DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 405

RIN 1245–AA13

Revision of the Form LM–10 Employer Report

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

ACTION: Form revision.

SUMMARY: The Office of Labor-Management Standards (OLMS) of the Department of Labor (Department) is revising the Form LM–10 Employer Report upon review of the comments received in response to its September 13, 2022 notice of proposed form revision. Under section 203 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or the Act), employers must file a Form LM–10 Employer Report with the Department to disclose certain payments, expenditures, agreements, and arrangements. Under the revision, the Department adds a checkbox to the Form LM–10 report requiring certain reporting entities to indicate whether such entities were Federal contractors or subcontractors in their prior fiscal year, and two lines for entry of filers' Unique Entity Identifier and Federal contracting agency or agencies, if applicable.

DATES:

Effective date: This rule is effective August 28, 2023.

Applicability date: The changes made to the Form LM–10 reporting requirements will be applicable to Form LM–10 reports filed on or after such date.

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority

The legal authority for this Final Rule is set forth in sections 203 and 208 of the LMRDA, 29 U.S.C. 433, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as the Secretary may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438. The Secretary has delegated this authority under the LMRDA to the Director of OLMS and permits re-delegation of such authority. *See* Secretary's Order 03–2012—Delegation of Authorities and Assignment of Responsibilities to the Director, Office of Labor-Management Standards, 77 FR 69375 (November 16, 2012). The Director moved to exercise this authority through a proposed form revision. 87 FR 55952 (September 13, 2022).

II. Statutory and Regulatory Background

A. History of the LMRDA's Reporting Requirements

The Secretary of Labor administers and enforces the LMRDA, as amended, Public Law 86–257, 73 Stat. 519–546, codified at 29 U.S.C. 401–531. The LMRDA, in part, establishes labor-management transparency through reporting and disclosure requirements for labor organizations and their officials, employers and their labor relations consultants, and surety companies. *See* 29 U.S.C. 431–441.

In enacting the LMRDA in 1959, a bipartisan Congress expressed the conclusion that in the labor and management fields ''there have 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 which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of . . . employers, labor relations consultants, and their officers and representatives.'' 29 U.S.C. 401(b).

The LMRDA is the direct outgrowth of an investigation conducted by the Senate Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, which convened in 1958. Enacted in 1959 in response to the report of the McClellan Committee, the LMRDA addresses various ills identified by the Committee through a set of integrated provisions aimed, among other things, at shedding light on labor-management relations, governance, and management. *See* 29 U.S.C. 401. These provisions include financial reporting and disclosure requirements for employers and labor relations consultants. *See* 29 U.S.C. 431–441.

Among the abuses that prompted Congress to enact the LMRDA was questionable conduct by some employers and their labor relations consultants that interfered with the right of employees to organize labor unions and to bargain collectively under the National Labor Relations Act (NLRA),

29 U.S.C. 151 *et seq. See, e.g.,* S. Rep. NO. 86–187 (''S. Rep. 187'') at 6, 10–12 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (''LMRDA Leg. Hist.''), at 397, 402, 406–408. Congress was concerned that labor consultants, acting on behalf of management, worked directly or indirectly to discourage legitimate employee organizing drives and to engage in ''union-busting'' activities. S. Rep. 187 at 10, LMRDA Leg. Hist. at 406. Congress concluded that such consultant activities ''should be exposed to public view,'' *id.,* S. Rep. at 11, ''since most of them are disruptive of harmonious labor relations and fall into a gray area,'' even if the consultant's conduct was not unlawful or did not otherwise constitute an unfair labor practice under the NLRA. *Id.* at 12; *see also* 29 U.S.C. 401(a) (in enacting LMRDA, Congress found that ''the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation'').

As a result, Congress imposed reporting requirements on employers and their consultants under LMRDA section 203. 29 U.S.C. 433. Under LMRDA section 208, the Secretary of Labor is authorized to issue, amend, and rescind rules and regulations prescribing the form and publication of required reports, as well as ''such other reasonable rules and regulations . . . as [the Secretary] may find necessary to prevent the circumvention or evasion of such reporting requirements.'' 29 U.S.C. 438. The Secretary is also authorized to bring civil actions to enforce the LMRDA's reporting requirements. 29 U.S.C. 440. Willful violations of the reporting requirements, knowing false statements made in a report, and knowing failures to disclose a material fact in a report are subject to criminal penalties. 29 U.S.C. 439.

B. Statutory and Regulatory Requirements for Employer Reporting

Section 203(a) of the LMRDA, 29 U.S.C. 433(a), requires employers to file a report, subject to certain exemptions, covering the following payments and arrangements made in a fiscal year: certain payments to, or other financial arrangements with, a labor organization or its officers, agents, or employees; payments to employees for the purpose of causing them to persuade other employees with respect to their bargaining and representation rights; payments for the purpose of interfering with employees in the exercise of their bargaining and representation rights or for obtaining information on employee or labor organization activities in connection with labor disputes involving their employer; and arrangements (including related payments) with a labor relations consultant for the purpose of persuading employees with respect to their bargaining and representation rights, or for obtaining information concerning employee activities in connection with a labor dispute involving their employer. 29 U.S.C. 433.

The employer must file with the Secretary a report, in a form prescribed by the Secretary, signed by the employer's president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a). The implementing regulations of the Department require employers to file a Form LM–10 Employer Report (''Form LM–10'') that contains this information. *See* 29 CFR part 405.

C. Overview and History of the Form LM–10

The Form LM–10 must be filed by any employer who has engaged in certain financial transactions or arrangements, of the type described in LMRDA section 203(a), with any labor organization, union official, employee, or labor relations consultant, or who has made expenditures for certain objects relating to activities of employees or a union. 29 U.S.C. 433(a). Employers are required to file only one Form LM–10 each fiscal year that covers all instances of reportable activity even if activity occurs at multiple locations.

In its current iteration, the Form LM–10 is divided into two parts: Part A and Part B. Part A consists of pages 1 and 2 of the Form LM–10. In Part A, Items 1–7 request basic identifying information about the employer: namely file number, fiscal year, address of the employer, address of the president or corresponding officer, any other address where records needed to verify the report can be made available for examination, a checklist of each location where records needed to verify the report can be made available for examination, and what type of legal entity is filing the report (''Corporation, Partnership, Individual, Other (specify)''). Items 13 and 14 are also featured on page 1 of Part A and are the signature boxes for the president and treasurer of the employer, respectively. Page 2 consists entirely of Part A, Item 8, which contains six ''Yes or No'' questions pertaining to reportable employer activities. If the employer can answer ''No'' to every question in Item 8, then no Form LM–10 needs to be filed. With each question answered ''Yes,'' the filer must complete a separate Part B for every person or organization with whom a reportable agreement was made or to whom a reportable payment was made as to that ''Yes'' answer. The form also asks for the total number of Part Bs filed for each question in Item 8.

Part B comprises page 3, and requires the name of the reporting employer and the file number again to ensure it is matched with Part A. Similarly, the next field is a checkbox indicating the questions in Item 8 (labeled a through f) to which this Part B applies. Items 9–12 require various details regarding the agreement or payments the employer-filer made.

Item 9 consists of four parts, 9.a.–9.d. Item 9.a. asks whether this Part B concerns itself with an ''Agreement,'' a ''Payment,'' or ''Both.'' Item 9.b. requires the name and address of the person with whom or through whom a separate agreement was made or to whom payments were made. Item 9.c. requires the position of any persons mentioned in 9.b. Item 9.d. requires the name and address of the labor organization or firm any person mentioned in 9.b. is a part of.

Item 10 consists of two parts, 10.a. and 10.b. Item 10.a. requires the date of the promise, agreement, or arrangement pursuant to which payments or expenditures were agreed to or made. Item 10.b. consists of three checkboxes and filers are required to mark whether the promise, agreement, or arrangement was ''Oral,'' ''Written,'' or ''Both.'' If the agreement is written and entered into during the fiscal year, it must be attached to the report.

Item 11 consists of three parts, 11.a.–11.c. Item 11.a. requires the date of each payment or expenditure referred to in Item 9. Item 11.b. requires the amount of each of those payments. Item 11.c. requires the filer to indicate the kind of each payment or expenditure, specifying whether it was a payment or a loan and whether it was made in cash or property.

Historically, Item 12 required a narrative response from the filers with a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report.

The explanation needed to include a detailed account of services rendered or promised in exchange for promises or payments the filer has either already made or agreed to make. The explanation needed also to fully outline the conditions and terms of any oral agreement or understanding pursuant to which they were made. Finally, the filer was required to indicate whether the payments or promises reported specifically benefited the person or persons listed in Item 9.b., or the firm, group, or labor organization named in Item 9.d. If the employer-filer made payments, promises, or agreements through a person or persons not shown above, it needed to provide the full name and address of such person or persons. The explanation needed to clearly indicate why the filer must report the payment, promise, or agreement. Any incomplete responses or unclear explanations rendered a report deficient. These requirements continue, substantively unchanged by this final rule, in new Item 12.a.

III. Revision to the Form LM–10

A. General Overview of Revision and Comments Received

As proposed in its September 13, 2022, proposed form revision, the Department revises the Form LM–10 to supplement the identifying information that OLMS already collects from employers required to file, such as the employer's name, address, and status as a corporation, partnership, or individual. *See* 87 FR 55952 (September 13, 2022). The revised Item 12 does not change which employers are required to file Form LM–10; it requires employers who are already required to file the Form to provide an additional item of identifying information—whether the employer is a federal contractor or subcontractor—and, if so, a short entry indicating the federal contracting agency and the contractor's Unique Entity Identifier (UEI), if the contractor has one. If providing the name of a federal contracting agency would reveal classified information, the filer should omit the name of the agency. All federal prime contractors, and, in some cases, subcontractors performing on federal prime contracts, must have a UEI to do business with the federal government or to meet reporting requirements pursuant to the Federal Acquisition Regulation (FAR). For example, FAR part 52.204–6 requires prime contractors to obtain a UEI to register to obtain contracts with the federal government.[1]

The Department has revised Item 12 to contain two parts: Item 12.a, which will now require the information previously required in Item 12, and a new Item 12.b. To collect the new information quickly and efficiently, the Department is adding one ''Yes,'' ''No,'' or ''N/A'' checkbox at the end of the form, in Item 12.b, regarding federal contractor status. In addition, this revision adds two lines where filers who are federal contractors or subcontractors will enter their UEI and the federal contracting agency involved.

Not all filers will be required to complete Item 12.b. Filers who answer ''Yes'' to Item 8.a., but ''No'' to Items 8.b.–8.f., will not be required to complete Item 12.b., and the electronic form will automatically check the ''N/A'' box and grey out (render nonfunctional) the remaining portions of Item 12.b. for those filers so that no entry can be made.[2]

The instructions also make explicit that filers must enter information in Item 12.a. that the Form LM–10 already encompassed before this revision—including the subject group of employees (*e.g.,* the particular unit or division in which those employees work). *See* unrevised Item 12 (''Provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises or payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements.''). This necessarily includes identifying certain payments, expenditures, agreements, and arrangements regarding employees. Filers previously would have identified the subject group of employees in Item 12.

On September 13, 2022, the Department published a proposed revision to the Form LM–10, which provided a 30-day comment period ending on October 13, 2022. The Department received 35 comments on the LM–10 revisions. Comments were received from labor organizations, nonprofit organizations, private individuals, and members of Congress. Of the 35 total comments, 32 expressed overall support for the proposed revisions while three opposed them. As discussed below, the Department adopts the revisions as proposed.

B. Overview of Item 12.a.

The new Item 12.a. consists of a narrative section that mirrors the prior Item 12, and the revised instructions add a clarification. In both the prior Item 12 and the new Item 12.a., filers must explain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made. As the instructions indicated for Item 12 and now indicate for Item 12.a., filers must provide ''a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report.'' The instructions are revised to make explicit that a ''full explanation'' continues to require filers to identify the subject group of employees (*e.g.,* the particular unit or division in which those employees work). This was accomplished by adding a new final clause to an existing sentence. The sentence, ''Your explanation must fully outline the conditions and terms of all listed agreements,'' was revised. It now reads, ''Your explanation must fully outline the conditions and terms of all listed agreements, including fully identifying the subject group of employees (*e.g.,* the particular unit or division in which those employees work).'' [3] This revision will help ensure that filers understand that a full description requires information on the subject group of employees.

C. Overview of Item 12.b.

Filers who check ''Yes'' for any item in Items 8.b. through 8.f. must complete

[1] ''As of April 4, 2022, the federal government stopped using the DUNS Number to uniquely identify entities. Now, entities doing business with the federal government use the Unique Entity ID created in *SAM.gov*. They no longer go to a third-party website to obtain their identifier. This transition allows the government to streamline the entity identification and validation process, making it easier and less burdensome for entities to do business with the federal government.'' *Unique Entity Identifier Update,* U.S. General Services Administration, available at *https://www.gsa.gov/about-us/organization/federal-acquisition-service/office-of-systems-management/integrated-award-environment-iae/iae-systems-information-kit/unique-entity-identifier-update* (last visited December 10, 2022).

[2] Item 8 requires filers to indicate the type of reportable activity engaged in by the employer. Item 8 a. asks filers: Did you make or promise or agree to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization officer, agent, shop steward, or other representative or employee of any labor organization? Items 8 b. through 8 f. ask about payments and expenditures related to a labor dispute or the right to organize and bargain collectively. *See also https://www.dol.gov/agencies/olms/reports/electronic-filing.*

[3] The preamble of the proposed revision provided, ''The instructions would also make explicit that a 'full explanation' requires that filers must identify the subject group of employees (*e.g.,* the particular unit or division in which those employees work).'' 87 FR 55954. Through an editing error, the instructions used the Latin abbreviation ''*i.e.*'' 87 FR 55969. The Department adopts the abbreviation used in the preamble.

Item 12.b. indicating their status as a federal contractor or subcontractor. Regarding such status, the Department, as proposed, adopts the following definitions from the regulations implementing Executive Order (E.O.) 13496, Notification of Employee Rights Under Federal Labor Laws: (a) ''contract,'' (b) ''contracting agency,'' (c) ''contractor,'' (d) ''government contract,'' (e) ''modification of a contract,'' (f) ''prime contractor,'' (g) ''subcontract,'' and (h) ''subcontractor.'' 29 CFR 471.1. Therefore, filers must answer Item 12.b. in accordance with those eight definitions.[4] *Id.*

Item 12.b. consists of two parts. First, filers must complete the ''Yes,'' ''No,'' or ''N/A'' checkbox in response to the following question: ''If your Part B applies to Items 8.b.–8.f., did the expenditures, payments, arrangements or agreements concern employees performing work pursuant to a federal contract or subcontract?'' Second, if the filer answers ''Yes,'' it must enter, on the two lines provided, their UEI and the name of the federal contracting agency involved. If a filer does not have a UEI, then the filer (most likely a subcontractor) should so state in Item 12.b. If providing the name of a federal contracting agency would reveal classified information, the filer should omit the name of the agency. When filers answer ''Yes,'' in the checkbox portion of Item 12.b., failure to complete the entry on the two lines provided, or providing an unclear explanation in that entry, will render the report deficient.

IV. Purpose and Justification for the Revisions

A. OLMS Has Authority To Issue This Rule

As the Department stated in its proposed revision, both the public and the employees whose rights are at issue have an interest in understanding the full scope of activities undertaken by employers to persuade employees regarding the exercise of their rights to organize or bargain collectively, to surveil employees, or to commit unfair labor practices. *See* S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–07. This interest is heightened when the employees' own tax dollars may be indirectly funding an employer's reportable activities. The public and employees also have an interest in knowing whether the federal government is paying for goods and services from an employer who would seek to engage in activity that may disrupt the harmonious labor relations that the federal government is bound to protect. *See* S. Rep. 187 at 12; *see also* 29 U.S.C. 401(a). OLMS has authority to protect this interest.

The Form LM–10 reporting requirement is based on Congress's concerns over the ''large sums of money [that] are spent in organized campaigns on behalf of some employers'' on persuader activities that ''may or may not be technically permissible'' and Congress's determination that the appropriate response to such persuader campaigns is to disclose them in the public interest and for the preservation of ''the rights of employees.'' *See* S. Rep. 187 at 10–12, LMRDA Leg. Hist. at 406–07.

As set forth in Section I, Statutory Authority, above, LMRDA Section 208 authorizes the Secretary to ''issue . . . regulations prescribing the form and publication of reports required to be filed[.]'' 29 U.S.C. 438. The statutory provision authorizing the issuance of the Form LM–10 describes the data and information to be reported in the Secretary's form. Employers shall file with the Secretary a report, in a form prescribed by the Secretary, signed by the employer's president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a). The statutory intent to require employers to provide a ''full explanation'' of payments was reflected in the Form LM–10 the Secretary established. Employers are told to provide a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a).

This revision, as with the proposal, explains that one of the ''circumstances'' that must be explained is whether the payments concerned employees performing work pursuant to a federal contract or subcontract. If so, the filer must provide its UEI, if it has one, and name the relevant federal contracting agency. Disclosing contractor status is consistent with Congress's intent in enacting the LMRDA: ''[I]t continues to be the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection.'' 29 U.S.C. 401(a); *see also* E.O. 13494 (reiterating ''the policy of the United States to remain impartial concerning any labor-management dispute involving Government contractors.''). As discussed in more detail, below, employees will more fully understand the circumstances under which they seek to exercise their rights when they know the contractor status and UEI of their employer, as well as the division or unit of the employees whose rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities the employer seeks to influence.

Half of all supportive commenters specifically referenced the Department's authority to make this revision, and two-thirds of supportive comments expressly indicated that making this revision is consistent with the LMRDA purpose of providing transparency through reporting and disclosure.

As one commenter stated, ''OLMS is well within its authority to prescribe these modest changes to the Form LM–10 [and] . . . [b]ecause the NPRM fully explains this sound basis for the revisions, we do not address them further.'' Another commenter similarly outlined the clear statutory basis for making the change: ''This statute [LMRDA] requires the disclosure of persuader activity payments to include 'full explanation of the circumstances' surrounding those payments . . . [and] delegates authority to the Agency to 'prescribe[]' the 'form' in which these reports are made, further reinforcing the authority of OLMS to implement this propose change.''

