permissible interpretation of the provision's terms. 455 F.3d at 395, 396; see also id. at n. * (LMRDA legislative history confirms ''inherent ambiguity of the statute'').

The court, however, further concluded that the Department had failed to provide a ''reasoned analysis'' for its change of position ''sufficient to command [the court's] deference under *Chevron.*'' 455 F.3d at 396. The court noted that the Department failed to link specifically the general policy concerns underlying the financial reporting revisions in the final rule, (i.e., changes in union size, financing and structure, and resulting financial irregularities, 67 FR 79,280), with an assessment of the Department's new and prior interpretations of Section 3(j)(5). 455

F.3d at 396–397. The court also noted that the Department had unduly relied on the *Bremerton* decision, without acknowledging that because the intermediate body in that case contained private sector members, the decision's holding did not contribute to the required reasoned analysis. Id. at 397. Accordingly, the court remanded the rule to the Department to provide a reasoned explanation for its change in interpretation.

That analysis is set forth below.

Explanation for the Department's Revised Interpretation of Section 3(j)(5)

The Department's revised interpretation of the statute broadens the coverage of intermediate labor organizations subject to the reporting requirements of the LMRDA.

The result of this interpretation is that intermediate bodies that are subordinate to a national or international labor organization that includes a covered labor organization will be covered by the LMRDA, even if the intermediate body is composed of solely public sector local labor unions not covered by the Act. The rulemaking record as a whole suggested several reasons in support of the Department's adoption of this policy, and those reasons will be further explained and analyzed here.

The Department's 2002 NPRM supported its regulatory revisions to labor organizations' financial reporting requirements with the following analysis:

> Labor organizations also have changed tremendously since the enactment of the LMRDA in 1959. There are now far fewer small, independent unions and more large unions affiliated with a national or international body * * *. In fact, many large unions today resemble modern corporations in their structure, scope and complexity. Moreover, just as in the corporate sector, there have been a number of financial failures and irregularities involving pension funds and other member accounts maintained by labor organizations. These failures and irregularities result in direct financial harm to union members. If the members of labor organizations had more complete, understandable information about their unions' financial transactions, investments and solvency, they would be in a much better position than they are today to protect their personal financial interests and exercise their democratic rights of self-governance.

NPRM, 67 FR at 79,280–81.

In addition, regarding the Department's view of Section 3(j)(5), the NPRM stated:

> The instructions to form LM–2 adopt the recent holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao* v. *Bremerton Metal Trades Council, AFL–CIO*, 294 F.3d 1114 (2002), interpreting Section 3(j) of the LMRDA, because that interpretation gives full meaning to the plain language of the statute. In that case, the Court ruled that an intermediate labor organization that has no dealings itself with private employers and no members who are employed in the private sector may nevertheless be a labor organization engaged in commerce within the meaning of Section 3(j) of the LMRDA if the intermediate body is ''subordinate to a national or international labor organization which includes a labor organization engaged in commerce.'' Accordingly, the Instructions will clarify that any ''conference, general committee, joint or system board, or joint council'' that is subordinate to a national or international labor organization will be required to file an annual financial form if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of Section 3(j) of the LMRDA.

NPRM, 67 FR 79,280, 79,284.

The Department's 2003 Final Rule provided the following support for its policy revision:

> The stated intent of Congress was to exempt ''wholly public sector'' labor organizations from the coverage of the Act. The *Bremerton* court found that an intermediate labor organization is not ''wholly public sector'' and exempt from the Act where it is subordinate to a parent organization that meets the definition of a labor organization engaged in an industry affecting commerce. The Department's regulation at 29 CFR 451.3(a)(4) is not contrary to the *Bremerton* decision when the regulation is read as giving effect to the court's interpretation of the term ''wholly public sector labor organization.'' The Department concludes that none of the commenters provides a persuasive argument for disagreeing with the *Bremerton* court's reading of the statute and therefore will maintain the expanded language in the instructions for the Form LM–2.

Final Rule, 68 FR 58,374, 58,384.

