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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

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July 25, 2023

VIA ELECTRONIC TRANSMISSION

The Honorable Julie Su
Acting Secretary
U.S. Department of Labor
200 Constitution Ave, NW
Washington, D.C. 20210

Dear Acting Secretary Su:

I am concerned that the Department of Labor's (DOL) Office of Labor-Management Standards (OLMS) has recently demonstrated a concerted effort to distort federal statutes to favor unions.

The Landrum-Griffin Labor Management Reporting and Disclosure Act (LMRDA) was enacted following an investigation by the Senate Select Committee on Improper Activities (the McClellan Committee) into union racketeering and corruption. The McClellan Committee's findings highlighted a host of financial improprieties and abuses in the administration of union and management health and welfare funds, including \$10 million in union funds that had "either been stolen, embezzled or misused."¹ LMRDA's central purpose is to "safeguard union funds and assets" by conducting audits and investigations, notwithstanding its important role in collecting and analyzing employer persuader activity and disclosure forms.²

In July 2022, an OLMS investigation led to a 57-month sentence of a former union official who was convicted of embezzling \$2.1 million in union funds.³ In May 2023, Newton Jones, the president of the International Brotherhood of Boilermakers (IBB), and co-signatory to a letter endorsing your nomination,⁴ was ousted by the IBB executive council after a hearing revealed corruption and misappropriation of funds under his leadership. Mr. Jones' misconduct included utilizing union funds to pay his wife over \$100,000 plus benefits "for apparently no union

¹ See generally *The Legislative Recommendations of the McClellan Committee*, 81 MONTHLY LAB. REV. 518, 518-20 (1958).

² 29 U.S.C. § 431.

³ Press Release, U.S. Att'y's Off., E. Dist. of Mich., Former UAW Official Sentenced to 57 Months in Prison For Embezzling Over \$2 Million in Union Funds (July 26, 2022), <https://www.justice.gov/usao-edmi/pr/former-uaw-official-sentenced-57-months-prison-embezzling-over-2-million-union-funds>.

⁴ Letter from Elizabeth H. Shuler et al. to U.S. Sens. (June 7, 2023), <https://aflcio.org/about/advocacy/legislative-alerts/letter-supporting-julie-sus-nomination-labor-secretary>.

purpose,” spending \$20,000 on flights to Ukraine for personal business, and submitting “\$40,000 in receipts for meals in North Carolina—some ‘quite lavish and expensive’—with no justification for the expenses.”⁵

Instead of emphasizing union disclosure and transparency in accordance with LMRDA’s legislative purpose, OLMS has focused on employer persuader activity. In a post entitled “Putting ‘Management’ Back Into the Labor-Management Reporting and Disclosure Act,” OLMS Director Jeffrey Freund misrepresented LMRDA’s legislative purpose by claiming “management is an equally important part of [OLMS’s] reporting and disclosure program.”⁶ In reality, however, an employer’s disclosure obligations under LMRDA are limited solely to payments and expenditures disbursed for the purposes of persuading employees during a union organization campaign in the workplace.⁷ Section 203(e) of LMRDA also contains a clear statutory exception for “report[s] covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation” in the course of their daily employment.⁸

In contrast, the reporting obligations LMRDA imposes on labor organizations are comprehensive, requiring the filing of constitutions, bylaws, the names and titles of officers, assets and liabilities, regular dues, direct and indirect loans, and salaries of union leadership.⁹ Members are also to be afforded the right “to examine any books, records and accounts necessary to verify” labor reports.¹⁰ Section 202 also imposes a full panoply of reporting obligations on officers and employees of labor organizations.¹¹ DOL’s failure under your leadership to acknowledge these salient distinctions in reporting obligations indicates a disregard for the purpose of the statute.

Furthermore, OLMS is not pursuing similar reporting requirements for union organizers who join a workplace with the specific intention of encouraging employees to join a union, known as “salts.” Recent media reports found that salts helped to organize union elections at several major companies.¹² Another analysis found that Service Employees International Union (SEIU) affiliate Workers United paid 41 union salts nearly \$2.5 million in 2022.¹³

Transparency in reporting for both employers and unions is necessary for the proper administration of the LMRDA. If OLMS plans to impose new legal obligations on employers for information that is currently protected from disclosure under Section 203(e), it must engage in

⁵ Judy L. Thomas, ‘This misuse is shocking.’ *Kansas City, KS-based union president ousted by executive staff*, YAHOO!NEWS (June 5, 2023), <https://ca.news.yahoo.com/misuse-shocking-kansas-city-ks-103000141.html>.