Other supportive commenters agreed that the revision was consistent with, and a reasonable alteration pursuant to, the reporting requirements of section 203 of the LMRDA and within the Department's authority under section 208 to ''issue . . . regulations prescribing the form and publication of reports required to be filed[.]'' 29 U.S.C. 438. As a union commenter described, the LM–10 already directs filers ''to '[e]xplain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made.'' Accordingly, the commenter continued, ''it is reasonable and appropriate for [filers] to disclose their status as a federal contractor or subcontractor, and information about the employees (or

[4] The Form LM–10 instructions list the definitions adopted from the implementing regulations of E.O. 13496 (Notification of Employee Rights Under Federal Labor Laws) at 29 CFR 471.1 for *Contract, Contracting agency, Contractor, Government contract, Modification of a contract, Prime Contractor, Subcontract, and Subcontractor. See* 29 CFR 471.1.

groups thereof) that are the subject of the payments, expenditures, agreements, or arrangements covered by the statute, as a part of their obligation to provide a full explanation of this conduct.''

Commenters also turned to legislative history for further support of the Department's authority to issue this revision. A union commenter citing the LMRDA Legislative History, highlighted Congress' concern with ''middlemen'' and the applicable statutory language as ''provid[ing] clear authority for the modest action proposed in the NPRM.'' A different union commenter also looked to the legislative history of the LMRDA, citing a Senate Report that concluded most persuader activity is '' 'disruptive of harmonious labor relations and fall[s] into a gray area' such that it 'should be exposed to public view.' '' The Department enacts this revision to more fully realize the ideal of transparency that is central to section 203 of the LMRDA. As many union commenters noted, the broad authority granted to the Secretary by section 208 allows for these modest changes to the form. Another union commenter agreed that the Department's ''clear interest in understanding the full scope of activities undertaken by employers that enter into agreements to persuade employees not to exercise these rights'' is indeed served by these revisions.

B. The Revision Furthers the Intent of the Act

One intent of the Act is to support a harmonious relationship among employees, labor organizations, employers, and labor relations consultants. *See* 29 U.S.C. 401 (congressional declaration of findings, purposes, and policy for LMRDA); *id.* at 401(a) (in enacting the LMRDA, Congress found that ''the relations between employers and labor organizations and the millions of workers they represent have a substantial impact on the commerce of the Nation''). The Act therefore requires transparency and accountability not just for labor organizations, but employers and labor relations consultants as well. Congress intended the LMRDA to provide for the elimination and prevention of improper practices on the part of ''labor organizations, *employers,* labor relations consultants and their officers and representatives.'' 29 U.S.C. 401(c) (emphasis added).

Members of Congress commented that the ''proposed rule does not subject any employer to new filing requirements.'' The Department agrees that the revision does not change the criteria that determines which employers are required to file the Form LM–10. The revision also does not impair any rights that filers had prior to the change to Item 12, including First Amendment rights, as addressed below in Part V.B. It does not increase required filers' liability in connection with activities that they already had to report and does not impose duties to file reports that filers did not already have under the LMRDA. It adds, for certain filers only, the straightforward step of providing basic identifying details regarding contractor status that filers will be able to quickly enter on the Form LM–10. Consistent with the statutory scheme enacted by Congress, the revision outlines aspects of the ''full explanation'' that filers must report on the Form LM–10. 29 U.S.C. 433(a).

Next, one commenter opposed the proposed Form LM–10 revision because it claimed that the proposed revision is contrary to the intent of the LMRDA. The commenter asserted that while the LMRDA does place some requirements on management, the main intent of the law is to ''ensure that individual workers are apprised of the financial actions *of their own unions*[.]'' (Emphasis in original.) This assertion is contradicted by both the legislative history and the plain language of the statute. The Act expressly requires employer reports, 29 U.S.C. 433 (''Report of employers''), and authorizes the Department ''to issue, amend, and rescind rules and regulations prescribing the form and publication'' of the employer reports required to be filed under the statute. 29 U.S.C. 438. The commenter explained, however, that in its view, ''[w]orkers have a direct and obvious interest in being aware of the actions of their unions, which purport to speak on their behalf as their collective voice. The workers' interest is less compelling when it involves the financial disclosure by employers as that is, by definition, not the workers' own money and they do not have control over its use under ordinary circumstances.'' The Department disagrees that this is a reason to reject the revision. Congress, aware that employers were spending their own money on what are now reportable activities, enacted the LMRDA to expose those payments, agreements, and arrangements to public view. *See* S. Rep. No. 86–187 (''S. Rep. 187'') at 10–11 (1959), reprinted in 1 NLRB, LMRDA Leg. Hist., at 406–07.

Legislative history shows that the revisions are in accord with the congressional intent of the Act. When debating and enacting the LMRDA, Congress considered conduct by some employers and their labor relations consultants as interfering with the right of employees to organize labor unions and to bargain collectively under the NLRA. *See* S. No. 86–187. Rep, at 50–51, reprinted in 1 LMRDA Leg. Hist., at 446–447. Congress believed that employer payments and activities aimed at employee unionization efforts should be made public even if they are lawful.[5] *See* S. No. 86–187. Rep, at 81–82, reprinted in 1 LMRDA Leg. Hist., at 477–478. Among the concerns that prompted Congress to enact the LMRDA was employers retaining labor relations consultants whose actions discouraged or impeded the right of employees to organize labor unions and to bargain collectively under the NLRA, 29 U.S.C. 151 *et. seq. See, e.g.,* S. No. 86–187. Rep, at 6, 10–12, reprinted in 1 LMRDA Leg. Hist., at 397, 402, 406–408. Therefore, the Department finds that employer reporting on persuader, surveillance, and unfair labor practice activity is a fundamental part of the Act.

Moreover, Congress authorized the Department to collect detailed reports from employers. 29 U.S.C. 433, 438. The Senate Report explained that the Department's collection and public disclosure of employer reports under section 203 ''will accomplish the same purpose as public disclosure of conflicts of interest and other union transactions which are required to be reported'' under other sections of the bill that was to become the LMRDA. S. Rep. No. 86–187, at 5, 12, reprinted in 1 LMRDA Leg. Hist., at 401, 408.[6] The Senate Report also explained that employers required to file must ''file a detailed report.'' Consistent with this congressional intent, Form LM–10 reports have required a variety of details from employers including whether they are partnerships, corporations, or individuals. *See* Form LM–10, Item 7. Similarly, the revision now adds an additional piece of identifying

[5] Congress recognized that some of the persuader activities occupied a ''gray area'' between proper and improper conduct and chose to rely on disclosure rather than proscription, to ensure harmony and stability in labor-management relations. *See* S. Rep. No. 86–187, at 5, 12; 1 LMRDA Leg. Hist., at 401, 408.

[6] H.R. Rep. No. 86–741(1959), at 12–13, 35–37, reprinted in 1 LMRDA Leg. Hist., at 770–771, 793–795, contained similar statements However, it should be noted that the House bill contained a much narrower reporting requirement—reports would be required only if the persuader activity interfered with, restrained, or coerced employees in the exercise of their rights, *i.e.,* if the activity would constitute an unfair labor practice. The House bill also contained a broad provision that would have essentially exempted attorneys, serving as consultants, from any reporting. In conference, the Senate version prevailed in both instances, restoring the full disclosure provided in the Senate bill. *See* H. Rep. No. 86–1147 (Conference Report), at 32–33; 1 LMRDA Legis. Hist., at 936–937.

information in Item 12.b. for certain filers—whether they are federal contractors or subcontractors and, if so, their UEI and agency involved.

C. The Revision Ensures That Filing Employers Fully Explain the Circumstances of Payments, Agreements, and Arrangements

This revision ensures that filers fully explain the circumstances of all covered payments, as required by the statute. The statute states in broad terms that the details of the reportable activity are to be collected in a ''form prescribed by [the Secretary] . . . showing . . . a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.'' 29 U.S.C. 433(a). For example, the group of employees affected by a covered agreement (scope of agreement) and the worksite of the employees to be targeted (location of performance on the agreement) are basic details readily captured by the statute's use of the phrase ''terms of any agreement.'' 29 U.S.C. 433. The status of an employer as a federal contractor is captured within ''full explanation'' of those terms. In many cases, it may also be captured in the terms of the agreement itself, and reportable for that reason alone.

One commenter who opposed the revision noted that Congress did not include federal contractor status as an explicit requirement in the drafting of the LMRDA, indicating that Congress did not find such status relevant. The Department does not agree as Congress, instead of making explicit all aspects of the reporting requirements, authorized the Secretary to, ''issue . . . rules and regulations prescribing the form and publication of reports required to be filed'' including concerning the details of a ''full explanation of the circumstances of all such payments[.]'' 29 U.S.C. 433, 438. Congress declined to enumerate each ''circumstance[]'' to be reported, delegating authority to the Secretary to determine the relevant details when prescribing the form and publication of the Form LM–10.

Members of Congress commented that the revision ''would only inform employees of whether their employer is a federal contractor, a fact typically already known by employees since they work on the contracts.'' Another commenter also thought it would be ''self-evident'' if employees' work for a company involved the federal government. In contrast, an international union representing employees throughout the economy, including manufacturing employees, commented that the form may provide the first notice to employees that they are employees of a federal contractor: ''In many instances, manufacturing employees may be unaware that their employer is a federal contractor or subcontractor.'' The commenter described analogous circumstances for service sector employees. Similarly, a national union commented that it only discovered during the pandemic that some of the employers it bargains with consider themselves to be federal contractors because those employers sought aid available to such contractors. In support of the revision, another commenter said that adding Item 12.b. will add a level of accountability. The Department agrees that some employees may not be aware that their work is pursuant to a federal contract and that the revision adds a level of accountability envisioned by the LMRDA. It adds identifying details regarding filers' contractor status that are part of the ''full explanation'' Congress intended to be publicized under the Act.

D. Both the Public and Workers Have an Interest in Transparency Concerning Employers' Federal Contractor Status

As stated in the notice of proposed revision, the Department makes these revisions in response to the increased prevalence of, and public interest in, persuader activities in recent years.

1. Persuader Activity Has Increased in Prevalence

The media, academics, and non-governmental organizations (NGOs) have noted persuader activity in a number of industries, including multiple high-profile instances of companies investing substantial resources in persuader activity. Over the decades, employer efforts to defeat unions have become more prevalent, with more employers turning to union avoidance consultants.[7] Further, members of Congress have noted recently that federal contractors have engaged in such agreements and activities.[8] As the Agency responsible for promoting transparency around management attempts to influence employees' organizing and collective bargaining rights, OLMS closely monitors developments in the ways management interacts with union organizing efforts. As union avoidance activity increases, it is well within OLMS's role to increase the quality and utility of the information being disclosed on such activity.

The noted prevalence of persuader activity accordingly increases the interest of the federal government in obtaining information about employers' spending on reportable activities. Congress found that most of this kind of persuader activity is ''disruptive of harmonious labor relations,'' even if lawful. S. Rep. 187 at 12, LMRDA Leg. Hist. at 406. The federal government has an increased interest in fully identifying employers who may be disrupting the harmonious labor relations that the federal government is bound to protect when those employers are receiving tax dollars through federal contracts. *See* 29 U.S.C. 401(a). In other words, greater transparency is even more important when persuader activities are increasingly undertaken by employers that receive federal funds through contracting relationships. *See* E.O. 13494 (reiterating ''the policy of the United States to remain impartial concerning any labor-management dispute involving Government contractors.'').

[7] Celine McNicholas, et. al, *Unlawful: U.S. Employers Charged with Violating Federal Labor Law in 41.5 percent of all Union Elections,* Economic Policy Institute, (Dec. 11, 2019) available at *https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/* (''The data show that U.S. employers are willing to use a wide range of legal and illegal tactics to frustrate the rights of workers to form unions and collectively bargain . . . . [E]mployers spend roughly $340 million annually on 'union avoidance' consultants to help stave off union elections . . . . Over the past few decades, employers' attempts to thwart organizing have become more prevalent, with more employers turning to the scorched-earth tactics of 'union avoidance' consultants.''); Heidi Shierholz et. al, *Latest Data Release on Unionization,* Economic Policy Institute, (Jan. 20, 2022) available at *https://www.epi.org/publication/latest-data-release-on-unionization-is-a-wake-up-call-to-lawmakers/* (describing how ''it is now standard, when workers seek to organize, for employers to hire union avoidance consultants''); John Logan, *The New Union Avoidance Internationalism,* 13 Work Org., Lab. & Globalisation 2 (2019) available at *https://www.scienceopen.com/hosted-document?doi=10.13169/workorgalaboglob.13.2.0057;* Thomas A. Kochan et. al, U.S. Workers' Organizing Efforts and Collective Actions: A Review Of The Current Landscape, Worker Empowerment Research Network, (June 2022) available at *https://mitsloan.mit.edu/sites/default/files/2022-06/Report%20on%20Worker%20Organizing%20Landscape%20in%20US%20by%20Kochan%20Fine%20Bronfenbrenner%20Naidu%20et%20al%20June%202022.pdf;* In Solidarity: Removing Barriers to Organizing, Hearing Before the United States House Committee on Education and Labor, 117th Congress (September 14, 2022), available at *https://edlabor.house.gov/hearings/in-solidarity-removing-barriers-to-organizing.*

[8] Should Taxpayer Dollars Go to Companies that Violate Labor Laws?, Comm. on the Budget, 117th Congress (May 5, 2022), available at *https://www.budget.senate.gov/hearings/should-taxpayerdollars-go-to-companies-that-violate-labor-laws* (discussing the propriety of government contracting with Federal contractors that engage in legal and illegal tactics, including ''union busters,'' to dissuade workers from exercising their organizing and collective bargaining rights).

One commenter disagreed with this rationale and opposed the proposed Form LM–10 revisions because they believe the Department failed to provide any evidence of persuader activities negatively affecting labor relations or leading to increased costs or delays for the contracts. Evidence of the efficiency of federal contracts is not necessary, as this is not part of the justification for this revision. Independent evidence of persuader activities negatively affecting labor relations is also not necessary as Congress determined that workers and the public needed disclosure of persuader activities, even if lawful. Nevertheless, an international union that represents employees in an array of industries, including employees of federal contractors, commented that, based on its long experience with anti-union campaigns waged by labor consultants, persuader activity is harmful to workers' ability to exercise their collective bargaining rights. Consistent with this comment, and as discussed above, in enacting the LMRDA Congress was concerned with the impact of persuader activities on harmonious labor relations and believed that increased transparency about employer efforts to persuade employees regarding their organizing and collective bargaining rights would benefit workers and the public. The revision furthers this statutory purpose.

2. The Revisions Will Lead To Increased Transparency

Many commenters favored the revision because it supports increased transparency regarding persuader, surveillance, and unfair labor practice activity. One commenter observed that the revision will provide ''notice to workers and the public when a corporation reporting anti-union spending is also a government contractor.'' The commenter believed that this will ''help organizing workers better understand the full extent of corporate opposition.'' The Department agrees that the revision to Form LM–10 will increase transparency regarding which federal contractors and subcontractors are engaging in activities reported on the LM–10. Confirming a filer's status as a federal contractor, as well as its UEI and federal agency involved, as part of a full explanation of persuader activities will provide a method for the public and employees to quickly identify whether a filer is a federal contractor.

Like the federal government itself, workers and the public also have a strong interest in spending choices by federal contractors. As a policy institute commenter researched, and many commenters cited, employers spend at least $340 million a year to bring union avoidance consultants to influence workers as they decide whether to support an organizing effort. The policy institute commenter argued that the revision would allow workers and the public more transparency into the willingness of federal contractors to engage in such practices. The Department agrees that this may be relevant information to employees as they choose how to exercise their organizing and collective bargaining rights. It is therefore part of the ''full explanation'' that Congress envisioned employers reporting. 29 U.S.C. 433(a).

One commenter opposing the revision said that ''if the company does work on a federal contract, it is unlikely that this will be a central or even relevant issue when the workers and the management negotiate their own contract.'' The commenter asserted that ''workers still work for the company and it is its policies and contract terms that will be at issue.'' In the commenter's view, it is ''extremely unlikely that workers would oppose the company accepting federal contracts, for example.'' The Department is not revising the LM–10 because it expects employees to make a particular choice regarding how they wish to exercise their organizing and collective bargaining rights. Instead, the revision outlines further information that employees may choose to consider when determining whether and how to exercise their rights.

Two commenters supported the revision because it would empower employees to speak out against both unlawful and lawful efforts by their employer to convince them to remain unrepresented. Publicizing which Form LM–10 filers are federal contractors will give workers more information as they choose whether or not to speak out against such efforts by their employer to convince them to remain unrepresented. And as an advocacy center commenter also maintained, ''the public is entitled to know whether public funds may indirectly lead to any sort of disruption of labor relations and workers' rights.''

By learning of the federal contractor status of their employer, those employees would have convenient access to the information that would allow them to meaningfully exercise their organizing and collective bargaining rights such as their First Amendment right to choose whether to contact their representatives in Congress to inquire about the federal appropriations underlying the contracts with their employers, or the employers' activities undertaken pursuant to such contracts, or allow the employees to work more effectively with advocacy groups or the media to disseminate their views as employees to a wider audience. *See* 29 U.S.C. 157; 45 U.S.C. 152, Fourth. This is consistent with Congress' expectations when enacting the LMRDA—that in the public interest citizens would have the benefit of public reports regarding employer conduct that falls in a ''gray area.'' S. Rep. 187 at 11, LMRDA Leg. Hist. at 407 (persuader activities ''should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concomitant obligation to insure the free exercise'' of those rights).

Another comment discussed the Department's authority to ensure LMRDA compliance and ''strongly support[ed] the proposed change to the LM–10's instructions to make explicit that Filers must identify the specific group of employees—such as the work unit or division—that were subjected to the reportable, employer-sponsored anti-union activities.'' The Department received no negative comments on its proposed clarification that filers must identify the subject group of employees and will retain the revised instructions as proposed. The Department finds that doing so will increase compliance.

Multiple commenters also cited better NLRB cross-matching as a benefit of the revision. The Department finds that by clarifying that filers must identify the unit of employees subjected to their persuader activity, representation and unfair labor practice cases before the NLRB that have similar information documented can be matched more easily by employees, allowing them to know whether they were subjected to persuader activities more readily. This in turn would allow them to make better-informed decisions regarding their workplace representation.

Several commenters spoke to how the revision is justified as a matter of policy by the public need for greater transparency in these times of increased public interest in joining a union. As one commenter indicated, ''[i]n 2022, workers voted to unionize in more elections than they have in nearly two decades. Support for labor unions is [at] its highest level since 1965, with 71 percent of Americans saying they approve of unions[.]'' The commenter went on to say ''roughly half of nonunion workers—or 60 million workers—would join a union if they could[.]''