These excerpts from the rule-making record establish a foundation for the Department's explanation of its policy choice, and point to three interdependent rationales for the adoption of the revised interpretation. First, the Department has selected a policy alternative that is consistent with the terms of the statute and promotes Congress's purposes in enacting the LMRDA. The Department's interpretation of Section 3(j)(5) advances the twin Congressional goals that labor organizations' financial conditions and operations should be subject to public disclosure to benefit employees that participate in those organizations, and that the definition of ''labor organizations'' covered by the LMRDA should be interpreted broadly to advance union democracy, financial transparency, and integrity. Second, the expanded coverage permitted by the new interpretation promotes disclosure of financial disbursements and receipts to and from structurally related labor organizations, thus enhancing employees' ability to understand the overall operation of labor organizations in general, as well as identify any potential financial irregularities in particular. The structure and financial aspects of labor organizations have become increasingly complex in the nearly fifty years since the passage of the LMRDA. Unlike several decades ago, when small, independent unions predominated, there are now large, multi-level, multi-faceted labor organizations, most of which are affiliated with large and complex national or international labor organizations. In addition, many labor organizations have restructured and reorganized their affiliate relationships, rendering a single labor organization report insufficient to provide transparency to increasingly complex structures and relationships.

Third, and most importantly, the revised interpretation gives full meaning to clause two of Section 3(i), 29 U.S.C. 402(i), which has at its core a focus on covering those intermediate bodies precisely because they are subordinate to a covered national or international labor organization even though they may consist only of unions not covered under the first clause of 3(i). The interpretation advances public disclosure of financial transactions by intermediate bodies that receive money from covered national and international labor organizations, the source of which is, in part, fees and assessments originating from employees in the private sector. Thus, the so-called ''wholly public sector'' intermediate body loses that attribute to a great extent (despite its composition) when it is subordinate to, and accepting contributions from, covered national and international labor organizations whose funds are derived, in part, from employees in the private sector.

As the court of appeals noted, these bases for the revised interpretation were not fully explained in the prior rulemaking, and we now elaborate upon them in greater detail.[1]

[1] In the preamble to the 2003 final rule, the Department reviewed and responded to all comments regarding the Department's interpretation in the final rule. As explained in the preamble, the Department received only five comments on its interpretation, including one from a supportive union member and one from a labor organization that employed a mistaken premise that the interpretation would require state or local central bodies to file financial disclosure forms. 68 FR 58,383–58,384. Taken together, the remaining three comments from three labor organizations

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1. Consistency With the Terms and Purpose of the LMRDA

As noted above, in enacting the LMRDA, Congress intended to ''eliminate or prevent improper practices'' in labor organizations, protect the rights and interests of employees, and prevent union corruption. 29 U.S.C. 401(b), (c). To curb embezzlement and other improper financial activities of labor organizations, Congress required labor organizations to file detailed annual financial reports with the Secretary of Labor. 29 U.S.C. 431(b). The reporting provisions of the LMRDA were devised to implement the basic premise of the LMRDA—that the Act was intended to safeguard democratic procedures within labor organizations and protect the basic democratic rights of union members. By mandating that labor organizations disclose their financial operations to employees they represent, Congress intended to promote union self-government, which would be advanced because union members would be provided sufficient information to permit them to take effective action in regulating internal union affairs.

The LMRDA is a remedial statute, necessary to impose high standards and ethical conduct in the administration of internal union affairs. *Wirtz* v. *Local 153, Glass Bottle Blowers Assn.*, 389 U.S. 463, 469–470 (1968). In addition, Congress intended the definition of labor organization to be construed broadly to achieve the Act's purposes. *Donovan* v. *National Transient Div., Int'l Bhd. of Boilermakers*, 736 F.2d 618, 621 (10th Cir. 1984), cert. denied, 469 U.S. 1107 (1985). In order to fully effectuate and serve the remedial purposes of the Act noted above, the Department seeks to interpret the definitional sections of the LMRDA broadly ''to include all labor organizations of any kind other than those clearly shown to be outside the scope of the Act.'' 29 CFR 451.2 (2006).