⁶ Jeffrey Freund, *Putting ‘Management’ Back Into the Labor-Management Reporting and Disclosure Act*, U.S. DEP’T OF LAB. BLOG (Jan. 5, 2022), <https://blog.dol.gov/2022/01/05/putting-management-back-into-the-LMRDA>.

⁷ 29 U.S.C. § 433(a)(2)-(4).

⁸ 29 U.S.C. § 433(e).

⁹ See 29 U.S.C. § 431.

¹⁰ 29 U.S.C. § 431(c).

¹¹ See 29 U.S.C. § 432.

¹² See, e.g., Josh Eidelson, *The Undercover Organizers Behind America’s Union Wins*, BLOOMBERG (Apr. 3, 2023, 4:00 AM), <https://www.bloomberg.com/news/features/2023-04-03/starbucks-amazon-labor-union-wins-helped-by-undercover-salts#xj4y7vzkg>.

¹³ *Analysis: Workers United paid nearly \$2.5 million to organizers, “salts” and activists at Starbucks*, LABORUNIONNEWS.COM (Apr. 25, 2023), <https://laborunionnews.substack.com/p/analysis-workers-united-paid-nearly>.

notice and comment rulemaking or pursue legislative changes to LMRDA.¹⁴ Agency reversal of policies via guidance are unlawful if the agency has “relied on factors which Congress has not intended to consider.”¹⁵ The reliance interests of the regulated community must be considered before long-standing enforcement policy is reversed. In the absence of clear congressional intent, a change in enforcement policy may not be applied retroactively.¹⁶ The Supreme Court has held enforcement of administrative subpoenas must be denied where the investigation is not for a lawfully authorized purpose.¹⁷

On January 31, 2022, OLMS eliminated disclosure requirements for unions by rescinding the final rule on “Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization is Interested, Form T-1” (hereinafter Form T-1 Rule).¹⁸ The Form T-1 Rule ensured financial transparency in union elections, prevented circumvention of the LMRDA’s reporting requirements, and remedied reporting loopholes in the Taft-Hartley Act. OLMS’s decision to rescind the Form T-1 Rule undermined the role the agency plays in enforcing provisions of LMRDA by perpetuating the very “breach[es] of trust, corruption, disregard of the rights of individual employees and other failures to observe high standards of responsibility” on the part of unions that LMRDA was designed to prevent.¹⁹

OLMS’s apparent targeting of employers while relieving labor unions of the most minimal disclosure obligations is yet another indication DOL is politicizing enforcement by violating the LMRDA and the Administrative Procedure Act. Therefore, I request answers to the following questions, on a question-by-question basis, by **August 7, 2023**:

1. What new reporting requirements is OLMS requiring of employers? What legal authority is OLMS relying on to get this information?
2. What wage information of regular officers or supervisors who are fulfilling their regular job duties is OLMS requiring of employers? What legal authority is OLMS relying on to get this information?
3. Please explain how OLMS is coordinating with the NLRB “to identify employers who must file Form LM-10 reports identifying expenditures they made with an object to interfere with, restrain or coerce employees in the exercise of their protected organizing and bargaining rights.”²⁰

¹⁴ See generally *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1986) (holding that under the APA an agency making a change in longstanding enforcement policy must provide a reasoned explanation for the change, demonstrate awareness it is changing its position, and show there are good reasons for the new policy).

¹⁵ See *Dept. of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020).

¹⁶ See *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016); *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1980); *Rock of Ages Corp. v. Sec’y of Lab.*, 170 F.3d 148, 158 (2d Cir. 1999).

¹⁷ See *Oklahoma Press Publ’g Co. v. Walling*, 327 U.S. 186 (1946).

¹⁸ Rescission of Labor Organization Annual Financial Report for Trusts In Which A Labor Organization Is Interested, Form T-1, 86 Fed. Reg. 74356 (Jan. 31, 2022) (to be codified at 29 C.F.R. pts. 403, 408).

¹⁹ See 29 U.S.C. § 401(b).

²⁰ Jeffrey Freund, *Putting ‘Management’ Back Into the Labor-Management Reporting and Disclosure Act*, U.S. DEP’T OF LAB. BLOG (Jan. 5, 2022), <https://blog.dol.gov/2022/01/05/putting-management-back-into-the-LMRDA>.

4. Please provide a list of all employers DOL has required to produce proprietary information.
5. As Mr. Jones has publicly endorsed your confirmation, will you be recusing yourself as Acting Secretary from any OLMS action or audits relating to IBB?

Thank you for your prompt attention to this matter.

Sincerely,

Bill Cassidy, M.D.

Bill Cassidy, M.D.

Ranking Member

Senate HELP Committee