One commenter, an independent advocacy organization, also emphasized that while the LMRDA provides statutory authority for employer reporting form revisions that the

Secretary deems necessary, this rulemaking is further justified by the particular legal status of the group it now seeks to secure disclosure from: federal contractors. This commenter noted that starting with E.O. 8802, Administrations of both parties since 1941 have held entities that receive federal money to ''the highest ethical standards.'' The commenter said that this policy was reflected in legislation including Title VI of the Civil Rights Act of 1964, and the Workforce Investment and Opportunities Act. The commenter also wrote that regulations require federal contractors to ''conduct themselves with the highest degree of integrity and honesty.'' [9] The Department acknowledges the benefits of these laws but need not rely on them as the LMRDA expressly contains a similar policy choice for all employers that must report, including filers that are federal contractors. One of Congress' stated purposes was to hold all covered employers to ''the highest standards of responsibility and ethical conduct[.]'' 29 U.S.C. 401(a). The revision does so regarding filers that are federal contractors and is therefore consistent with the LMRDA.

The increased transparency from the revision will benefit employees working on federal contracts who are subject to persuader activity, information gathering, or interference, by giving them a ''full explanation'' about their employers' reportable activities—as intended by Congress in enacting the LMRDA. 29 U.S.C. 433(a). Generally, the transparency created by the reporting requirements is designed to provide workers with necessary information to make informed decisions about the exercise of their rights to organize and bargain collectively. For example, with the knowledge that the source of the information received is an anti-union campaign managed by an outsider, workers will be better able to assess the merits of the arguments directed at them and make an informed choice about how to exercise their rights.

Here, employees have a particular interest in knowing whether their employers are federal contractors because, as taxpayers themselves, those employees should know whether they are indirectly financing persuasion campaigns regarding their own rights to organize and bargain collectively. An individual commenter added that ''employees of federal contractors and subcontractors are often given constitutional protections and other protections that would be awarded to government employees,'' and thus the federal government has a special interest in seeing what forces such contractors bring to bear on their employees' exercise of their rights. The Department agrees with this line of reasoning that federal contractors and subcontractors occupy a particular role in civil society through their relationship with the federal government and receipt of federal monies. *See* 29 U.S.C. 401(a) (providing it is ''the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection''). Although persuader campaigns are not themselves reimbursable under the federal contract or subcontract,[10] federal contractors receive substantial financial benefits from these federal contracts.

As one commenter explained, ''these employers often receive 'significant' sums of money under federal contracts, funds which 'directly or indirectly' support their business activities, including any decision to hire union avoidance consultants or otherwise engage in persuader activities.'' In the same vein, a union commenter noted that although no federal funds could be properly expended to engage in reportable activity under section 203(a), federal contractors can nonetheless still engage in this activity using other funding, and while federal agencies may not be supporting that activity directly, the federal agencies nonetheless support businesses that engage in employee persuasion, helping to make them profitable. The Department agrees that the funds free up other funds to be spent on consultants. They support directly or indirectly contractors' businesses and additional activities, which may include the decision to hire consultants to persuade employees.

The revision will increase transparency about these circumstances by ensuring that Form LM–10 reports include which federal contractors and subcontractors are engaging in persuader, surveillance, and unfair labor practice activities. Confirming a filer's status as a federal contractor, as well as its UEI and the federal agency involved, as part of a full explanation of reportable activities will provide a method for the public and employees to quickly identify whether a filer is a federal contractor.

E. Including the Unique Entity Identifier Will Prevent Confusion and Ease Access

Multiple commenters supported the requirement to provide the Unique Entity Identifier (UEI) on Form LM–10. An international union commented that requiring certain filers to provide their UEIs on the Form LM–10 is critical to avoid confusion. Another international labor organization agreed, noting that the revision would allow for ''better identification of filing employers through the use of the UEI[.]'' The Department agrees that the requirement that certain filers provide their UEI, if they have one, will avoid confusion and allow the public and employees to more easily confirm the identity of filers who are federal contractors. It will also ensure other, more detailed, information regarding federal contracts is easily obtainable to employees and the general public. Two or more employers may have a similar name, which can create difficulty for workers and the public in determining whether the employer is, in fact, receiving federal funds. Individual employers often use multiple names, including trade, business, assumed, or fictitious names, such as a DBA (''doing business as'') designation. Nevertheless, all federal prime contractors have their own individual identifier to seek and secure federal contracts, which can more explicitly link an employer to a particular federal contract.[11] Requiring employers to provide this federal contract identifier on the Form LM–10 furthers the congressional purpose of detailed employer reporting under the LMRDA, 29 U.S.C. 401, 433, because members of the public and employees will be able to more easily distinguish companies with similar names or locate reports on companies that have changed their names. This information can also help employees and the general public to more expeditiously search detailed government contract data for these employers in the *SAM.gov* (System for Award Management system) and *USASpending.gov* websites. By using the UEI, employees and the general public can be certain that the detailed contract information available in the SAM System, for example, is an award granted to the specific employer who has filed the Form LM–10.

F. The Revisions Do Not Create a Significant Burden on Employers

By using existing definitions and requiring reporting of information easily

[9] Federal Acquisition Regulations System § 3.1002.

[10] *See* E.O. 13494 (federal agencies ''shall treat as unallowable the costs of any activities undertaken to persuade employees . . . to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing'').

[11] *See* Federal Acquisition Regulations System § 4.605(b).

accessible to the filers, the Department has avoided imposing any significant burden on filers. As discussed above, the Form LM–10 uses a list of definitions adopted from the implementing regulations of E.O. 13496 (Notification of Employee Rights Under Federal Labor Laws) at 29 CFR 471.1. The Department expects that federal contractors and subcontractors are already familiar with these definitions because they are also, with minimal changes, the same definitions that already govern Federal contractors and subcontractors under E.O. 11246, Equal Employment Opportunity, and its implementing regulations. *See* 41 CFR 60–1.3 (definitions regarding obligations of federal contractors and subcontractors). Executive Order 11246 prohibits federal contractors and federally assisted construction contractors and subcontractors who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The E.O. also requires Government contractors to take affirmative action to ensure that equal employment opportunity is provided in all aspects of employment. Additionally, E.O. 11246 prohibits federal contractors and subcontractors from, under certain circumstances, taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers. E.O. 11246 is enforced by the Department's Office of Federal Contract Compliance Programs (OFCCP) and covers approximately one–fifth of the entire U.S. labor force. E.O. 11246's requirements are incorporated in applicable government contracts or subcontracts and includes nondiscrimination, notice posting,[12] annual reporting,[13] record keeping,[14] and, for contractors that meet certain threshold requirements, development and maintenance of a written affirmative action program,[15] among other requirements. Therefore, the Department expects that all filers who are federal contractors and subcontractors will already know their status as such under E.O. 11246 and its implementing regulations, *see* 41 CFR 60–1.3 and 60–1.5, and that most filers are able to easily identify the information required for Item 12.b—their UEI and federal contracting agency or agencies.

In addition, federal contractors and subcontractors are required to comply with E.O. 13496. Executive Order 13496 applies to federal contractors and subcontractors subject to the NLRA. Pursuant to E.O. 13496, covered employers are already required to know whether they are federal contractors or subcontractors under the definitions used in this revision and, if they are, to post a notice and to inform employees of their rights under the NLRA, the primary law governing relations between unions and employers in the private sector. *See* 29 CFR 471. The notice, prescribed in the regulations of the Department, informs employees of federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. The Department expects that most filers are subject to the NLRA.[16]

Several supportive comments discussed the minimal burden of the revision. Multiple comments indicated the limited nature of the burden on employers given the minimal amounts of time and effort the revisions necessitate, and that, for whatever burden does exist, it is justified by the substantial benefit to employees and the public.

As one union commenter stated, ''OLMS is not imposing an onerous burden on employers with these minor revisions,'' and the revisions ''are minor but important changes to employer's reporting requirements.'' The commenter went on to say that ''the proposed revision does not change which employers must file Form LM–10 or when or how often they must be filed. The revision mainly requires employers to check a box disclosing if they are federal contractors and, if so, to provide a federal unique entity identifier if applicable, and identify the federal agencies involved[.]'' Another union commenter echoed the sentiment: ''This is a modest revision that results in almost no additional burden on employer filers and will provide important information to OLMS, employees, the public, and other federal agencies.'' And, as another union commenter stated, ''it is worth noting that the proposed rule's required disclosures are narrowly tailored to be minimally invasive on employers.''

Comments highlighted that the form offers little burden increase. ''This small change will reap significant benefits while creating almost no additional administrative burden for LM–10 filers,'' one commenter stated. As another indicated, ''the Agency is proposing to incorporate the same definitions of 'contract,' 'contracting agency,' 'contractor' and other related terms that are included in E.O. 13496, which is currently effective and imposes obligations on federal contractors and subcontractors.'' The comment continued to rightly point out ''federal contractors and subcontractors are generally required to obtain a Unique Entity Identifier ('UEI') as a condition of performing work on federal contracts.''

As described in the burden analyses below, in Section VI.A(1), it will take filers on average five minutes to gather and enter the information required by this revision. This cost is not significant. While the Department recognizes the merits of the argument from some commenters that there should be no increase in the time estimate for the LM–10 due to this *de minimis* burden, especially as many filers will simply check ''No,'' the entry of the UEI and federal contracting agency(ies) will take slightly more time and the Department believes five minutes is a reasonable estimate for filers who have to complete it.

V. Additional Comments Received

A. Comments Concerning Potential Duplication of Existing Reporting Requirements

One comment, filed by Members of Congress, opposed the proposed Form LM–10 revision because the commenters believe requesting contractor status on the Form LM–10 elicits duplicative information. The commenters reasoned that because the public can determine whether an employer has contracts with the federal government through other governmental systems, requesting federal contractor status information for Form LM–10 is contrary to E.O. 12866. Executive Order 12866 directs federal agencies to issue

[12] Notices to be posted, 41 CFR 60–1.43 (2022).

[13] Reports and other Required Information, CFR 60–1.7 (2022).

[14] Record Retention, 41 CFR 60–1.12 (2022).

[15] Affirmative Acton Programs, § 60–1.40; 60–2.1 (2022).

[16] Employers covered by the Railway Labor Act (RLA) are not covered by E.O. 13496, however, both NLRA and RLA employers are subject to the reporting requirements of the LMRDA. Thus, RLA employers may need more time to identify which employees who are the subject of the LM–10 report have duties relating to the performance of the Federal contract or subcontract. The Department expects that only a small number of filers will be Federal contractors or subcontractors subject to the RLA. The Department received no comments on the issues of RLA coverage or lack of NLRA coverage. The Department received no comments from anyone—including specifically from RLA-covered employers or their representatives—on this subject. *See: https://www.nlrb.gov/reports/nlrb-case-activity-reports/representation-cases/election/election-statistics* and *https://nmb.gov/NMB_Application/wp-content/uploads/2021/12/FY-2021-NMB-Performance-and-Accountability-Report-PAR.pdf.*

rules that ''are required by law, are necessary to interpret the law, or are made necessary by compelling public need such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people.'' The comment asserts that an employee could search the Federal Procurement Data System (FPDS) or *USASpending.gov* websites to determine whether their employer has contracts with the federal government. The comment also mentions that a listing of federal government contractors is available from the Small Business Administration and the General Services Administration.

While the Department acknowledges that some information on contractor status is available on other government websites, the Department disagrees that any duplication in public disclosure of contractor status negates or undermines the need for this revision or is contrary to E.O. 12866. The websites and databases where this information is currently available are either not designed for the general public or provide a far greater level of detail about federal contracts, which is not duplicated in the Form LM–10 by this rule. Also, as mentioned above, this minor addition to the Form LM–10 will significantly reduce confusion between employers with similar names, as it can readily distinguish which employer is which in these expansive databases. Thus, consistent with E.O. 12866, the Department has identified a problem and chosen a method which is most cost-effective and tailored to impose minimal burden on regulated entities. The information required by the revision, while minimal, is not otherwise easily available to the public. The change places almost no burden at all on reporting entities while, in contrast, the alternative solution offered by the comment would place the burden to research the reportable information on the very population for whom disclosure is intended to benefit.

For example, subcontractor information is available on the GSA Electronic Subcontracting Reporting System (ESRS), but this information is made available only to individuals with a registered government or contractor log-in account. The LM–10 forms are offered for public viewing on the OLMS Online Public Disclosure Room (OPDR), which does not require a registered government or contractor account. Including contractor identification information on the Form LM–10, available on the OPDR, will allow employees and the public to easily identify all filers who are paid under federal contracts, regardless of whether they are a prime contractor or a subcontractor. This reporting will provide a more transparent representation of when federal dollars go to filers who may also make disbursements to labor relations consultants designed to persuade employees regarding their rights to organize and bargain collectively or surveil employees. *See* Form LM–10, Items 8.b. through 8.f. This information cannot be readily ascertained from the SBA or GSA contractor lists.

The reporting of contractor status on the Form LM–10 is limited to identifying information and is therefore minimally duplicative of the more detailed reporting on the *USASpending.gov* website or what is listed on the GSA and SBA contractor lists. OLMS only requires the UEI number and the identification of the contracting agency and no other details of the contracts provided on other government lists. The UEI number required by the Department is the same number reported on the *USASpending.gov* website, but the final rule does not require duplicative reporting of the detailed financial information on federal contracts provided on that website.

The *USASpending.gov* website is compiled by the U.S. Department of the Treasury under the authority of the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended by the Digital Accountability and Transparency Act (DATA Act), codified at 31 U.S.C. 6101 note. Consistent with the FFATA, detailed information about federal awards must be made publicly available on *USASpending.gov*. The DATA Act expanded the FFATA for purposes that include linking ''federal contract, loan, and grant spending information to programs of federal agencies to enable taxpayers and policy makers to track federal spending more effectively. . . .'' [17] The website is generally adapted for the American public to show constituents how the federal government spends money every year. Federal agencies covered by the DATA Act report spending data to Treasury for posting on the website using standardized data elements, and Treasury also gathers required Federal agency spending data from financial and other government systems (such as the Federal Procurement Data System (FPDS)). Prime contractors and subcontractors that received Federal awards directly from federal agencies also self-report data on their awards to the FFATA Subaward Reporting System (FSRS). The FSRS is a component of ESRS (mentioned above) but requires different reports than ESRS. FSRS requires reporting of executive compensation and sub-award recipient information by prime contractors, while ESRS requires reporting of the Individual Subcontract Report, Summary Subcontract Report, and Commercial Report, required, in effect, under the FFATA. One purpose of the DATA Act was to ''simplify reporting requirements for entities receiving Federal funds by streamlining reporting requirements. . . .'' [18] It also provides that the method of collection and reporting data, in the context of subawards, shall minimize the burdens on Federal recipients and sub-recipients.[19] Requesting contractor identification numbers is not an overly burdensome or a duplication of financial reporting, as it does not require any additional information required by the FFATA and DATA Act, but simply requires the reporting of an identification number already known to a federal contractor. For example, employers filing a Form LM–10 are not required to include information on whether contracts are awarded to Small Businesses, Women-Owned Small Businesses, Veteran-Owned Small Business, and related characteristics, which are to be reported to the ESRS. Reporting contractor identification numbers on the Form LM–10 is not unnecessarily burdensome for federal award recipients because the employer is already aware of their identification number from reporting under the FFATA.

An international union commenter observed that there is ''a significant gap in data concerning the scope of dissuasion campaigns undertaken by federal contractors and subcontractors'' to dissuade employees from joining a union. A nonpartisan organization agreed that the revision will help fill this information gap. Nine commenters supported the revision so that there will be a public record of which contractors engage in persuader activities. The Department agrees that such a public record is consistent with congressional intent to publicize a ''full explanation'' of reportable activities and will bridge an important information gap. 29 U.S.C. 433(a). These benefits outweigh any

[17] 31 U.S.C. 6101 note (DATA Act—Digital Accountability and Transparency Act of 2014, Pub. sec. 2(1)).

[18] Public Law 113–101, sec. 2(3).

[19] 31 U.S.C. 6101 note (FFATA sec. 2(d)(2)(A)); *see also* 31 U.S.C. 6101 note (DATA Act sec. 5) (discussing, in general, efforts to avoid unnecessary duplication and burdensome reporting).

minor duplication of contractor identifying information in government databases, especially when, as discussed above, some employees are not already aware that their employers are federal contractors. By including federal contractor identification on LM–10 Forms, the Department is linking federal contractor status with employer reporting to the Department to enable workers and the general public to easily evaluate federal spending within the context of the LMRDA. As mentioned above, the GSA and SBA websites provide lists of contractors within the context of those agencies. The SBA directory, for example, provides a listing of those contractors who have subcontracting plans with small businesses. Neither GSA nor SBA publishes reportable information under the LMRDA. Including basic identifying information about federal contractor status on LM–10 Forms allows OLMS, employees, and the general public to have all the relevant information in one, easily accessible reporting database pursuant to the LMRDA.

Similarly, Federal contractor status as required by OLMS in this revision provides less detailed information than the reporting required by the GSA *SAM.gov* website and is easier for the public to access and use. *SAM.gov* is generally designed for contractors who may, among other tasks, access publicly available award data and federal assistance listings. *SAM.gov* includes contract data derived from the FPDS, as well as some additional information submitted by *SAM.gov* contractor account users. With a *SAM.gov* user account, one can analyze federal spending by federal organization, geographical area, business demographics, and product or service type, among other characteristics. The Department does not seek to duplicate this detailed contract information provided on *SAM.gov*, but rather is requesting only for Form LM–10 filers to report their UEI and federal agency involved. Additionally, *SAM.gov* does not focus on LMRDA-reportable activities. In contrast to *SAM.gov*, the OLMS OPDR provides Form LM–10 data to the public and does so without the barrier of a user account. Therefore, any duplication of information on the Form LM–10 poses a minimal burden, if any, to the reporting entity and bridges an important information gap by making this information more easily accessible to the general public. OLMS, employees, and the public should not have to research voluminous collections of contracting information and multiple websites to glean which federal contracts are being fulfilled by employees who are subjected to persuader, surveillance, or unfair labor practice activity. Employees and the general public should have the ability, by getting the UEI, to learn the extent to which the filer engages in reportable activity while providing its goods and services to the Federal government.

Disclosing federal contractor status on the Form LM–10 is also consistent with E.O. 12866. Taken holistically, E.O. 12866 requires that a rulemaking identify a problem it intends to address, choose a method which is most cost-effective, and tailor that method to impose the least burden on society. Through its enforcement of the LMRDA, the Department ensures public, transparent reporting of certain activities that impact protected labor rights. The Department determined that filers engaging in activities that may impact protected labor rights should disclose whether they hold government contracts. Through this rule, the Department has chosen to require minimal information about federal contractor status. While the request of federal contractor status on Form LM–10 may also serve the function of the DATA Act's interest in linking federal expenditures to federal agency programs, as mentioned above, this is wholly distinct from the problem of transparent reporting under the LMRDA. Therefore, while the federal contractor status information may be available elsewhere, it does not make the regulation, in total, duplicative as to be in contravention of E.O. 12866.