The Department's pre-2002 interpretation of Section 3(j)(5) did not fully serve Congressional intent that the statute's definition be read broadly, nor did it serve the remedial purposes of the LMRDA. Employees concerned about payments to and from intermediate labor organizations subordinate to a covered national or international labor organization did not have access to the quality and quantity of information available to members of unions that have historically filed the Department's annual disclosure forms. Absent such disclosures, union members know less about the governance of their unions and are thereby frustrated by their inability to monitor the spending of their dues monies because they are not fully aware of the financial commitments and obligations of their union. They are disadvantaged in their ability to make informed decisions when electing their union officers because they do not have detailed information about the funding decisions made by incumbent officeholders. In contrast, members of unions that file the financial disclosure forms have a tool that can help them detect fraud and embezzlement. Officers and employees of such unions are deterred from committing such misconduct because they understand that their unions' financial transactions are recorded, reported, and made publicly available on the Internet. Employees concerned about the expenditures of intermediate unions that did not report as the result of the Department's prior policy have been denied the benefits that flow from the increased transparency that compliance with the LMRDA brings, including more effective member participation in union decision-making, more informed voters, and the deterrence and detection of fraud. If all intermediate bodies subordinate to LMRDA-covered labor organizations are not themselves covered by the LMRDA, union transparency is diminished and misdeeds will be more difficult to discover.

2. Structural and Financial Complexity of Labor Organizations

The Department's NPRM noted that ''many large unions today resemble modern corporations in their structure, scope and complexity.'' NPRM, 67 FR at 79,280. Indeed, ''commercial organizations and unions still share many structural features of complex organizations. In most industrial nations, unions as labor organizations have developed from small, voluntary associations, to larger, more formal bureaucracies. With the formation and expansion of large scale industrial unions, the structure of labor organizations has shifted from that of informal communities of workers to more centralized, hierarchical, and rational bureaucracies.'' Julian Barling, Clive Fullagar & E. Kevin Kelloway, *The Union and Its Members* 13 (Oxford University Press 1992).

In a unionized workplace, employees may be members of a local labor organization, which represents employees with respect to terms and conditions of employment at that particular workplace. That local union is typically chartered by a national union, which in turn may be affiliated with a national federation of unions. In addition, there are city and state federations of labor organizations, international federations of labor, joint and district councils, and departments within a national federation of unions, among others. There are many different, but related, labor organizations that a union member must examine in order to analyze his or her local representative's expenditure of funds.

The interrelatedness, and resulting structural complexity, of labor organizations has a number of causes. The need for collaboration among and between labor organizations with shared interests, the necessity of labor organization cohesion during times of economic strife, the need for large-scale reform regarding certain issues, such as nation-wide wages and hours reform, the rise in multi-city or national corporations, and the growth of a global economy, have all contributed to the increase in labor organization affiliation within local, central and national labor organizations. See Sidney Lens, *Unions and What They Do* 39–46 (G.P. Putnam's Sons 1968). These factors contributing to labor organization interrelatedness and complexity have only increased in the final decades of the twentieth century.

This growth of interconnected labor organizations has been accompanied by a complicated pattern of relationships, including affiliations, disaffiliations, trusteeships, federal court supervision, and the like. For instance, in 2005, seven of the largest national and international unions left the AFL–CIO, for many years the only national federation of unions, and created a brand new national labor federation. Several of the nation's largest labor organizations have departed the AFL–CIO in the past, only to rejoin, and then depart again. Several national or international labor organizations prefer to remain independent from any national federation. State federations of

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challenged the interpretation on three grounds: (1) The Department did not have the statutory authority to undertake the revised interpretation; (2) the Department's construction of the statutory terms was erroneous, and resulted in the coverage of intermediate labor organizations that are purely public-sector labor organizations and exempt from the definitional provisions of the Act; and (3) the intermediate bodies to which the Act would apply are not ''subordinate'' to a national or international labor organization within the meaning of the Act. After full consideration the Department determined that none of the comments resulted in a determination that the interpretation was either legally flawed, an erroneous construction of the statute, or misguided public policy. 68 FR 58,383–58,384. The Department has once again fully reviewed and reconsidered these comments prior to publication of this Policy Statement, and the conclusion expressed in the 2003 preamble remains unaltered.

labor organizations have themselves affiliated or disaffiliated with national organizations depending on the common or divergent interests of those labor organizations. Labor organizations have been placed in trusteeship, requiring management of their internal affairs by higher-level labor organizations, and several labor organizations have been managed for years under court supervision. The AFL–CIO itself has departments that are groupings of international unions based on trade or industry that affiliate specifically with those departments. A local union member may have direct contact only with his or her local, but in all likelihood he or she is represented, through elected or appointed delegates, within a maze of other union structures.