The revision will allow employees access to the ''full explanation'' and circumstances of employers' reportable activity, including federal contractor status, in a location and context in which it is more accessible and useful to them. While general information about federal contracts is provided via other means, including this information on the Form LM–10 furthers the interest of transparency as intended by the LMRDA. Employees, union organizers, and the general public who are reviewing LM forms are more accustomed to reviewing documents like the Form LM–10 than extensive procurement- and employer-centric database platforms. Further, an employee or member of the public can more easily ascertain from the revised Form LM–10 whether the federal contract directly impacts a specified employment group because the federal contract identification is provided alongside information about the employer and subject group of employees. Minor redundancies in reportable information do not outweigh the benefits of having all LMRDA reportable information in one, easily accessible site on the Department's website.

The LMRDA reporting regime emphasizes access to information at the cost of minor redundancies. By statute, the information reported on one LM form may well appear in another LM form. Employer reporting (under 29 U.S.C. 433(a)) consists of the same information reported by labor relations consultants (under 29 U.S.C. 433(b)). In addition, employers report (under 29 U.S.C. 433(a)(1)) the same payments reported as receipts by labor unions (under 29 U.S.C. 431(b)(2)). Further, employers report (under 29 U.S.C. 433(a)(1)) the same payments reported by labor union officers and employees (under 29 U.S.C. 432). Plainly, therefore, the LMRDA was constructed to allow the public to more easily find relevant information by putting identical information in different reports targeted to different audiences.

In addition, this revision is similar to other Department requirements that include minor redundancies and cross-references to information provided to other governmental agencies in more depth. For example, on Form LM–2, labor organizations are required to report whether they have any political action committees (PAC), the full name of each PAC, and in addition, they must list the name of any government agency with which the PAC has a publicly available report, and the relevant file number of the PAC.[20] Despite being arguably redundant, these disclosures allow for a greater degree of transparency for union members and the public, by allowing viewers of the reports to connect such report with other labor related disclosures. The revision follows this same pattern when it takes three discrete pieces of information from locations where those interested in persuader reporting are not likely to look and brings it into the Form LM–10 where those who are interested will easily come across it.

B. Comments Concerning First Amendment Protected Activities and Other Employee and Employer Rights

Two comments opposed the proposed Form LM–10 revision because, they argued, the revision would have a ''chilling effect'' on contractors' right to engage in First Amendment-protected speech. The commenters asserted that the Department intends the revision to discourage lawful persuader activities by federal contractors. One commenter was concerned that the revision would

[20] LM–2 Instructions, Item 11, Item 69.

''restrict fair and open competition and discriminate against nonunion construction workers and businesses.'' The commenters noted that under the LMRDA, employers are permitted to hire outside labor relations consultants, including attorneys, to help persuade their employees regarding union organizing or collective bargaining representation. The commenters believed that the revision would increase public pressure on federal contractors and will assist advocacy efforts against employers. The commenters opined that ''the clear intent of the proposed rule is to encourage labor unions and other pro-union advocates to pressure federal agencies to stop awarding contracts to federal contractors who engage in lawful persuader activity.'' The commenters expressed concern that the government will use the information collected as a result of the revision to disqualify companies that engage in persuader activity from being awarded federal contracts.[21] The Department disagrees with these comments. The commenters' concern about a chilling effect appears purely speculative as they have not given any examples of how revealing basic identifying information of employers engaging in reportable activity has chilled speech or led to federal agencies barring or disqualifying employers from federal contracting. The argument also assumes bad faith on the part of labor organizations and federal agencies which the comment presumes will not comply with procurement standards.

There are safeguards built into the procurement process, *i.e.,* how agencies select successful bidders on contracts, that protect against the kinds of harm the commenters envision. When awarding contracts, agencies are generally required to follow strict rules designed to promote open and fair competition among vendors, without any improper bias or inappropriate consideration. That includes requirements for announcement in advance of the criteria to be used in selecting the winning firms. See, for example, Federal Acquisition Regulation (FAR) (48 CFR) 15.203(a), on the content of requests for proposals, and FAR 15.304(d), on evaluation factors and significant subfactors. See also FAR 3.101–1 which sets strict standards of conduct for the acquisition workforce, including ''complete impartiality'' and ''preferential treatment for none.'' In cases where there is reason to believe a firm has engaged in conduct that may be a cause for debarment or suspension, agencies must follow suspension and debarment regulations at FAR Subpart 9.4, Debarment, Suspension, and Ineligibility, or parallel suspension and debarment rules at Part 180 of Title 2 of the Code of Federal Regulations, for non-procurement transactions. Those suspension and debarment rules provide firms proposed for debarment or that are being suspended notice of such action and an opportunity to contest such action. See, for example, FAR 9.406–3, Procedures.

These commentors misinterpret First Amendment jurisprudence, and the Department is not persuaded by their speculative assertions. Initially, there is some tension between the commenters' concern that the Department is unnecessarily duplicating information and their concern that the disclosure of this already available information on the LM–10 will have a chilling effect. While the Department agrees that the revision will make contractor status available in a new context, the commenters' free speech concerns are both speculative and unsupported by First Amendment precedent.

The argument that the revision will discourage lawful persuader activities by federal contractors, as some commenters fear, is unsupported because persuader activities have been reported and disclosed since the inception of Form LM–10 reporting, yet no commenter identified evidence of a chilling effect. As discussed above, the Form LM–10 has always required filers to disclose the name of the employer, the reportable activity, and a ''full explanation of the circumstances'' of the activity, which encompassed identification of the group of employees subject to that activity. Federal contracting agencies have long had the means to identify federal contractors who also file LM–10 reports. No commenters identified evidence of contractors being barred, disqualified, ''blacklisted,'' or steered away from federal contracting as a result of such connections. If being publicly linked to persuader activity had a negative impact on an employer's ability to obtain federal contracts, that issue would likely have already arisen. The placement of this existing, publicly available information in the convenient Form LM–10 report does not inflict a constitutional injury, as discussed below.

In multiple opinions, the Supreme Court has held that transparency promotes informed decision making amongst shareholders and the electorate, rather than chilling speech. *See Citizens United* v. *Fed. Election Comm'n,* 558 U.S. 310 (2010); *McConnell* v. *Fed. Election Comm'n,* 540 U.S. 93 (2003); *Buckley* v. *Valeo,* 424 U.S. 1 (1976). In *Citizens United,* the Court stated that ''disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.'' *Citizens United,* 558 U.S. at 371. In upholding the disclosure requirements of the statute there at issue, the Court discussed *Buckley* v. *Valeo* and the Court's later opinion in *McConnell* and instructed that: ''Disclaimer and disclosure requirements may burden the ability to speak, but they . . . 'do not prevent anyone from speaking'; rather they help citizens to 'make informed choices in the political marketplace.' '' 558 U.S. at 367 (internal citations and quotations omitted). The interests served by requiring employers to report on persuader and surveillance activities are also congruent with those interests served by disclosure provisions in federal and state laws regulating lobbyists.[22]

In support of its argument that the proposed revision would chill LM–10 filers' protected speech, one commenter cited *Chamber of Commerce* v. *Brown,* 554 U.S. 60 (2008). This commenter argued that the proposed revision is invalid for the same reasons as those relied on by the U.S. Supreme Court in striking down a California State law, which prohibited certain employers who received certain state funds from using such funds to ''assist, promote, or

[21] One commenter stated a fear of being ''blacklisted'' as a federal contractor as a specific potential cause of the chilling effect. Another was ''concerned the proposed rule will be used to steer federal contracts away from companies that exercise their right to speak with their employees about unionization.''

[22] *See U.S.* v. *Harriss,* 347 U.S. 612, 625–626 (1954) (holding that ''those who for hire attempt to influence legislation'' may be required to disclose the sources and amounts of the funds they receive to undertake lobbying activities); accord, *e.g., Fla. League of Prof'l Lobbyists, Inc.* v. *Meggs,* 87 F.3d 457, 460 (11th Cir. 1996) (upholding state lobbyist disclosure statutes in light of state interest in helping citizens ''apprais[e] the integrity and performance of officeholders and candidates, in view of the pressures they face''). *See* also *Nat'l Ass'n of Mfrs.* v. *Taylor,* 582 F.3d 1, 9–10 (D.C. Cir. 2009) (upholding requirement that registered lobbyists disclose the identity of organizations that made monetary contributions and actively participated in or controlled the registrant's lobbying activities); *Kimbell* v. *Hooper,* 164 Vt. 80, 85–88, 665 A.2d 44 (1995) (upholding state lobbying statute against First Amendment challenge); *Gmerek* v. *State Ethics Comm'n,* 569 Pa. 579, 595, n. 1, 807 A.2d 812, 822 (2002) (dissent) (collects cases in which state lobbying disclosure laws were upheld against First Amendment and other challenges).

deter union organizing.'' *Id.* at 62. The decision in *Brown* was based on the Court's determination that this prohibition was preempted by Section 8(c) of the NLRA because it regulated activity (non-coercive employer speech on the subject of union organizing) that Congress intended to leave unregulated. *Id.* at 68–69.

The Department, as discussed above, has explicit authority from Congress to prescribe the form of reports that employers must file to disclose certain payments, including lawful payments, related to their activities around union organizing, collective bargaining, and surveillance of union activity. 29 U.S.C. 433, 438. The revision does not change or expand the payments or activities on which employers must report. Accordingly, there is no speech that was formerly protected from disclosure that this revision now brings to light. It simply requires current filers to provide additional, basic information about their status as a federal contractor, which will promote the congressional interest in free debate around issues of union organizing and collective bargaining.

The Supreme Court has also held that it would not strike down a statute based on speculative arguments, particularly those relating to assertions that amount to ''self-censorship'' or, in this case, self-censorship for fear of being disqualified as a federal contractor. *U.S.* v. *Harriss,* 347 U.S. 612, 626 (1954) (holding that ''those who for hire attempt to influence legislation'' may be required to disclose the sources and amounts of the funds they receive to undertake lobbying activities). The Court stated that the hypothetical hazards of self-censorship or restraint are at most indirect and too remote to require striking down a statute which on its face is otherwise plainly within the area of congressional power and is designed to safeguard a vital national interest. *Id.* Indeed, the Court has held that those resisting disclosure can prevail under the First Amendment if they can show ''a reasonable probability that the compelled disclosure [of personal information] will subject them to threats, harassment, or reprisals from either Government officials or private parties.'' *John Doe No. 1* v. *Reed,* 561 U.S. 186, 200 (2010) (upholding the state of Washington's Public Records Act requirements making referendum petitions available to the public), *citing Buckley* v. *Valeo,* 424 U.S. 1, 74 (1976). The Department is requiring limited additional disclosure that is within its delegated authority under section 208 of the LMRDA. The commenters have not shown any actual basis or reasonable probability for their fear of being disqualified or steered away from federal contracting due to revealing their contractor status on the Form LM–10.

Moreover, the Courts of Appeals for the Fourth and Sixth Circuits, in *Master Printers of America* and *Humphreys,* determined that a showing of threats, harassment, or reprisals to specific individuals must be shown to prove that government regulation will substantially chill free speech. *Master Printers of America* v. *Donovan,* 751 F.2d 700, 704 (4th Cir. 1984)*; Humphreys, Hutcheson and Mosely* v. *Donovan,* 755 F.2d 1211, 1220 (6th Cir. 1985). In *Master Printers of America* and *Humphreys,* the Courts of Appeals for the Fourth and Sixth Circuits focused on four factors in determining whether section 203(b) of the LMRDA had a deterrent effect and therefore violated free speech rights: (1) the degree of infringement on free speech; (2) the importance of the governmental interest protected by the LMRDA; (3) whether a ''substantial relation'' exists between the governmental interest and the information required to be disclosed; and (4) the closeness of the fit between the LMRDA and the governmental interest it purports to further. *Master Printers of America,* 751 F.2d at 704; *Humphreys,* 755 F.2d at 1220.

The Fourth Circuit in *Master Printers of America* determined that the challenger had not met its burden of showing that the section 203 disclosures had exposed its members to economic reprisal, loss of employment, threat of physical coercion and other manifestations of public hostility directed at specific individuals necessary to establish a ''deterrent effect.'' 751 F.2d at 704–705. In *Humphreys,* the Sixth Circuit also rejected First Amendment challenges to the disclosure obligation under section 203. The court concluded that the persuader law firm had failed to meet the ''deterrent effect'' standard for demonstrating an unconstitutional violation of its right to freely associate. 755 F. 2d at 1220–1222. The court rejected the persuader's free speech claim, ruling instead that the disclosures ''are unquestionably 'substantially' related to the government's compelling interest'' in preventing improper activities in labor-management relations. 755 F. 2d at 1222. In support of that conclusion, the court observed that the required disclosures would help employees exercise their right to support or not support a union, ''enabl[ing] employees in the labor relations setting, like voters in the political arena, to understand the source of the information they are given during the course of a labor election campaign.'' *Id.* The courts were able to examine evidence of the alleged chilling effect in reaching their conclusions. Neither the Department nor the commenters, of course, have at this stage of the final rule the benefit of any actual evidence to review the effects of requiring the disclosure of whether an employer is a federal contractor on the Form LM–10.

The requirement that a filer indicate whether it was a federal contractor or subcontractor in the prior fiscal year, and include related identification information, does not restrict employers from hiring outside labor relations consultants, including attorneys, to persuade employees regarding union organizing or collective bargaining, any more than the existing LM–10 and LM–20 reporting requirements. The revision does not discourage lawful persuader activities as labor relations consultants may still persuade employees in conformity with the NLRA and First Amendment rights of the employer and labor relations consultants. The requirement that employers report labor relations consultant activity is unchanged. In addition, both the public and the employees whose rights are at issue have an interest in more fully understanding the financial circumstances of employers who surveil employees, commit unfair labor practices, or persuade employees regarding their rights to organize or bargain collectively. *See* S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–07.

Next, a commenter argued that the revision is preempted by the NLRA because it affects activity that is allowed by that statute. The Department disagrees. As discussed above, Congress was aware that some reportable activity would be lawful under the NLRA and still chose to require that that same employer activity be publicly reportable under the LMRDA. *See* S. No. 86–187. Rep, at 81–82, reprinted in 1 LMRDA Leg. Hist., at 477–478.

One commenter said that the revision will support employees and the public as they choose whether to ''engage in their own appropriate First Amendment protected persuasion activity.'' Another commenter asserted that it is ''improper for OLMS to collect information with the objective of encouraging the media and advocacy groups to use it to browbeat federal contractors who engage in persuader activity.'' The Department rejects the contention that the revision is intended to encourage the browbeating of federal contractors. Like the contention above that the revision will chill speech, it is speculative and unsupported by the

facts. Both presuppose that an employer that discloses persuader activity and federal contractor status will be subjected to intimidation. However, LM–10 filers' persuader activities have long been available to the public by the very same forms, and the filers' federal contract status has always been discoverable by the public through different data sets, yet no commenter asserted that ''browbeating'' has occurred. As was stated in the proposed revision, the objective of these revisions is to provide increased transparency for the public as a whole. This public exposure will allow for an open public discussion and debate, not intimidation, about the prevalence of persuader activity and the extent to which specific federal agencies might be indirectly supporting such activities by doing business with employers that engage in persuader activities.

One commenter, a non-profit research and advocacy organization, believed that the revisions would result in small and mid-sized businesses not seeking legal advice or counsel on their rights and responsibilities under the NLRA or the Railway Labor Act. The commenter asserted that these smaller businesses ''are more likely to be run by managers with little experience relating to collective bargaining and consequently more need to seek outside legal counsel to advise them on their legal rights and responsibilities.'' The commenter said that these ''companies are less likely to seek that advice if doing so gets them flagged on a public list.'' The commenter believed that the ''legal firms that these companies could afford are less likely to provide this advice due to concern over targeted campaigns by union activists.'' The commenter asserted that this ''will result in workers being less-informed of their rights under those laws, as unions are unlikely to fully explain rules that allow workers to opt out of membership or to hold their union to account.'' Further, according to the commenter, ''there is reason to be concerned that it could result in workers being uninformed regarding the practical impact of collective bargaining on their workplace and their relationship with their employer, their rights under the Supreme Court's *Beck* decision [23] or any rights they may have if they reside in a state with a right to work statute.'' The Department disagrees with the premise of this comment because seeking legal advice does not trigger an employer's duty to file a Form LM–10. *See* 29 U.S.C. 433(c). Therefore, the commenters conclusions based on that premise are also unpersuasive. Moreover, these employers already have a duty to file Form LM–10s for any covered activity. The principal disclosures secured by the Form LM–10 are unchanged; there is no evidence that the addition of a government contractor checkbox would in itself chill any activities.

The comments also referenced the right of employees to obtain balanced and informed input from both the employer and the labor organization when employees decide whether to unionize. Again, the commenters seemed concerned that the revision would affect this balance by chilling employer free speech or making decisions for workers instead of allowing workers to make their own organizing and collective bargaining decisions. As discussed above, the Department disagrees. The commenters offered no specific examples of chilled speech, and the revision takes no position on whether or how employees should exercise their rights—it simply enables employees to easily access information that gives them more context about those decisions.

C. Comments Outside the Scope of This Rulemaking

Some comments offered perspectives on issues that fell outside the scope of this rulemaking or offered reasons for the revision upon which the Department does not rely. While not amongst the reasons that the Department is adopting the revision, some commenters provided examples of how the information made available by the revision might be helpful outside the LMRDA context, which the Department will address in this section. Although the Department does not rely on these examples as a reason to promulgate the revision, the collateral consequences of the rule may provide additional benefits for the public. For example, a union commenter highlighted that the form may prompt employees of federal contractors to become aware of protections afforded to them under the Walsh-Healey Public Contracts Act. Similarly, the commenter outlined how a similar dynamic exists between private sector service employees and the McNamara-O'Hara Service Contract Act, as well as other Executive Orders. And regardless of their industry, the commenter believes employees should be made aware of their employer's status because all federal contractor employees are protected when whistleblowing under the False Claims Act when reporting certain instances in which their employer attempts to defraud the government. The Department believes these potential benefits are excellent examples of the derivative good that the increased transparency of the revisions will provide.

Further, even knowing that the employer is a contractor, employees do not necessarily know how and where they can find additional information about the contractor. With knowledge of the contractor status and the UEI, workers and the public will be able to connect the Form LM–10 reports with other disclosures, as mentioned by this commenter. This cross-referencing furthers transparency in a variety of areas while limiting the burden on filers. Therefore, the efficient accessibility of federal contractor status is in the interest of the American public and any minimal duplication that may exist serves the interest of transparency.

Regarding revisions to Form LM–10, many unions offered an array of amendments to other items on the form, in addition to Item 12. One policy center commenter suggested that the Department ''should look into requiring that federally-assisted contractors check a similar box, along with state and local contractors.'' Such adjustments fall outside the scope of the proposed revisions, and while it will not be considered for adoption here, the Department will make note of this request as it considers future rulemaking.

Multiple union commenters indicated that the Department must significantly increase its Form LM–10 enforcement and offered statistics on declining reports being filed over the last decade despite this not being accompanied by a decrease in persuader activity. One union commenter provided specific examples of particular employers who, in the commenter's opinion, owed Form LM–10s. The Department continues to enforce all provisions of the reporting requirements of the LMRDA, including the Form LM–10, and any employee, union organizer, or other member of the public may report instances in which it believes a Form LM–10 is owed and has not been submitted by an employer.[24]

A union commenter argued that the Form LM–10 should be filed as soon as the employer engages the services of labor relations consultants, offering immediate availability to the public. The LMRDA does not offer flexibility in when the Form LM–10 (or any other employer report) must be filed, explicitly requiring annual reporting in Section 203(a) of the Act. 29 U.S.C.

[23] *Communications Workers of Am.* v. *Beck,* 487 U.S. 735 (1988).

[24] Members of the public may submit information about entities which need to report by emailing *olms-public@dol.gov.*

433(a). The Form LM–20 documenting the labor relations consultant-side of the persuader agreement, on the other hand, is due within 30 days of the labor relations consultant entering into the agreement. 29 U.S.C. 433(b).

Multiple commenters advocated for additional minor changes. One union commenter offered a number of additional changes to the LM–10 and its instructions focused on providing more examples of reportable activity under Items 8.b, 8.c, and 8.d. Another commenter outlined various form sections and new, recommended form language. While the Department agrees with providing additional examples of reportable activity to increase compliance rates, this can be accomplished through the publicly available Form LM–10 Frequently Asked Questions and other compliance materials. Further alterations to the instructions and form beyond those outlined in the revision proposal are out of the scope of this rulemaking.

Some union commenters discussed the idea of updating the Electronic Forms System to allow for cross-matching LM–20s and LM–21s to LM–10s. These commenters, as well as others, also advocated vigorously that the focus of any reporting clarifications should be regarding activity pursuant to section 203(a)(2) and (3), 29 U.S.C. 433(a)(2) and (3), not section 203(a)(4) and (5), 29 U.S.C. 433(a)(4) and (5), even offering numerous examples for those provisions that they believe should be explicitly stated in the instructions.[25] These commenters offered examples even for section 203(a)(4), emphasizing the holistic approach that improving the Form LM–10 over time should take.

While ultimately these concerns fall outside the scope of this rulemaking, the Department is reviewing these examples and those submitted by other commenters. Compliance assistance material, as mentioned, is another excellent avenue for providing examples so that employers understand the activity that they should report.

One comment advocated for specific factors that the government should consider when awarding federal contracts. Another commenter said that the revision is not necessary to prevent federal payments for persuader activities because the current regulations regarding E.O. 13494 are sufficient. These topics are outside the scope of the Department's rule. In making the revision, the Department is not relying on any benefits it may provide in enforcement of E.O. 13494 or other federal procurement standards.

D. The Revision May Provide Other Benefits to the Government

While not amongst the reasons that the Department is adopting the revision, some commentors raised other benefits to the government, outside of the LMRDA context, that the Department will address in this section. First, regulations and an Executive Order prohibit federal contractors from obtaining reimbursement from the Government for the costs of any activities they undertake to persuade employees to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively. E.O. 13494, 74 FR 6101; 48 CFR 31.205–21. Several commenters noted that the LM–10 revision is consistent with E.O. 13494. A union commenter remarked, ''this [revision] will also serve an important governmental function . . . enabl[ing] the public, the various federal contracting agencies, Congress, OLMS, and any other federal agencies to better track the use of federal taxpayer dollars and federal funds.'' A policy institute commenter stated the new disclosure will make it easier for federal agencies to identify the work that should not be reimbursed under federal acquisition regulations and E.O. 13494. The Department agrees that is a possible residual benefit of the revision. One individual commenter stated ''[t]he federal government has a special interest in the companies it gives federal contracts to and therefore should be able to monitor which companies are federal contractors when looking at the Form LM–10.'' Although these are not the Department's reasons for the Form LM–10 revision, they may be secondary benefits of the rule.

Other commenters remarked on a need for the Department to work closer with other agencies, especially the NLRB, to identify reportable activities. While the information gained through the revision could aid in efforts to prevent circumvention and evasion of reporting requirements occurring among federal contractors, such efforts are outside of the scope of this rule.

VI. Regulatory Procedures

A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review)

Under E.O. 12866 (as amended by Executive Order 14094), the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. As amended by Executive Order 14094, section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $200 million or more; or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, territorial, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive Order. OMB has determined that this revision is a significant regulatory action under E.O. 12866.

Executive Order 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitative values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

[25] Section 203 (a)(4) and (a)(5) require reporting in association with an agreement or arrangement and payment to a labor relations consultant or other independent contractor where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer. 29 U.S.C. 433(a)(4)–(5). Whereas 203(a)(2) and (a)(3) require the employer to file a report for payments to employees with an object to persuade other employees to exercise or not to exercise the right to organize and bargain collectively through representatives of their own choosing or expenditures wherein their object is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer. *Id.* at 433(a)(2)–(3).

1. Costs of the Updated Form LM–10 for Affected Employers

The Form LM–10 is filed by private business entities that engage in certain financial transactions or arrangements, and these employer entities only have reporting obligations during fiscal years in which the entity makes such transactions or enters in such arrangements. As such, the Form LM–10 is not an annually mandatory form, so not all employers must file the Form LM–10 in a given year. Further, as has been discussed, the revisions to the Form LM–10 do not add a new form or remove any forms, nor does it expand or contract the circumstances under which it is necessary for an employer to file an LM–10. This revision slightly changes the structure of Item 12 by adding one checkbox and two items for certain filers. The Department will account for the potentially minimal costs of the slight changes to the structure of Item 12.

Based upon estimates for the existing Form LM–10 and other LM forms, the Department adopts its proposed estimate that the new Item 12.b. will take approximately 5 minutes to complete, thus adding approximately 5 minutes of reporting burden to the existing Form LM–10 (which the current existing instructions estimate to take approximately 35 minutes to complete, including the current Item 12). Five minutes is an estimate that takes into account that not all filers will be federal contractors or subcontractors and not all federal contractors or subcontractors that file will be required to complete the two lines in Item 12.b.

The Department made this burden determination for the following reasons. Some filers will spend zero minutes on Item 12.b. because, after only checking ''Yes'' to Item 8.a., the form will automatically check ''N/A'' and grey out the rest of Item 12.b. as no answer will be required. Many filers will need less than 5 minutes to address Item 12.b. because they will only need to check ''No,'' to indicate that they are not a federal contractor or subcontractor.

The Department does not attribute any burden to the revision's clarification requiring the filer to provide identifying information about the employees who are the subject of the employer's activities. This has always been a requirement. *See* unrevised Item 12 (''Provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises or payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements.''). This necessarily includes identifying certain payments, expenditures, agreements, and arrangements regarding employees.

As described above, federal contractors and subcontractors subject to reporting requirements are already aware of their UEI (if they have one) and will need no more than 5 minutes to complete Item 12.b. Checking ''Yes'' regarding their status as a federal contractor or subcontractor will only take a few minutes because most federal contractors and subcontractors are already required to be familiar with the definitions here regarding that status, which are based on E.O. 11246 and E.O. 13496 and their implementing regulations. *See* 41 CFR 60–1.3 (definitions regarding obligations of federal contractors and subcontractors); 29 CFR 471 and note 3, *supra* (including eight definitions OLMS adopts). The Department received some comments in support of its time estimate and no comments indicating that contractors need more time to complete Form LM–10 based on these revisions or that the Department's estimate is inaccurate.

Similarly, most federal contractors and subcontractors should be able to easily enter their UEI. *See* note 1, *supra.* If a filer does not have a UEI, the filer should so state in Item 12.b. Along with their UEI, federal contractors and subcontractors will enter the name of the federal contracting agency(ies) on the two lines in Item 12.b. If providing the name of a contracting agency would reveal classified information, the filer may omit the name of the agency.

Employers covered by the Railway Labor Act (RLA) are not covered by E.O. 13496. Executive Order 13496 applies to federal contractors and subcontractors subject to the NLRA. Pursuant to E.O. 13496, NLRA covered employers are required to know whether they are federal contractors or subcontractors and, if they are, to post a notice and to inform employees of their rights under the NLRA, the primary law governing relations between unions and employers in the private sector. *See* 29 CFR part 471. The notice, prescribed in the regulations of the Department, informs employees of federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. RLA employers do not have this posting requirement and therefore may need more time to identify whether the employees who are the subject of the LM–10 report have duties relating to the performance of a federal contract or subcontract.

While some RLA-covered employers may need more than 5 minutes, because they may not be immediately familiar with whether the subject group of employees perform work on a federal contract or subcontract (for Item 12.b.), the Department does not expect RLA-covered filers to be as numerous as NLRA-covered filers. The Department presumes that the large majority of employers that constitute federal contractors or subcontractors would need no more than 5 minutes for Item 12.b., because they will be covered by the NLRA and therefore they will already be required to retain information relevant to Item 12.b., including whether the subject group of employees performed work under such contracts, pursuant to E.O. 13496 (Notification of Employee Rights Under Federal Labor Law). No comments received opposed this view.

While a few filers may have a slightly higher time burden, and some will have a time burden that is lower than 5 minutes, the Department has accounted for this in determining the estimated time burden of 5 minutes. The Department asked for comment on this point, specifically asking whether to increase the estimate to 15 minutes. Some commenters noted that the additional time burden was insignificant or would be substantially less than 5 minutes, and none of the commenters argued for greater than 5 minutes. Thus, the Department adopts its five-minute estimate.

The Department estimates that the 5 additional minutes, just as the previous 35-minute total estimate, represents an estimate of affected filers. Indeed, not all Form LM–10 filers will need to complete the new Item 12.b.[26] More specifically, filers need not fill out Item 12.b. if they have only checked ''Yes'' to Item 8.a. Rather, only if a filer answers ''Yes'' to any of Items 8.b.–8.f. would they need to answer Item 12.b. Additionally, filers who check ''No'' on Item 12.b. will not have to enter any further information in Item 12.b., further decreasing the estimated time burden. Further, because the Form LM–10 represents a situationally occurring reporting requirement rather than an annual reporting requirement, it would be imprudent to try to estimate differing burden levels associated with first-year

[26] In FY 22, based upon an electronic review of reports submitted, OLMS received approximately 235 Form LM–10 reports covering persuader-related transactions and agreements, among the 496 total Form LM–10 reports received during that year. See *https://www.dol.gov/agencies/olms/data.* and subsequent exposures to the new questions.

exposure and subsequent exposures to the new questions.

To determine the cost increase per Form LM–10 filer associated with the new Item 12, and as proposed, the Department utilized an approach consistent with the information collection request (ICR) filed with the Office of Management and Budget pursuant to the Paperwork Reduction Act (PRA). In the existing ICR, the Department assumed that employers would hire a lawyer to complete the form, and it derived the average hourly salary for lawyers ($71.17) from the Occupational Employment and Wages Survey, May 2021 survey (released in March 2022), Table 1, from the Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES) Program. *See: https://www.bls.gov/oes/current/oes231011.htm.* Further, the Department determined the total compensation (salary plus fringe benefits) by increasing the hourly wage rate by approximately 45.0 percent, which is the percentage total of the average hourly benefits compensation figure ($12.52 in December 2021) over the average hourly wage figure ($27.83 in December 2021). *See* Employer Costs for Employee Compensation Summary, September 2021 (released in December 2021), from the BLS at *http://www.bls.gov/news.release/ecec.nr0.htm.* Thus, the Department increased its estimate of the total hourly compensation for lawyers to $103.20 ($71.17 × 1.450).

As such, the average individual employer filing the LM–10 as modified under this rule can expect to incur an increased cost per year of, approximately, $8.60 ($103.20 × 5/60 = $8.60).

Although not all Form LM–10 filers will need to complete Item 12.b., the Department nevertheless estimates that each of the approximately 580 annual Form LM–10 filers (based upon a 5-year average of submitted reports from FYs 18–22) will incur the additional 5 minutes of annual reporting burden. See: *https://www.dol.gov/agencies/olms/data.* As such, the overall cost of this revision for all entities filing a Form LM–10 per year is $4,988 ($8.60 × 580 reporting entities = $4,988). The Department asked for comments on this approach, and, other than the comments addressed above, did not receive any response.

2. Summary of Costs

In sum, this revision to the Form LM–10 has an approximated 10-year cost of $49,880 (10 years × $4,988 per year = $49,880) spread across 580 separate yearly Form LM–10 filers. OLMS does not believe that this cost will cause a significant burden on reporting entities.

3. Benefits

The revision furthers the purpose of the LMRDA. The Act provides that ''in the public interest, it [is] . . . the responsibility of the Federal Government to protect employees' rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities for their mutual aid or protection[.]'' 29 U.S.C. 401(a). Congress found that to accomplish this objective, ''it is essential that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations, particularly as they affect labor-management relations.'' *Id.* Congress simultaneously found that public reporting by employers was one way to accomplish this, given that the substance of employer persuader activities was often ''unethical.'' S. Rep. 187 at 11, LMRDA Leg. Hist. at 407.

The Form LM–10 reporting requirement is based on Congress's concerns over the ''large sums of money [that] are spent in organized campaigns on behalf of some employers'' on persuader activities that ''may or may not be technically permissible'' and Congress's determination that the appropriate response to such persuader campaigns is to disclose them in the public interest and for the preservation of ''the rights of employees.'' *See* S. Rep. 187 at 10–12, LMRDA Leg. Hist. at 406–07.

As set forth in Section I, Statutory Authority, above, LMRDA Section 208 authorizes the Secretary to ''issue . . . regulations prescribing the form and publication of reports required to be filed[.]'' 29 U.S.C. 438. The statutory provision authorizing the issuance of the Form LM–10 describes the data and information to be reported in the Secretary's form. Employers shall file with the Secretary a report, in a form prescribed by the Secretary, signed by the employer's president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a). The statutory intent to require employers to provide a ''full explanation'' of payments was reflected in the Form LM–10 the Secretary established. Employers are told to provide a ''full explanation'' of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made. 29 U.S.C. 433(a).

The Form LM–10 serves the public as well as the employees whose rights are at issue. Both have an interest in understanding the full scope of activities undertaken by employers to persuade employees regarding the exercise of their rights to organize or bargain collectively, to surveil employees, or to commit unfair labor practices. *See* S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–07. This interest is heightened when the employees' own tax dollars may be indirectly funding an employer's reportable activities. The federal government also has an interest in knowing whether it is paying for goods and services from an employer who would seek to disrupt the harmonious labor relations that the federal government is bound to protect. *See* 29 U.S.C. 401(a). OLMS has authority to protect this interest.

Today's revision, as with the proposal, explains that one of the ''circumstances'' that must be explained is whether the payments concerned employees performing work pursuant to a federal contract or subcontract. If so, the filer must provide its UEI, if it has one, and name the relevant federal contracting agency. The reporting requirements associated with the unrevised Form LM–10 already called for the reporting of other aspects of an employer's contact and identifying information as part of the ''full explanation of the circumstances'' of the reportable activity. The revision clarifies that that ''full explanation'' continues to require filers to identify the subject group of employees (*e.g.,* the particular unit or division in which those employees work).

The revision to the Form LM–10 will therefore benefit employers in the filing of complete and accurate forms. By updating the form and instructions to clearly and accurately describe the information employers must disclose, the final rule will facilitate their understanding and compliance, thereby reducing incidents of noncompliance and associated costs incurred when noncompliant.

The revision will also benefit filers' employees and the public. As discussed above, employees will more fully understand the circumstances under which they seek to exercise their rights when they know the contractor status and UEI of their employer, the federal agency involved, as well as the division or unit of the employees whose rights to organize, choose their own representatives, bargain collectively, and otherwise engage in concerted activities the employer seeks to influence. The revision will ensure that, as Congress envisioned, persuader activity that is most often ''disruptive of harmonious labor relations and fall[s] into a gray area'' will be ''exposed to public view.'' S. Rep. 187 at 11, LMRDA Leg. Hist. at 407.

The revision thus supports harmonious labor relations consistent with the LMRDA. One intent of the Act is to support a harmonious relationship among employees, labor organizations, employers, and labor relations consultants. This requires transparency and accountability not just for labor organizations, but employers and labor relations consultants as well. Congress intended the LMRDA to provide for the elimination and prevention of improper practices on the part of ''labor organizations, *employers,* labor relations consultants and their officers and representatives.'' 29 U.S.C. 401(c) (emphasis added).

The proposed rule increases transparency but does not change the criteria that determines which employers are required to file the Form LM–10. The revision also does not impair any rights that filers had prior to the change to Item 12, including First Amendment rights, as addressed above in Part V.B. It does not increase required filers' liability in connection with activities that they already had to report and does not impose duties to file reports that filers did not already have under the LMRDA. It adds, for certain filers only, the straightforward step of providing basic identifying details regarding contractor status that filers will be able to quickly enter on the Form LM–10. Consistent with the statutory scheme enacted by Congress, the revision outlines aspects of the ''full explanation'' that filers must report on the Form LM–10. 29 U.S.C. 433(a).

Congress believed that employer payments and activities aimed at employee unionization efforts should be made public even if they are lawful.[27] *See* S. No. 86–187. Rep, at 81–82, reprinted in 1 LMRDA Leg. Hist., at 477–478. Among the concerns that prompted Congress to enact the LMRDA was employers retaining labor relations consultants whose actions discouraged or impeded the right of employees to organize labor unions and to bargain collectively under the NLRA, 29 U.S.C. 151 *et seq. See, e.g.,* S. No. 86–187. Rep, at 6, 10–12, reprinted in 1 LMRDA Leg. Hist., at 397, 402, 406–408. Therefore, the Department finds that employer reporting on persuader, surveillance and unfair labor practice activity is a fundamental part of the Act.

The revision to Form LM–10 will increase transparency regarding which federal contractors and subcontractors are engaging in persuader activities. Confirming a filer's status as a federal contractor, as well as its Unique Entity Identifier and the federal contracting agency involved, as part of a full explanation of persuader activities will provide a method for the public and employees to quickly identify which federal contractors are reporting persuader activities in a given year.