The complexity of labor organization structures and relationships may be daunting to employees represented at the workplace level by a local labor organization. Yet the structural complexity pales in comparison to the financial complexity created by these relationships. Dues and fees are collected from members at the local level, and that money is sent on to other related organizations in the form of per-capita assessments to support an increasingly complicated, sophisticated, and coordinated set of expenditures by related labor organizations, including education, organizing, political action at all levels of government, strike funds, public relations, research, legal representation, and so on. The ability of that local union member to follow the trail of transactions among and between labor organizations affiliated with the local union is challenging at best.

Confronted by the structural and financial complexity of interrelated labor organizations, a local union member is further hindered by the fact that labor organizations are required to report only their individual financial conditions—joint affiliate reporting is not required by the LMRDA. As a result, a local union member interested in ascertaining the end-point of his or her dues collected by the local but cast into the stream of affiliate expenditures must obtain the financial reports of the local and each affiliated labor organization—the national or international, the state level organization, the national federation, and any other labor organizations affiliated directly or indirectly with the local union. Of course, this opportunity to study and analyze one's own local union expenditures is lost if, within the chain of affiliations, one of the affiliates has not filed an annual financial report.

Given the increased complexity of union structures and finances, the ability of local union members to benefit from the transparency afforded by the LMRDA should not be diminished by a labor organization's relationship to an intermediate body that does not presently file annual financial reports. Such a circumstance is akin to a parent corporation disguising its assets and expenditures by lodging them with an undisclosed subsidiary. To avoid this scenario in the context of labor organizations, the LMRDA should be interpreted, to the extent permitted by the statute's terms, so that local union members have the ability to lift the cloak of structural and financial complexity, and fully understand the activities and expenditures of their local unions, their local's national affiliates, and the national organization's subordinate labor organizations.

3. Intermediate Bodies' Expenditure of Funds Derived in Part From Compulsory Fees and Taxes on Employees in the Private Sector

The two principles discussed above—the promotion of Congress's goal of transparency in labor organization expenditures and the complex structural and financial relationships between unions—lead directly to the final consideration supporting the Department's revised interpretation of Section 3(j)(5). The LMRDA's purpose and intent, its legislative history, and the complexity and interrelatedness of modern labor organizations, all support the disclosure of assets and expenditures of intermediate labor bodies whose funds are derived, at least in part, from private sector employees. In some cases, private sector employees are represented by a local union that financially supports a national or international labor organization with which it is affiliated, and that national or international labor organization in turn financially supports a subordinate state-level labor body that may itself be wholly composed of locals representing employees only in the public sector and therefore, has not, in the past, filed annual financial disclosure statements.

Consider, for example, a local labor organization composed entirely of nurses and other health care professionals employed by hospitals and other facilities in the private sector, which is affiliated with a national union primarily representing teachers in the public sector. The private-sector nurses' local union dues support the national teachers union, which in turn disburses funds to its state-level subordinates. The state-level subordinate may itself be wholly composed of public-sector locals and, as a result, not previously required to file a financial disclosure statement. Consequently, the private-sector nurses can track expenditures of their local union dues only until the expenditures reach the state-level labor organization. There, under the Department's prior interpretation, further financial information would not be available, because the intermediate labor organization would not be considered to be engaged in an industry affecting commerce under the Act and would not be required to file reports.

The same scenario holds true in the case of faculty and staff employed by universities in the private sector, and represented by a local union affiliated with another national union primarily representing teachers in the public sector. The private-sector faculty members' local union dues support the national teachers union, which in turn disburses funds to its state-level subordinates. Again, the intermediate body may be wholly composed of public-sector locals, but it is receiving indirectly the dues and fees of employees in the private sector.

These scenarios are borne out by the two tables below. Table 1 reflects locals affiliated with two national teachers unions that have many dues-paying members employed in the private-sector, like the nurses and university professors examples noted above. The per capita fees paid to the national teachers union by members of those private-sector locals are shown below.