Increased transparency also informs the public of when federal monies go to federal contractors who subject their employees to persuader, surveillance, or interference activity, and thus protects harmonious labor relations, even if these activities are not unlawful. *See* S. Rep. 187 at 10–12, LMRDA Leg. Hist. at 406. Given the potential for disruption, the public, like employees, has an interest in knowing whether the government is indirectly funding persuader activity by engaging in business with these companies. The required disclosure of such information is consistent with and fully authorized by sections 203 and 208 of the LMRDA and their broad grant of authority to prescribe the form of the required reports. 29 U.S.C. 433 and 438.

Congress authorized the Department to collect detailed reports from employers. 29 U.S.C. 433 and 438. The Senate Report explained that the Department's collection and public disclosure of employer reports under section 203 ''will accomplish the same purpose as public disclosure of conflicts of interest and other union transactions which are required to be reported'' under other sections of the bill that was to become the LMRDA. S. Rep. No. 86–187, at 5, 12, reprinted in 1 LMRDA Leg. Hist., at 401, 408.[28] The Senate Report also explained that employers required to file must ''file a detailed report.'' Consistent with this congressional intent, Form LM–10 reports have required a variety of details from employers including whether they are partnerships, corporations, or individuals. *See* Form LM–10, Item 7. Similarly, the revision now adds an additional piece of identifying information in Item 12.b. for certain filers—whether they are federal contractors or subcontractors and, if so, their UEI and agency involved. This revision ensures that filers fully explain the circumstances of all covered payments, as required by the statute.

Congress declined to enumerate each ''circumstance [ ]'' to be reported, delegating authority to the Secretary to determine the relevant details when prescribing the form and publication of the Form LM–10. The Department finds that some employees may not be aware that their work is pursuant to a federal contract and that the revision adds a level of accountability envisioned by the LMRDA. It adds identifying details regarding filers' contractor status that are part of the ''full explanation'' Congress intended to be publicized under the Act.

Over the decades, employer efforts to defeat unions have become more prevalent, with more employers turning to union avoidance consultants.[29]

[27] Congress recognized that some of the persuader activities occupied a ''gray area'' between proper and improper conduct and chose to rely on disclosure rather than proscription, to ensure harmony and stability in labor-management relations. *See* S. Rep. No. 86–187, at 5, 12; 1 LMRDA Leg. Hist., at 401, 408.

[28] H.R. Rep. No. 86–741 (1959), at 12–13, 35–37, reprinted in 1 LMRDA Leg. Hist., at 770–771, 793–795, contained similar statements. However, it should be noted that the House bill contained a much narrower reporting requirement—reports would be required only if the persuader activity interfered with, restrained, or coerced employees in the exercise of their rights, *i.e.,* if the activity would constitute an unfair labor practice. The House bill also contained a broad provision that would have essentially exempted attorneys, serving as consultants, from any reporting. In conference, the Senate version prevailed in both instances, restoring the full disclosure provided in the Senate bill. *See* H. Rep. No. 86–1147 (Conference Report), at 32–33; 1 LMRDA Legis. Hist., at 936–937.

[29] Celine McNicholas, et al., *Unlawful: U.S. Employers Charged with Violating Federal Labor Law in 41.5 percent of all Union Elections,* Economic Policy Institute, (Dec. 11, 2019) available at *https://www.epi.org/publication/unlawful-employer-opposition-to-union-election-campaigns/* (''The data show that U.S. employers are willing to use a wide range of legal and illegal tactics to frustrate the rights of workers to form unions and collectively bargain . . . . [E]mployers spend roughly $340 million annually on 'union avoidance' consultants to help stave off union elections . . . . Over the past few decades, employers' attempts to thwart organizing have become more prevalent, with more employers turning to the scorched-earth tactics of 'union avoidance' consultants.''); Heidi Shierholz et al., *Latest Data Release on Unionization,* Economic Policy Institute, (Jan. 20, 2022) available at *https://www.epi.org/publication/latest-data-release-on-unionization-is-a-wake-up-call-to-lawmakers/* (describing how ''it is now standard, when workers seek to organize, for employers to hire union avoidance consultants''); John Logan, *The New Union Avoidance*

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Further, members of Congress have noted recently that federal contractors have engaged in such agreements and activities.[30] As the Agency responsible for promoting transparency around management attempts to influence employees' organizing and collective bargaining rights, OLMS closely monitors developments in the ways management interacts with union organizing efforts. As union avoidance activity increases, it is well within OLMS's role to increase the quality and utility of the information being disclosed on such activity.

The noted prevalence of persuader activity accordingly increases the interest of the federal government in obtaining information about employers' spending on reportable activities. In enacting the LMRDA, Congress was concerned with the impact of persuader activities and believed that increased transparency about employer efforts to persuade employees regarding their organizing and collective bargaining rights would benefit workers and the public. Congress found that most of this kind of persuader activity is ''disruptive of harmonious labor relations,'' even if lawful, and determined that workers and the public needed disclosure of persuader activities. S. Rep. 187 at 12, LMRDA Leg. Hist. at 406. The revision furthers this statutory purpose.

The federal government has an increased interest in fully identifying employers who may be disrupting the harmonious labor relations that the federal government is bound to protect when those employers are receiving tax dollars through federal contracts. *See* 29 U.S.C. 401(a). In other words, greater transparency is even more important when persuader activities are increasingly undertaken by employers that receive federal funds through contracting relationships. *See* E.O. 13494 (reiterating ''the policy of the United States to remain impartial concerning any labor-management dispute involving Government contractors.'').

Like the federal government itself, workers and the public also have a strong interest in spending choices by federal contractors. Therefore, whether a filer is a federal contractor may be relevant information to employees as they choose how to exercise their organizing and collective bargaining rights. The Department is not revising the LM–10 because it expects employees to make a particular choice regarding how they wish to exercise their organizing and collective bargaining rights. Instead, the revision outlines further information that employees may choose to consider when determining whether and how to exercise their rights. It is therefore part of the ''full explanation'' that Congress envisioned employers reporting. 29 U.S.C. 433(a).

Publicizing which Form LM–10 filers are federal contractors will give workers more information as they choose whether or not to speak out against lawful and unlawful efforts by their employer to convince them to remain unrepresented. Such workers and the public are entitled to know whether public funds may indirectly lead to any sort of disruption of labor relations and workers' rights.

Employees have a particular interest in knowing whether their employers are federal contractors because, as taxpayers themselves, those employees have an interest in knowing whether they may be indirectly financing persuasion campaigns regarding their own rights to organize and bargain collectively. Although the persuader campaigns are not themselves reimbursable under the federal contract or subcontract,[31] the government is paying federal dollars for goods and services, sometimes in large amounts, which support such contractors' businesses. Additionally, by learning of the federal contractor status their employer enjoys, those employees would have convenient access to the information that would allow them to meaningfully exercise their organizing and collective bargaining rights such as their First Amendment right to choose whether to contact their representatives in Congress about federal appropriations underlying the contracts with their employers, or the employers' activities undertaken pursuant to such contracts, or allow the employees to work more effectively with advocacy groups or the media to disseminate their views as employees to a wider audience. *See* 29 U.S.C. 157; 45 U.S.C. 152, Fourth. This is consistent with Congress' expectations when enacting the LMRDA—that in the public interest, and consistent with First Amendment rights to speak out on these issues, citizens would have the benefit of public reports regarding employer conduct that falls in a ''gray area.'' S. Rep. No. 86–187 at 11 (1959), reprinted in 1 NLRB, LMRDA Legislative History, at 407 (persuader activities ''should be exposed to public view, for if the public has an interest in preserving the rights of employees then it has a concomitant obligation to insure the free exercise'' of those rights).

Another benefit of the rule is increasing compliance by revising the Form LM–10 Instructions to clarify that filers must identify the group of employees subjected to the persuasion, surveillance or interference reported. This clarification will also enable better NLRB cross-matching by employees and the public. By clarifying that filers must identify the unit of employees subjected to their persuader activity, representation and ULP cases before the NLRB that have similar information documented can be matched more easily by employees, allowing them to know whether they were subjected to persuader activities more readily. This in turn would allow them to make better-informed decisions regarding their workplace representation.

One of Congress' stated purposes was to hold all covered employers to ''the highest standards of responsibility and ethical conduct[.]'' 29 U.S.C. 401(a). The revision does so regarding filers that are federal contractors and is therefore consistent with Act.

The increased transparency from the revision will benefit employees working on federal contracts who are subject to persuader activity, information gathering, or interference, by giving them a ''full explanation'' about their employers' reportable activities—as intended by Congress in enacting the LMRDA. 29 U.S.C. 433(a). Generally, the transparency created by the reporting requirements is designed to provide workers with necessary information to make informed decisions about the exercise of their rights to organize and bargain collectively. For example, with the knowledge that the source of the

Internationalism, 13 Work Org., Lab. & Globalisation 2 (2019) available at *https://www.scienceopen.com/hosted-document?doi=10.13169/workorgalaboglob.13.2.0057;* Thomas A. Kochan et al., U.S. Workers' Organizing Efforts and Collective Actions: A Review Of The Current Landscape, Worker Empowerment Research Network, (June 2022) available at *https://mitsloan.mit.edu/sites/default/files/2022-06/Report%20on%20Worker%20Organizing%20Landscape%20in%20US%20by%20Kochan%20Fine%20Bronfenbrenner%20Naidu%20et%20al%20June%202022.pdf;* In Solidarity: Removing Barriers to Organizing, Hearing Before the United States House Committee on Education and Labor, 117th Congress (September 14, 2022), available at *https://edlabor.house.gov/hearings/in-solidarity-removing-barriers-to-organizing.*

[30] Should Taxpayer Dollars Go to Companies that Violate Labor Laws?, Comm. on the Budget, 117th Congress (May 5, 2022), available at *https://www.budget.senate.gov/hearings/should-taxpayerdollars-go-to-companies-that-violate-labor-laws* (discussing the propriety of government contracting with Federal contractors that engage in legal and illegal tactics, including ''union busters,'' to dissuade workers from exercising their organizing and collective bargaining rights).

[31] *See* E.O. 13494 (federal agencies ''shall treat as unallowable the costs of any activities undertaken to persuade employees . . . to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing'').

information received is an anti-union campaign managed by an outsider, workers will be better able to assess the merits of the arguments directed at them and make an informed choice about how to exercise their rights.

The requirement that a filer provide its UEI, if it has one, will prevent confusion and allow the public and employees to more easily confirm the identity of filers who are federal contractors. It will also ensure other, more detailed information regarding federal contracts is easily obtainable to employees and the general public. Two or more employers may have a similar name, which can create difficulty for workers and the public in determining whether the employer is, in fact, receiving federal funds. Individual employers often use multiple names, including trade, business, assumed or fictitious names, such as a DBA (''doing business as'') designation. Nevertheless, all federal prime contractors have their own individual UEI to seek and secure federal contracts which can more explicitly link an employer to a particular federal contract.[32]

Requiring employers to provide this federal contract identifier on the Form LM–10 furthers the congressional purpose of detailed employer reporting under the LMRDA, 29 U.S.C. 401 and 433, because members of the public and employees will be able to more easily distinguish companies with similar names or locate reports on companies that have changed their names. This information can also help employees and the general public to more expeditiously search detailed government contract data for these employers in the SAM system and *USASpending.gov* websites. By using the UEI, employees and the general public can be certain that the detailed contract information available in the SAM System, for example, is an award granted to the specific employer who has filed the Form LM–10.

By using existing definitions and requiring reporting of information easily accessible to the filers, the Department has avoided imposing any significant burden on filers. As discussed above, the Form LM–10 uses a list of definitions adopted from the implementing regulations of E.O. 13496 (Notification of Employee Rights Under Federal Labor Laws) at 29 CFR 471.1. The Department expects that federal contractors and subcontractors are already familiar with these definitions because they are also, with minimal changes, the same definitions that already govern Federal contractors and subcontractors under E.O. 11246, Equal Employment Opportunity, and its implementing regulations. *See* 41 CFR 60–1.3 (definitions regarding obligations of federal contractors and subcontractors). Executive Order 11246 prohibits federal contractors and federally assisted construction contractors and subcontractors who do over $10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin. The E.O. also requires Government contractors to take affirmative action to ensure that equal employment opportunity is provided in all aspects of employment. Additionally, E.O. 11246 prohibits federal contractors and subcontractors from, under certain circumstances, taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or the pay of their co-workers. Executive Order 11246 is enforced by the Department's Office of Federal Contract Compliance Programs (OFCCP) and covers approximately one-fifth of the entire U.S. labor force. E.O. 11246's requirements are incorporated in applicable government contracts or subcontracts and includes nondiscrimination, notice posting,[33] annual reporting,[34] record keeping,[35] and, for contractors that meet certain threshold requirements, development and maintenance of a written affirmative action program,[36] among other requirements. Therefore, the Department expects that all filers who are federal contractors and subcontractors will already know their status as such under E.O. 11246 and its implementing regulations, *see* 41 CFR 60–1.3 and 60–1.5, and that most filers are able to easily identify the information required for Item 12.b—their UEI and federal contracting agency or agencies.

In addition, federal contractors and subcontractors are required to comply with E.O. 13496. Executive Order 13496 applies to federal contractors and subcontractors subject to the NLRA. Pursuant to E.O. 13496, covered employers are already required to know whether they are federal contractors or subcontractors under the definitions used in this revision and, if they are, to post a notice and to inform employees of their rights under the NLRA, the primary law governing relations between unions and employers in the private sector. *See* 29 CFR 471. The notice, prescribed in the regulations of the Department, informs employees of federal contractors and subcontractors of their rights under the NLRA to organize and bargain collectively with their employers and to engage in other protected concerted activity. The Department expects that most filers are subject to the NLRA.[37]

It will therefore take filers on average five minutes to gather and enter the information required by this revision. This cost is not significant. The change places almost no burden at all on reporting entities.

In contrast, it benefits employees and the public. The information required by the revision, while minimal, is not otherwise easily available to the public. For example, subcontractor information is available on the GSA Electronic Subcontracting Reporting System (ESRS), but this information is made available only to individuals with a registered government or contractor log-in account. The LM–10 forms are offered for public viewing on the OLMS Online Public Disclosure Room (OPDR), which does not require a registered government or contractor account. Including contractor identification information on the Form LM–10, available on the OPDR, will allow employees and the public to easily identify all filers who are paid under federal contracts, regardless of whether they are a prime contractor or a subcontractor. This reporting will provide a more transparent representation of when federal dollars go to filers who may also make disbursements to labor relations consultants designed to persuade employees regarding their rights to organize and bargain collectively or

[32] *See* Federal Acquisition Regulations System § 4.605(b).

[33] Notices to be posted, 41 CFR 60–1.43 (2022).

[34] Reports and other Required Information, 41 CFR 60–1.7 (2022).

[35] Record Retention, 41 CFR 60–1.12 (2022).

[36] Affirmative Acton Programs, § 60–1.40; 60–2.1 (2022).

[37] Employers covered by the Railway Labor Act (RLA) are not covered by E.O. 13496, however, both NLRA and RLA employers are subject to the reporting requirements of the LMRDA. Thus, RLA employers may need more time to identify which employees who are the subject of the LM–10 report have duties relating to the performance of the Federal contract or subcontract. The Department expects that only a small number of filers will be Federal contractors or subcontractors subject to the RLA. The Department received no comments on the issues of RLA coverage or lack of NLRA coverage. The Department received no comments from anyone—including specifically from RLA-covered employers or their representatives—on this subject. *See: https://www.nlrb.gov/reports/nlrb-case-activity-reports/representation-cases/election/election-statistics* and *https://nmb.gov/NMB_Application/wp-content/uploads/2021/12/FY-2021-NMB-Performance-and-Accountability-Report-PAR.pdf.*

surveil employees. *See* Form LM–10, Items 8.b. through 8.f. This information cannot be readily ascertained from the SBA or GSA websites.

The reporting of contractor status on the Form LM–10 is limited to identifying information and is therefore minimally duplicative of the more detailed reporting on the *USASpending.gov* website or what is listed on the GSA and SBA contractor lists. OLMS only requires the UEI number and the identification of the contracting agency, and no other details of the contracts provided on other government lists. The UEI number required by the Department is the same number reported on the *USASpending.gov* website, but the final rule does not require duplicative reporting of the detailed financial information on federal contracts provided on that website.

The *USASpending.gov* website is compiled by the U.S. Department of the Treasury under the authority of the Federal Funding Accountability and Transparency Act of 2006 (FFATA), as amended by the Digital Accountability and Transparency Act (DATA Act), codified at 31 U.S.C. 6101 note. Consistent with the FFATA, detailed information about federal awards must be made publicly available on *USASpending.gov*. The DATA Act expanded the FFATA for purposes that include linking ''federal contract, loan, and grant spending information to programs of federal agencies to enable taxpayers and policy makers to track federal spending more effectively.'' [38] The website is generally adapted for the American public to show constituents how the federal government spends money every year. Federal agencies covered by the DATA Act report spending data to Treasury for posting on the website using standardized data elements, and Treasury also gathers required Federal agency spending data from financial and other government systems (such as the Federal Procurement Data System (FPDS)). Prime contractors and subcontractors that received federal awards directly from federal agencies also self-report data on their awards to the FFATA Subaward Reporting System (FSRS). The FSRS is a component of ESRS (mentioned above) but requires different reports than ESRS. FSRS requires reporting of executive compensation and sub-award recipient information by prime contractors, while ESRS requires reporting of the Individual Subcontract Report, Summary Subcontract Report, and Commercial Report, required, in effect, under the FFATA. One purpose of the DATA Act was to ''simplify reporting requirements for entities receiving Federal funds by streamlining reporting requirements . . . .'' [39] It also provides that the method of collection and reporting data, in the context of subawards, shall minimize the burdens on Federal recipients and sub-recipients.[40] Requesting contractor identification numbers is not overly burdensome or a duplication of financial reporting, as it does not require any additional information required by the FFATA and DATA Act, but simply requires the reporting of an identification number already known to a federal contractor. For example, employers filing a Form LM–10 are not required to include information on whether contracts are awarded to Small Businesses, Women-Owned Small Businesses, Veteran-Owned Small Business, and related characteristics, which are to be reported to the ESRS. Reporting contractor identification numbers on the Form LM–10 is not unnecessarily burdensome for federal award recipients because the employer is already aware of their identification number from reporting under the FFATA.

As has been discussed above, the Department therefore believes that its revision to the Form LM–10 will also bridge important information gaps that have appeared in Form LM–10 reporting and is consistent with congressional intent to publicize a ''full explanation'' of reportable activities. 29 U.S.C. 433(a). The revision adds minimal but important information that had not been easily accessible to the public or employees regarding filers that engage in reportable activities, including whether they benefit from federal contracts.