TABLE 1.—FISCAL YEAR 2005 PER CAPITA TAX DISBURSEMENTS FROM LOCALS COMPOSED AT LEAST IN PART OF PRIVATE-SECTOR EMPLOYEES TO AFFILIATED NATIONAL TEACHERS UNION [2]

Locals Affiliated With American Federation of Teachers [3]	
Indiana Educators Federation, Local 4524	$254,735
Temple University, Local 4531	173,540
USF Faculty Association, Local 4269	91,381
Washington Teachers Union, Local 6	794,148

TABLE 1.—FISCAL YEAR 2005 PER CAPITA TAX DISBURSEMENTS FROM LOCALS COMPOSED AT LEAST IN PART OF PRIVATE-SECTOR EMPLOYEES TO AFFILIATED NATIONAL TEACHERS UNION [2]—Continued

Professional Guild of Ohio, Local 1960	171,237
UCATS, Local Union 3882	395,783
Danbury Hospital Professional Nurses Association, Local Union 5047	174,270
New Haven Federation of Teachers, Local Union 933	537,260
Oregon Federation of Nurses-Kaiser, Local Union 5017	412,957
NY State Public Employees Federation, Local Union 4053	7,658,493
Alaska Public Employees Association, Local Union 5200	423,730
Professional Staff Congress/CUNY, Local Union 2334	4,771,000
L & M Healthcare Workers Union, Local Union 5123	169,217
Locals Affiliated With National Education Association [4]	
OEA American Education Assn Okinawa	264,263
Endicott College Faculty Association	8,631
Adrian College Association of Professors	50,959
University of Detroit Professors Union	147,821
Roger Williams University Faculty	105,623
Baker College Education Association	25,261
Milton Hershey Education Association	70,025
National Education Assn Ind Local Union University of Detroit Support Staff	14,840
Rhode Island School of Design Faculty	58,215
RISD Part Time Faculty Association, Local 895	39,997

[2] Labor organizations that file Form LM–2, LM–3, or LM–4 reports with the Department are, by definition, ''labor organizations'' covered by the LMRDA. Local labor organizations that file reports are composed, at least in part, of members employed in the private sector. See 29 CFR 451.3(a)(4) (''mixed and non-government locals [are] 'labor organizations' and subject to the Act'').

[3] These figures are taken from the Form LM–2 filed by each listed local labor organization for its fiscal year 2005. Form LM–2s are filed by those labor organizations with total annual receipts of $250,000 or more in their fiscal years. See Instructions for Electronic Form LM–2 Labor Organizations Annual Report (3/23/04) at p. 1, at *http://www.dol.gov/esa/regs/compliance/olms/erds/LM2Instr2-2-04koREVISED.pdf.* (Revisions in 2003 to the Form LM–2 and its instructions, which set $250,000 as the mandatory floor for filing the Form LM–2 amended the old floor of $200,000 set in 29 CFR 403.4. See 68 FR 58383, 58473.) Article VIII, Section 1(a) of AFT's constitution requires each local to pay an established per capita tax to the national office, and further sets the per capita rate at which the national office will pay the office of each state federation. See AFT 2002 Constitution at p. 21.

[4] Except in one case in which the labor organization filed a Form LM–2, these figures are taken from the Form LM–3 filed by each listed local labor organization for its fiscal year 2005. Section 2–9 of the NEA's bylaws indicates that, as established in contracts entered into between the affiliates and the NEA, local affiliates transmit dues to both the state affiliate and the NEA. As a result, these figures may represent disbursements to both state affiliates and the NEA. See Bylaws of the National Education Association of the United States 2004–2005 at. p. 7.

* * * * *

Table 2 below confirms that these national teachers unions, which, as shown above, received per capita fees from locals composed, at least in part, of private sector employees, disbursed funds to their affiliated intermediate bodies.

TABLE 2.—FISCAL YEAR 2005 DISBURSEMENTS AS ''CONTRIBUTIONS, GIFTS AND GRANTS'' BY NATIONAL TEACHERS UNIONS TO INTERMEDIATE STATE-LEVEL LABOR ORGANIZATIONS [5]

Contributions, Gifts and Grants by American Federation of Teachers to State Affiliates [6]	
Louisiana Federation of Teachers*	$15,000
Contributions, Gifts and Grants by National Education Association to State Affiliates [7]	
Alabama Education Association*	$1,561,525
NEA Alaska*	390,595
Arizona Education Association*	879,775
Arkansas Education Association*	434,715
Colorado Education Association*	142,435
Connecticut Education Association*	844,595
Delaware State Education Association*	239,015
Georgia Association of Educators*	972,770
Hawaii State Teachers Association*	414,740
Idaho Education Association*	317,305
Indiana State Teachers Association*	1,181,930
Iowa State Education Association*	892,770
Kansas NEA*	595,465
Kentucky Education Association*	1,009,842
Louisiana Association of Educators*	479,094
Maryland State Teachers Association*	1,434,090
Massachusetts Teachers Association*	1,638,351
Education Minnesota	1,410,256
Mississippi Association of Educators*	242,370
Missouri NEA*	800,440
Nebraska State Education Association	590,465
NEA New Hampshire*	405,595

TABLE 2.—FISCAL YEAR 2005 DISBURSEMENTS AS ''CONTRIBUTIONS, GIFTS AND GRANTS'' BY NATIONAL TEACHERS UNIONS TO INTERMEDIATE STATE-LEVEL LABOR ORGANIZATIONS [5]—Continued

NEA New Mexico	332,305
NEA New York	1,535,089
New Jersey Education Association	2,286,522
Nevada State Education Association*	777,045
North Carolina Association of Educators*	1,283,365
North Dakota Education Association*	213,370
Oklahoma Education Association*	772,045
Oregon Education Association*	1,012,705
South Carolina Education Association*	434,740
South Dakota Education Association*	239,015
Texas State Teachers Association	1,408,136
Tennessee Education Association*	1,105,568
Utah Education Association	112,435
Vermont NEA	438,660
Virginia Education Association*	1,509,090
Washington Education Association*	1,922,975
West Virginia Education Association*	416,740
Wisconsin Education Association Council*	2,470,440
Wyoming Education Association*	190,725

[5] LM–2 instructions require labor organizations to itemize contributions, gifts and grants on Schedule 17 of the Form. The itemizations include ''direct and indirect disbursements to all entities and individuals during the reporting period associated with contributions, gifts, and grants, other than those listed on Schedules 15, 16, and 20[, and i]nclude, for example, charitable contributions, contributions to scholarship funds, etc.'' See Instructions for Electronic Form LM–2 Labor Organizations Annual Report (3/23/04) at p.32, at *http://www.dol.gov/esa/regs/compliance/olms/erds/LM2Instr2-2-04koREVISED.pdf.*

[6] These figures are taken from the Form LM–2 filed by AFT for its fiscal year beginning July 1, 2004 and ending June 30, 2005.

[7] These figures are taken from the Form LM–2 filed by the NEA for its fiscal year beginning September 1, 2004 and ending August 31, 2005.

* State affiliates marked with an asterisk are parties in *Alabama Education Ass'n* v. *Chao,* 455 F.3d 386 (D.C. Cir. 2006), and have not filed financial disclosure reports with the Department. These state affiliates have stated in that litigation that they are intermediate bodies wholly composed of public sector affiliates. State affiliates that are not marked by an asterisk are not parties in *Alabama Education Ass'n* v. *Chao,* and have not filed current financial disclosure reports with the Department. The Department presumes that their non-filing status is due to their wholly public sector composition and not due to any other exception or exemption under the LMRDA.

Taken together, Tables 1 and 2 demonstrate that two national teachers unions receive dues and fees from employees employed in the private-sector, and that money is, in turn, disbursed to intermediate bodies that have previously not been required to file financial disclosure reports.

* * * * *

The expenditure of dues and fees of private-sector employees by intermediate-level state affiliates of national labor organizations without full public disclosure of those expenditures runs afoul of the purpose and intent of the LMRDA. As noted earlier, labor organizations that solely ''deal with'' public-sector employers are not covered by the first clause of Section 3(i), which applies only to labor organizations that deal with statutory, *i.e.*, private sector employers. The second clause has no such limitation, and does not require that intermediate bodies deal with any employers, private or public. Given the scenario outlined above—that intermediate bodies may receive financial support based on dues received in part from private sector employees, the second clause of section 3(i) makes perfect sense. Coverage of intermediate bodies under the second clause does not turn on the entity's dealings with employers, but is based instead on the subordinate relationship with a covered national or international. The Department's rule corrects the problem of the non-transparency of funds provided by covered national or international labor organizations to subordinate intermediate bodies, and gives full meaning to the second clause of Section 3(i).