These benefits outweigh any minor duplication of contractor identifying information in government databases, especially when, as discussed above, some employees are not already aware that their employers are federal contractors. By including federal contractor identification on LM–10 Forms, the Department is linking federal contractor status with employer reporting to the Department to enable workers and the general public to easily evaluate federal spending within the context of the LMRDA. As mentioned above, the GSA and SBA websites provide lists of contractors within the context of those agencies. The SBA directory, for example, provides a listing of those contractors who have subcontracting plans with small businesses. Neither GSA nor SBA publishes reportable information under the LMRDA. Including basic identifying information about federal contractor status on LM–10 Forms allows OLMS, employees, and the general public to have all the relevant information in one, easily accessible reporting database pursuant to the LMRDA.

Similarly, Federal contractor status as required by OLMS in this revision provides less detailed information than the reporting required by the GSA *SAM.gov* website and is easier for the public to access and use. *SAM.gov* is generally designed for contractors who may, among other tasks, access publicly available award data and federal assistance listings. *SAM.gov* includes contract data derived from the FPDS, as well as some additional information submitted by *SAM.gov* contractor account users. With a *SAM.gov* user account, one can analyze federal spending by federal organization, geographical area, business demographics, and product or service type, among other characteristics. The Department does not seek to duplicate this detailed contract information provided on *SAM.gov*, but rather is requesting only for Form LM–10 filers to report their UEI and federal agency involved. Additionally, *SAM.gov* does not focus on LMRDA-reportable activities. In contrast to *SAM.gov*, the OLMS OPDR provides Form LM–10 data to the public and does so without the barrier of a user account.

Therefore, any duplication of information on the Form LM–10 poses a minimal burden, if any, to the reporting entity and bridges an important information gap by making this information more easily accessible to the general public. OLMS, employees, and the public should not have to research voluminous collections of contracting information and multiple websites to glean which federal contracts are being fulfilled by employees who are subjected to persuader, surveillance, or unfair labor practice activity. Employees and the general public should have the ability, by getting the UEI, to learn the extent to which the filer engages in reportable activity while providing its goods and services to the Federal government.

Through its enforcement of the LMRDA, the Department ensures public, transparent reporting of certain activities that impact protected labor rights. The Department determined that

[38] Digital Accountability and Transparency Act of 2014, Public Law 113–101, 128 Stat. 1146.

[39] Public Law 113–101, sec. 2(3).

[40] 31 U.S.C. 6101 note (FFATA sec. 2(d)(2)(A)); *see also* 31 U.S.C. 6101 note (DATA Act sec. 5) (discussing, in general, efforts to avoid unnecessary duplication and burdensome reporting).

filers engaging in activities that may impact protected labor rights should disclose whether they hold government contracts. Through this rule, the Department has chosen to require minimal information about federal contractor status. While the request of federal contractor status on Form LM–10 may also serve the function of the DATA Act's interest in linking federal expenditures to federal agency programs, as mentioned above, this is wholly distinct from the problem of transparent reporting under the LMRDA.

The revision will allow employees access to the ''full explanation'' and circumstances of employers' reportable activity, including federal contractor status, in a location and context in which it is more accessible and useful to them. While general information about federal contracts is provided via other means, including this information on the Form LM–10 furthers the interest of transparency as intended by the LMRDA. Employees, union organizers, and the general public who are reviewing LM forms are more accustomed to reviewing documents like the Form LM–10 than extensive procurement- and employer-centric database platforms. Further, an employee or member of the public can more easily ascertain from the revised Form LM–10 whether the federal contract directly impacts a specified employment group because the federal contract identification is provided alongside information about the employer and subject group of employees. Minor redundancies in reportable information do not outweigh the benefits of having all LMRDA reportable information in one, easily accessible site on the Department's website.

The LMRDA reporting regime emphasizes access to information at the cost of minor redundancies. By statute, the information reported on one LM form may well appear in another LM form. Employer reporting (under 29 U.S.C. 433(a)) consists of the same information reported by labor relations consultants (under 29 U.S.C. 433(b)). In addition, employers report (under 29 U.S.C. 433(a)(1)) the same payments reported as receipts by labor unions (under 29 U.S.C. 431(b)(2)). Further, employers report (under 29 U.S.C. 433(a)(1)) the same payments reported by labor union officers and employees (under 29 U.S.C. 432). Plainly, therefore, the LMRDA was constructed to allow the public to more easily find relevant information by putting identical information in different reports targeted to different audiences.

In addition, this revision is similar to other Department requirements that include minor redundancies and cross-references to information provided to other governmental agencies in more depth. For example, on Form LM–2, labor organizations are required to report whether they have any political action committees (PAC), the full name of each PAC, and in addition, they must list the name of any government agency with which the PAC has a publicly available report, and the relevant file number of the PAC.[41] Despite being arguably redundant, these disclosures allow for a greater degree of transparency for union members and the public, by allowing viewers of the reports to connect such report with other labor related disclosures. The revision follows this same pattern when it takes three discrete pieces of information from locations where those interested in persuader reporting are not likely to look and brings it into the Form LM–10 where those who are interested will easily come across it.

This easily accessible transparency promotes informed decision making by employees subjected to reportable persuader, surveillance, and interference activity. The revision does not discourage lawful persuader activities as employers and labor relations consultants may still persuade employees in conformity with the NLRA and First Amendment rights of the employer. The requirement that employers report labor relations consultant activity is also unchanged.

The revision recognizes that both the public and the employees whose rights are at issue have an interest in more fully understanding the financial circumstances of employers who surveil employees, commit unfair labor practices, or persuade employees regarding their rights to organize or bargain collectively. *See* S. Rep. 187 at 10–11, LMRDA Leg. Hist. at 406–07. The revision will support employees and the public as they choose whether to engage in their own First Amendment protected activity.

Knowledge of filers' federal contractor status will also enable members of the public to understand which federal agencies are contracting with employers who are engaging in persuader activity. The public and employees will benefit from knowing whether a specific federal agency is choosing to do business with an employer that is attempting to influence the exercise of workers' rights to choose whether to organize and bargain collectively. This public exposure will allow for an open public discussion and debate about the prevalence of persuader activity and the extent to which specific federal agencies might be indirectly supporting such activities by doing business with employers that engage in persuader activities.

[41] LM–2 Instructions, Item 11, Item 69.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Department is certifying that this form revision will not have a significant economic impact on a substantial number of small entities. The Department had estimated an increased cost per reporting entity of only $8.60 per employer. A five-year average of the number of employer filers for the LM–10 is 580. The SBA standard average yearly receipts for a small business total $7.5 million.[42] Assuming all 580 entities are small entities of less than $7.5 million in revenue, the total cost of $8.60 for all 580 entities would be $4,988 for the resulting changes from the revision of Item 12 of the Form LM–10. Further, using that figure of $7.5 million, the estimated increased cost per reporting entity—a minimum of $8.60, as mentioned above—represents only between 1.15 ten thousandth and 3.4 ten thousandth of a percent of the $7.5 million in yearly receipts for the average small business.[43] Therefore, a Final Regulatory Flexibility Analysis under the Regulatory Flexibility Act is not required. The Department did not receive any comments on this analysis or conclusion. The Secretary has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501.

A. Summary and Overview of the Final Form Revision

The following is a summary of the need for and objectives of the form revision. A more complete discussion of various aspects of the revisions are found in the preamble.

[42] *https://www.sba.gov/offices/headquarters/ogc_and_bd/resources/4562.*

[43] Form T–1 Rule, 85 FR 13438 (March 6, 2020). ''For this analysis, based on previous standards utilized in other regulatory analyses, the threshold for significance is 3 percent of annual receipts.'' *Id.*

The Department adds a checkbox to the Form LM–10 report requiring certain reporting entities to indicate whether they are federal contractors or subcontractors. If so, the report will direct the filer to indicate the federal contracting agency and the contractor's Unique Entity Identifier (UEI), if the contractor has one. The Department will also clarify in the Form LM–10's instructions that a filer must identify the subject group of employees (*e.g.,* the particular unit or division in which those employees work). This information has always been encompassed by Item 12 and the revised instructions now explicitly require it for Item 12.a.

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Specifically, employers are required to file to disclose the following in Form LM–10 filings, pursuant to LMRDA section 203 and subject to certain exemptions: payments and loans made to any union or union official; payments to any of their employees for the purpose of causing them to persuade other employees with respect to their bargaining and representation rights, unless the other employees are told about these payments before or at the same time they are made; payments for the purpose of interfering with employees in the exercise of their bargaining and representation rights, or obtaining information on employee or union activities in connection with labor disputes involving their company, except information obtained solely for use in a judicial, administrative or arbitral proceeding; and arrangements (and payments made under these arrangements) with a labor relations consultant or other person for the purpose of persuading employees with respect to their bargaining and representation rights, or obtaining information on employee or union activities in connection with labor disputes involving their company, except information obtained solely for use in a judicial, administrative, or arbitral proceeding.

The Department, pursuant to the LMRDA, is filling in present information gaps occurring in Form LM–10 reporting regarding filers' federal contractor status. As has been stated above, the Department is acting pursuant to an interest in more fully understanding the full scope of activities undertaken by filers that engage in reportable activities, including whether they benefit from federal contracts.

B. Methodology of the Burden Estimate

For purposes of the PRA, the cost burden of the revision to the Form LM–10 has been calculated above and is as follows. Based upon the existing LM form estimates, the revision to Item 12 will take no longer than 5 minutes to complete on average for approximately 580 filers in any given year, thus adding approximately 5 minutes of reporting burden to the existing Form LM–10 (which the current existing instructions estimate to take approximately 35 minutes to complete, including the unrevised Item 12). The Form LM–10 is not an annually mandatory form for employers; rather, it is only necessary in fiscal years during which the employer engages in identified transactions or agreements. Further, the revision to Item 12 does not affect all Form LM–10 filers, just those that answer ''Yes'' to Items 8.b.–8.f. (*see* footnote 2, above)—and only a subset of those filers (federal contractors and subcontractors) would need to complete all of Item 12.b. In addition, only one Form LM–10 report at most must be filed per fiscal year. Thus, the rule does not affect the total number of Form LM–10 reports that the Department expects to receive, nor does it affect the recordkeeping burden, as the Department estimates that most employers that file and are federal contractors or subcontractors must already retain records relevant to that status pursuant to E.O. 13496 (Notification of Employee Rights Under Federal Labor Law). *See* 29 CFR part 471, in particular subsection 471.2(d), which states that employers must post the notice where employees covered by the NLRA engage in activities relating to the performance of the contract. Instead, the rule will result only in an increase in reporting burden of 5 minutes per Form LM–10 and an overall increase of 2,900 burden minutes, or 48.3 burden hours, for Form LM–10 filers. The Department received just one comment on this analysis, which agreed with the overall assumptions and conclusions. Specifically, it rejected an estimate higher than five minutes per form, even suggesting that two additional minutes per form would suffice. However, the Department will retain the five-minute estimate, as it is more consistent with past estimates for similar tasks in this and other LM forms.

The final revision will have no impact on the other 11 information collections approved under ICR #1245–0003. The summary of the burden below accounts for the burden for all ICs (reports) in ICR 1245–0003.

C. Conclusion

As this final form revision requires a revision to an existing information collection, the Department is submitting, contemporaneous with the publication of this document, an ICR to amend the burden estimates under OMB Control Number 1245–0003 and revise the PRA clearance to address the clearance term. A copy of this ICR, with applicable supporting documentation, including among other items a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at: *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1245-0003* (this link will be updated following publication of this rule) or from the Department by contacting OLMS at 202–693–0123 (this is not a toll-free number)/email: *OLMSPublic@dol.gov.*

Agency: Department of Labor, Office of Labor-Management Standards.

Type of Review: Revision of a currently approved collection.

OMB Number: 1245–0003.

Title of Collection: Labor Organization and Auxiliary Reports.

Forms: LM–1—Labor Organization Information Report, LM–2, LM–3, LM–4—Labor Organization Annual Report, LM–10, Employer Report, LM–15—Trusteeship Report, LM–15A—Report on Selection of Delegates and Officers, LM–16—Terminal Trusteeship Report, LM–20—Agreement and Activities Report, LM–21—Receipts and Disbursements Report, LM–30—Labor Organization Officer and Employee Report, S–1—Surety Company Annual Report.

Affected Public: Private Sector—Business or other for-profits and not-for-profit institutions.

Estimated Number of Annual Respondents: 33,021.

Estimated Number of Responses: 35,067.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours: 4,644,785.

Estimated Total Annual Other Burden Cost: $0.

D. Unfunded Mandates Reform

This final revision will not include any federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

E. Small Business Regulatory Enforcement Act of 1996

This final revision is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This revision will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 405

Employers, Reporting and recordkeeping requirements

Signed in Washington, DC.

Jeffrey R. Freund,

Director, OLMS.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix A—Form LM–10

BILLING CODE 4510–86–P

U.S. Department of Labor
Office of Labor-Management Standards
Washington, DC 20210

Form approved
Office of Management and Budget
No.1245-0003
Expires XX-XX-XXXX

For Official Use Only

E

FORM LM-10
EMPLOYER REPORT

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT

Part A

1. File Number E-

2. Fiscal Year Covered — From: Month/Day/Year (mm/dd/yyyy) — Through: Month/Day/Year (mm/dd/yyyy)

3. Name and address of Reporting Employer (inc. trade name, if any).
Employer
Trade Name
Attention To
Title
Mailing Address
P.O. Box, Bldg., Room No., if any
Street
City
State
Zip Code + 4

4. Name and address of President or corresponding principal officer, if different from address in Item 3.
P.O. Box, Building and Room Number, if any
Street
City
State
ZIP Code +4

5. Any other address where records necessary to verify this report will beavailable for examination.
Name
Title
Organization
P.O. Box, Building and Room Number, if any
Street
City
State
ZIP Code + 4

6. Indicate by checking the appropriate box or boxes where records necessary to verify this report will be available for examination.
- ☐ Address in Item 3
- ☐ Address in Item 4
- ☐ Address in Item 5

7. Type of organization.
☐ Corporation ☐ Partnership ☐ Individual Other (specify)

Signatures

Each of the undersigned, duly authorized officers of the above employer declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. *(See Section VIII on penalties in the instructions.)*

13. Signed
Title President
President (if other title, see instructions)
On / / Date
Telephone Number

14. Signed
Title Treasurer
Treasurer (if other title, see instructions)
On / / Date
Telephone Number

Part A, Continued

Name of Reporting Employer:	File Number E-

8. Type of Reportable Activity Engaged In By Employer

Read the following questions and the accompanying instructions carefully, taking into consideration the exclusions listed in the instructions for these items, and check either "Yes" or "No" for each item. For each item that is answered "Yes", you must attach a Part B which appears on Page 3. Complete a separate Part B for each "Yes" answer to any of Items 8.a. through 8.f. Also, if the answer is "Yes" for more than one person or organization, complete a separate Part B for each person or organization. If you answer "Yes", enter the number of Part Bs that are submitted for that item in the line indicated.

DURING THE FISCAL YEAR COVERED BY THIS REPORT:

		YES	NO	If "Yes", number of Part Bs attached
8.a.	Did you make or promise or agree to make, directly or indirectly, any payment or loan of money or other thing of value (including reimbursed expenses) to any labor organization or to any officer, agent, shop steward, or other representative or employee of any labor organization?	☐	☐	
8.b.	Did you make, directly or indirectly, any payment (including reimbursed expenses) to any of your employees, or to any group or committee of your employees, for the purpose of causing them to persuade other employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing without previously or at the same time disclosing such payment to all such other employees?	☐	☐	
8.c.	Did you make any expenditure where an object thereof, directly or indirectly, was to interfere with, restrain, or coerce employees in the right to organize and bargain collectively through representative of their own choosing?	☐	☐	
8.d.	Did you make any expenditure where an object thereof, directly or indirectly, was to obtain information concerning the activities of employees or of a labor organization in connection with a labor dispute in which you were involved?	☐	☐	
8.e.	Did you make any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertook activities where an object thereof, directly or indirectly, was to persuade employees to exercise or not to exercise, or as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or did you make any payment (including reimbursed expenses) pursuant to such an agreement or arrangement?	☐	☐	
8.f.	Did you make any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertook activities where an object thereof, directly or indirectly, was to furnish you with information concerning activities of employees or of a labor organization in connection with a labor dispute in which you were involved; or did you make any payment pursuant to such agreement or arrangement?	☐	☐	

TOTAL NUMBER OF PART Bs FOR THIS REPORT IS

Part B

Name of Reporting Employer:		File Number E-	

Check Item Number (from Page 2) to which this Part B applies	ITEM 8.a ☐	ITEM 8.b ☐	ITEM 8.c ☐	ITEM 8.d ☐	ITEM 8.e ☐	ITEM 8.f ☐

9.a. ☐ Agreement ☐ Payment ☐ Both

9.c. Position in labor organization or with employer (if an independent labor consultant, so state).

9.b. Name and address of person with whom or through whom a separate agreement was made or to whom payments were made.

Name

P.O. Box, Building and Room Number, if any

Street

City

State ZIP Code + 4

9.d. Name and address of firm or labor organization with whom employed or affiliated.

Organization

P.O. Box, Building and Room Number, if any

Street

City

State ZIP Code + 4

10.a. Date of the promise, agreement, or arrangement pursuant to which payments or expenditures were agreed to or made.

10.b. The promise, agreement, or arrangement was:

☐ Oral ☐ Written* ☐ Both

(*Written agreements entered into during the fiscal year must be attached.)

11.a. Date of each payment or expenditure (mm/dd/yyyy).	11.b. Amount of each payment or expenditure.	11.c. Kind of each payment or expenditure (Specify whether payment or loan, and whether in cash or property).

12.a. Explain fully the circumstances of all payments, including the terms of any oral agreement or understanding pursuant to which they were made.

12.b. If your Part B applies to Items 8.b. – 8.f., did the payments or agreements concern employees performing work pursuant to a Federal contract or subcontract?

Yes ☐ No ☐ N/A ☐ If yes, enter your Unique Entity Identifier, if you have one. Enter the Federal contracting agency(ies) that are a party to the Federal contract(s).

Paperwork Reduction Act Statement

Public reporting burden for this collection of information is estimated to average 40 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Regulations, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

DO NOT SEND YOUR COMPLETED FORM LM-10 TO THE ABOVE ADDRESS.

INSTRUCTIONS FOR FORM LM-10 EMPLOYER REPORT

GENERAL INSTRUCTIONS

I. WHY FILE

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), requires public disclosure of specific financial transactions or arrangements made between an employer **and** one or more of the following: a labor organization, union official, employee, or labor relations consultant. Pursuant to Section 203(a) of the LMRDA, every employer who has engaged in any such transaction or arrangement during the fiscal year must file a detailed report with the Secretary of Labor. The Secretary, under the authority of the LMRDA, has prescribed the filing of the Employer Report, Form LM- 10, for employers to satisfy this reporting requirement.