It would undermine, rather than promote, the purposes of the LMRDA if a labor organization could disburse dues paid by private-sector employees to a subordinate labor body, and such subordinate labor body could spend that money in secrecy. Such a loophole does not exist on the face of the statute or anywhere in its legislative history, and was not deliberately created by Congress in 1959. Moreover, the Department's key statutory responsibility to promote union transparency and democracy under the LMRDA requires that this loophole created by prior interpretation be closed. As in the cases illustrated above, a private-sector employee represented by a private-sector local union covered by the LMRDA should not be prevented from tracing to its end-point the expenditure of his or her own dues and fees, even if a labor organization ultimately receiving those private-sector dues is composed solely of public-sector unions. Thus, the ambiguity in Section 3(j)(5), see *Alabama Education,* 455 F.3d at 395, should be resolved in favor of coverage of an intermediate labor organization that is subordinate to a national or international labor organization that includes a private sector local, even if the intermediate itself is composed solely of public sector members. Under this interpretation, the private-sector employees in that local will have an improved ability to ascertain the nature of labor organizations expenditures derived from their dues.

For several decades following the enactment of the LMRDA, the Department's administration of the statute did not reach intermediate labor organizations subordinate to a covered national or international labor organization but composed solely of local public-sector labor organizations. During that period of LMRDA administration, the Department's interpretation permitted LMRDA-covered national and international organizations to make financial disbursements to their intermediate affiliates without any requirement that the intermediate affiliates disclose the manner in which that money, some derived from private-sector employees, was spent. Private-sector local union members have been unable to ascertain whether their representatives spend their money wisely, foolishly, or even illegally. The LMRDA's primary goal of labor organization democracy achieved through labor organization transparency has been thwarted during this period.

The Department's revised interpretation is intended to shed light on the financial transactions of intermediate labor organizations that are subordinate to, and spend money conveyed to them by, covered labor organizations, thereby fully effectuating the purposes of the Act.

For the reasons set forth above, the Department of Labor is issuing this Policy Statement; Interpretation under the authority at 29 U.S.C. 431 and 438.

Signed at Washington, DC, this 23rd day of January, 2007.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. E7–1275 Filed 1–25–07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–07–003]

RIN 1625–AA00

Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project, Construction Barge ''MARMACK 12''

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the Barge ''MARMACK 12'', Official Number 1024657, while it is being used for the New Tacoma Narrows Bridge Construction Project. The zone will extend 500 feet in all directions from the barge, and will be in effect at all times during the duration of this rule. This zone is only in effect while the barge is on the navigable waters of the United States, in the Tacoma Narrows. The Coast Guard is taking this action to safeguard the public from possible collision with the barge and the deck sections it is carrying, and from hazards associated with navigating in the vicinity of the barge during construction operations. Entry into this zone is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

DATES: This rule is effective from 12:01 a.m. January 16, 2007 to 11:59 p.m. January 31, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–07–003 and are available for inspection or copying at the Waterways Management Division, Coast Guard Sector Seattle, 1519 Alaskan Way South, Seattle, WA 98134, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jes Hagen, Waterways Management Division, Coast Guard Sector Seattle, at (206) 217–6958.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) has not been published for this regulation and good cause exists for making it effective without publication of an NPRM in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Making the rule effective after 30 days of publication in the **Federal Register** would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. If normal notice and comment procedures were followed, this rule would not become effective until after construction activities were already taking place.

Discussion of Rule

The Coast Guard is adopting a temporary safety zone regulation on the waters of Tacoma Narrows, Washington, for the New Tacoma Narrows Bridge construction project. The Coast Guard has determined it is necessary to restrict access to the waters within 500 feet of the construction barge ''MARMACK'', in order to safeguard people and property from hazards associated with navigating in the vicinity of moving construction equipment. These safety hazards include, but are not limited to, hazards to navigation, collisions with the barge or its cargo, and disturbance of the load on the barge, which could fall or shift, injuring anyone in the vicinity. The Coast Guard, through this action, intends to promote the safety of personnel, vessels, and facilities in the area. Entry into this zone will be prohibited unless authorized by the Captain of the Port or his representative. This safety zone will be enforced by Coast Guard personnel. The Captain of the Port may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

This temporary rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by this regulation would encompass a small area that should not impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit this portion of the Tacoma Narrows during the time this regulation is in effect. The zone will not have a significant economic impact on a substantial number of small entities due to its small area, and the limited duration of the impacts to navigation caused by the zone. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121),