These reporting requirements of the LMRDA and of the regulations and forms issued under the Act only relate to the disclosure of specified payments. The reporting requirements do not address whether specific payments, transactions, or arrangements are lawful or unlawful. The fact that a particular payment, transaction, or arrangement is or is not required to be reported does not indicate whether it is or is not subject to any legal prohibition.

II. WHO MUST FILE

Any employer, as defined by the LMRDA, who has engaged in certain financial transactions or arrangements, of the type described in Section 203(a) of the Act, with any labor organization, union official, employee or labor relations consultant, **or** who has made expenditures for certain objects relating to activities of employees or a union, must file a Form LM-10. An employer required to file must complete only one Form LM-10 each fiscal year that covers all instances of reportable activity even if activity occurs at multiple locations.

NOTE: *Selected definitions from the LMRDA follow these instructions.*

III. WHAT MUST BE REPORTED

The types of financial transactions, arrangements, or expenditures which must be reported are set forth in Form LM-10. The LMRDA states that every employer involved in any such transaction or arrangement during the fiscal year must file a detailed report with the Secretary of Labor indicating the following: (1) the date of each arrangement and the date and amount of each transaction; (2) the name, address, and position of the person with whom the agreement or transaction was made; and (3) a full explanation of the circumstances of all payments made, including the terms of any agreement or understanding pursuant to which they were made.

Form LM-10 is divided into two parts, Part A and Part B. Item 8 of Part A contains six questions pertaining to reportable employer activities. Before completing any portion of the report, review these questions thoroughly and answer them, taking into account the exclusions listed in the instructions for Item 8. If the answer to each of these questions is **NO**, do not file this report. However, if the answer to any of these questions is **YES**, taking into account the applicable exclusions, complete Part A and complete a separate Part B for each **YES** answer. Also, if any of the **YES** answers applies to more than one person or organization, complete a separate Part B for each person or organization.

Special Reports. In addition to this report, the Secretary may require employers subject to the LMRDA to submit special reports on relevant information, including but not necessarily confined to reports involving specifically identified personnel on particular matters referred to in the second paragraph of the instructions for Item 8.a.

While Section 203 of the LMRDA does not amend, or modify, the rights protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA), the LMRDA contains no provision exempting the activities protected by that section from the reporting requirements. Therefore, you must report activities of the type set forth in Item 8, since the LMRDA requires such reports, regardless of whether the activities are protected by Section 8(c) of the NLRA. Note, however, that the information you are required to report in response to Item 8.c does not include expenditures relating exclusively to matters protected by Section 8(c) of the NLRA, because the definition in Section 203(g) of the LMRDA of the term

"interfere with, restrain, or coerce," which is used in Item 8.c, does not cover such matters.

NOTE: The text of NLRA Section 8(c) is set forth following these instructions.

IV. WHO MUST SIGN THE REPORT

The completed Form LM-10 must be signed by both the president and the treasurer, or the corresponding principal officers, of the reporting employer. A report from a sole proprietor need only bear one signature.

V. WHEN TO FILE

Each employer, as defined in the LMRDA, who has engaged in any of the transactions or arrangements described in the form and instructions, must electronically file Form LM-10 *within 90 days* after the end of the employer's fiscal year.

VI. HOW TO FILE

The Form LM-10 must be completed and submitted electronically, via the Office of Labor-Management Standards (OLMS) Electronic Forms System (EFS), available on the OLMS website at www.dol.gov/olms. If you must file an amended report, follow the prompts within EFS. Filers will be able to submit a report in paper format only if they assert a temporary hardship exemption.

NOTE: Upon registering with OLMS, the signatories and preparers must enter email addresses they use to conduct business, in order to file the form via the OLMS Electronic Forms System. While the email addresses will not appear on the report, OLMS may use the email address of the signatories and any preparers to contact the employer concerning LMRDA compliance.

If you have difficulty navigating the software, or have questions about its functions and features, call the OLMS Help Desk at: (866) 401-1109. For questions concerning the reporting requirements, please send an e-mail to OLMS-Public@dol.gov or call (202) 693-0123.

TEMPORARY HARDSHIP EXEMPTION:

If an employer experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing, the organization may assert a temporary hardship exemption to prepare and submit Form LM-10 in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date.

Unanticipated technical difficulties that may result in additional delays should be brought to the attention of OLMS by email at OLMS-Public@dol.gov, or by phone at (202) 693-0123.

NOTE: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. PUBLIC DISCLOSURE

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. Reports may be viewed and downloaded from the website at www.persuader-reports.gov. For assistance, please email OLMS-Public@dol.gov or call (202) 693-0123.

VIII. OFFICER RESPONSIBILITIES AND PENALTIES

The president and treasurer, or corresponding principal officers of the reporting employer required to sign Form LM-10, are personally responsible for its filing and accuracy. Under the LMRDA, these individuals are subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting employer and officers required to sign Form LM-10 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA provides that, "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

IX. RECORDKEEPING

The individuals required to file Form LM-10 are responsible for maintaining records which will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report.

You must retain the records for at least 5 years after the date you filed the report. You must retain any record necessary to verify, explain, or clarify the report including, but not limited to, vouchers, worksheets, and applicable resolutions.

X. COMPLETING FORM LM-10

Read the instructions carefully before completing Form LM-10.

Entering Dollars. In all Items dealing with monetary values, report amounts in dollars only; do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the boxes for reporting dollars if the employer has nothing to report.

PART A (ITEMS 1 – 8)

1. FILE NUMBER—The software will enter the five-digit file number assigned by OLMS for the reporting individual or organization here and at the top of each page of Form LM-10. If the number is incorrect or you do not have the number on file and cannot obtain it from past reports, the number can be obtained at www.unionreports.gov, emailing OLMS at OLMS-Public@dol.gov, or calling OLMS at (202) 693-0123.

NOTE: If you have previously filed a Form LM-10 and seek to search for past report to obtain your employer file number, please visit the OLMS Online Public Disclosure Room and select "View Other Reports." You have the

option to select your employer's name or organization from the drop-down menu. This menu contains all the individuals and organizations from whom OLMS has received employer reports.

2. FISCAL YEAR—Enter the beginning and ending dates of the fiscal year covered in this report. The report must not cover more than a 12-month period. For example, if the reporting employer's 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry.

3. NAME AND MAILING ADDRESS—Enter the full legal name of the reporting employer, a trade or commercial name, if applicable (such as a d/b/a or "doing business as" name), the name and title of the person to whom mail should be directed, and the complete address where mail should be sent and received, including any building and room number.

4. NAME AND ADDRESS OF PRINCIPAL OFFICER—Enter the name and business address of the president or corresponding principal officer if it is different from the address in Item 3.

5. ANY OTHER ADDRESS WHERE RECORDS ARE AVAILABLE—If you maintain any of the records necessary to verify this report at an address different from the addresses listed in Items 3 or 4, enter the appropriate name and address in Item 5.

6. RECORDS ARE AVAILABLE—Select the appropriate box(es) where the records necessary to verify this report are available for examination.

7. TYPE OF ORGANIZATION—Select the appropriate box which describes the reporting employer. If none of the choices apply, specify the type of reporting employer filing this report.

8. TYPE OF REPORTABLE ACTIVITY ENGAGED IN BY EMPLOYER—Read each question carefully, then read the exclusions listed below for each question. Select the appropriate **YES** or **NO** box next to each question; do not leave both boxes blank. If the answer to any of these questions is YES, indicate the number of Part Bs necessary for completing that question. With each question, complete a separate Part B for every person or organization with whom a reportable agreement was made as indicated by a **YES** answer. For example, if you answer Item 8.e **YES**, and you had agreements with two different labor relations consultants during the fiscal year, then you would complete two Part Bs for that question.

8.a. In answering Item 8.a, exclude the following:

(1) Payments of the kind referred to in Section 302(c) of the Labor Management Relations Act, 1947, as amended (LMRA); **and** (2) Payments or loans made in the regular course of business as a national or state bank, credit union, insurance company, savings and loan association, or other credit institution. (The text of Section 302(c) of the LMRA is set forth below.)

None of the following require a **YES** answer:

(a) payments made in the regular course of business to a class of persons determined without regard to whether they are, or are identified with, labor organizations and whose relationship to labor organizations is not ordinarily known to or readily ascertainable by the payer, for example, interest on bonds and dividends on stock issued by the reporting employer; (b) loans made to employees under circumstances and terms unrelated to the employees' status in a labor organization; (c) payments made to any regular employee as wages or other compensation for service as a regular employee of the employer, or by reason of his service as an employee of such employer, for periods during regular working hours in which such employee engages in activities other than productive work, if the payments for such periods of time are:

(1) required by law or a bona fide collective bargaining agreement, or (2) made pursuant to a custom or practice under such a collective agreement, or (3) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization; (d) initiation fees and assessments paid to labor organizations and deducted from the wages of employees pursuant to individual assignments meeting the terms specified in paragraph (4) of Section 302(c) of the LMRA; (e) sporadic or occasional gifts, gratuities, or favors of insubstantial value, given under circumstances and terms unrelated to the recipients' status in a labor organization; for example, traditional Christmas gifts.

8.b. In answering Item *8.b,* ***exclude*** expenditures made to any regular officer, supervisor, or employee as compensation for services as a regular officer, supervisor, or employee.

8.c. In answering Item *8.c,* ***exclude*** expenditures relating exclusively to matters protected by Section 8(c) of the National Labor Relations Act, as amended (NLRA).

NOTE: The definition set forth in Section 203(g) of the LMRDA for the term "interfere with, restrain, or coerce" excludes matters protected by Section 8(c) of the NLRA. Therefore, expenditures related exclusively to such matters protected by Section 8(c) are not required to be reported in this question. (The text of Section 8(c) of the NLRA is set forth below.)

8.d. In answering Item *8.d,* ***exclude*** the following:

(1) Information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; **and** (2) Expenditures made to any regular officer, supervisor, or employee as compensation for service as a regular officer, supervisor, or employee.

8.e. In answering Item *8.e,* ***exclude*** agreements or arrangements covering services related exclusively to the following: (1) giving you advice; **or** (2) agreeing to represent you before any court proceeding, administrative agency, or tribunal of arbitration; **or** (3) engaging in

collective bargaining on your behalf with respect to wages, hours, or other terms or conditions of employment or negotiating an agreement or any question arising thereunder.

If an agreement or arrangement covering the listed services also covers other activities referred to in the initial question, the exclusion does not apply and the information required for the entire agreement must be reported.

8.f. In answering Item *8.f,* ***exclude*** agreements or arrangements for obtaining information solely for use in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding.

PART B (ITEMS 9 – 12)

You must complete a separate Part B for each **YES** answer in Item 8 and for each separate reportable transaction as described in Section III of these instructions. At the top of Part B, check the appropriate Item number box to which this Part B applies.

9. AGREEMENT OR PAYMENT

9.a. Check the appropriate box describing whether this

Part B covers an agreement, a payment, or both.

9.b Enter the name and complete mailing address of the individual with whom you made a reportable agreement or to whom payments were made. Enter the name and address of the firm or organization in Item 9.d.

9.c. Give the position (or title) of each person listed in Item 9.b. as follows:

- If the answer to Item 8.a. in Part A is **YES**, indicate the position in the labor organization of each person listed in Item 9.b.
- If the answer to Item 8.b. in Part A is **YES,** identify the position in the reporting firm of each person listed in Item 9b.
- If the answer to Item 8.c. **or** Item 8.d. in Part A is **YES**, indicate the position in the firm or labor organization of each person listed in Item 9.b.
- If the answer to Item 8.e. **or** Item 8.f. in Part A is **YES**, indicate the position of each person in a firm or the occupation of each person listed in Item 9.b.

9.d. Enter the full name and address of the firm, group, or labor organization to whom payments were made, with whom the agreement or arrangement was made, or with whom the person listed in Item 9.b. was employed or affiliated.

10. DATE AND NATURE OF PROMISE, AGREEMENT, OR ARRANGEMENT

10.a. If you agreed or promised to make payments or if you actually made payments during the fiscal year pursuant to a promise, agreement, or arrangement, indicate the date on which either the promise was made or the agreement or arrangement was entered into. If the payments listed in Item 11 are unrelated to an agreement or arrangement, enter **NONE** in this section.

10.b Indicate whether the promise, agreement, or arrangement was oral, written, or both. Attach or upload a copy of any written agreement entered into during the fiscal year covered in this report.

11. PAYMENT OR EXPENDITURE

11.a. Enter the date of each payment referred to in Item 9.

11.b. If the form of payment was cash, enter the U.S. dollar amount of each payment made during the fiscal year. If the form of payment was property, provide the market value in U.S. dollars of the property at the time of the transfer.

11.c. Indicate whether the payment was either a remuneration, gift, or loan. Specify the method of payment (for example, cash, check, or securities, or other property).

12. CIRCUMSTANCES OF ALL PAYMENTS

12.a. Provide a full explanation identifying the purpose and circumstances of the payments, promises, agreements, or arrangements included in the report. Your explanation must contain a detailed account of services rendered or promised in exchange for promises **or** payments you have already made or agreed to make. Your explanation must fully outline the conditions and terms of all listed agreements, including fully identifying the subject group of employees (i.e., the particular unit or division in which those employees work).

In addition to the above, you must indicate whether the payments or promises reported specifically benefited the person or persons listed in Item 9.b, or the firm, group, or labor organization named in Item 9.d. If you made payments, promises, or agreements through a person or persons not shown above, you must provide the full name and address of such person or persons. Your explanation must clearly indicate why you must report the payment, promise, or agreement. Any incomplete responses or unclear explanations will render this report deficient.

12. b. If you are completing Part B because you checked **YES** to any item in Items 8.b. through 8.f., did the payments or agreements concern employees performing work pursuant to a Federal contract or subcontract? Select the appropriate **YES** or **NO** box below the question; if you checked **YES** to just Item 8.a., then the **N/A** box will automatically be checked. Do not leave all three boxes blank. If the answer to the question is **YES**, you must indicate your Unique Entity Identifier. If you do not have a Unique Entity Identifier, state on the form that you do not have one. Enter the Federal contracting agency or agencies that are a party to the Federal contract(s). If providing the name of a contracting agency would reveal classified information, the filer should omit the name of the agency. For a definition of Federal "contract," "contracting agency," "contractor," "government contract," "modification of a contract," "prime contractor," "subcontract," and "subcontractor," please see the

Executive Order 13496 (Notification of Employee Rights Under Federal Labor Laws) implementing regulations at 29 CFR § 471.1 (excerpts below). Any incomplete responses or unclear explanations will render this report deficient.

SIGNATURES

13-14. SIGNATURES—The completed Form LM-10 which is filed with OLMS must be electronically signed by both the president and treasurer, or corresponding principal officers, of the reporting employer. A report from a sole proprietor need only bear **one** signature which you should enter in Item 13. Otherwise, this report must bear **two (2)** signatures.

If the report is signed by an officer other than the president and/or treasurer, so indicate in Items 13 and/or 14 by so indicate by entering the correct title in the title field next to the signature. Then you must Save and revalidate the form. Once the form has passed validation, then you must click to sign the report.

NOTE: Upon registering with OLMS, the signatories and preparers must enter email addresses they use to conduct business, in order to file the form via the OLMS Electronic Forms System. While the email addresses will not appear on the report, OLMS may use the email address of the signatories and any preparers to contact the employer concerning LMRDA compliance.

Enter the telephone number used by the signatories to conduct official business. You do not have to report a private, unlisted telephone number.

SELECTED DEFINITIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

SEC. 3. For the purposes of titles I, II, III, IV, V except section 505), and VI of this Act-

(a) "Commerce" means trade, traffic, commerce,

transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended. (29 U.S.C. 402 (c)).

(d) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce

(1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or

(2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) Not applicable.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged 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, and 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. (29 U.S.C. 402(i))

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it –

(1) Is the certified representative of employees under the provisions of the National Labor

Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees or an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) 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.

(k) Not applicable.

(l)Not applicable.

(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.

(o) Not applicable.

(p) Not applicable.

(q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service personnel.

NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8. "(c) The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Report of Employers

Sec. 203.

(a) Every employer who in any fiscal year made-

(1) any payment or loan, direct or indirect, of money or other thing of value (including reimbursed expenses), or any promise or agreement therefore, to any labor organization or officer, agent, shop steward, or other representative of a labor organization, or employee of any labor organization, except

(a) payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution and

(b) (b) payments of the kind referred to in section 302 (c) of the Labor Management Relations Act, 1947, as amended;

(2) any payment (including reimbursed expenses) to any of his employees, or any group or committee of such employees, for the purpose of causing such employee or group or committee of employees to persuade other employees to exercise or not to exercise, or as the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing unless such payments were contemporaneously or previously disclosed to such other employees;

(3) any expenditure, during the fiscal year, where an object thereof, directly or indirectly, is to interfere with, restrain, or coerce employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing, or is to obtain information concerning the activities of employees, or a labor organization in connection with a labor dispute involving such employer, except for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an

object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4);

shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly-

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

(c) Nothing in this section shall be construed to of arbitration or engaging or agreeing to engage in collective bargaining on behalf of such employer with respect to wages, hours, or other terms or conditions of employment or the negotiation of an agreement or any question arising thereunder.

(d) Nothing contained in this section shall be require any employer or other person to file a report covering the services of such person by reason of his giving or agreeing to give advice to such employer or representing or agreeing to represent such employer before any court, administrative agency, or tribunal construed to require an employer to file a report under subsection (a) unless he has made an expenditure, payment, loan, agreement, or arrangement of the kind described therein. Nothing contained in this section shall be construed to require any other person to file a report under subsection (b) unless he was a party to an agreement or arrangement of the kind described therein.

(e) Nothing contained in this section shall be construed to require any regular officer, supervisor, or employee of an employer to file a report in connection with services rendered to such employer nor shall any employer be required to file a report covering expenditures made to any regular officer, supervisor, or employee of an employer as compensation for service as a regular officer, supervisor, or employee of such employer.

(f) Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8 (c) of the National Labor Relations Act, as amended

(g) The term "interfere with, restrain, or coerce" as used in this section means interference, restraint, and coercion which, if done with respect to the exercise of rights guaranteed in section 7 of the National Labor Relations Act, as amended, would, under section 8(a) of such Act, constitute an unfair labor practice.

SECTION 302(c) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

"(c) The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his

service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, which-ever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents) Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event of the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such dead- lock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such a representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or (B) child care centers for preschool and school age dependents of employees: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended, or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor- Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industry-wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978."

OLMS has adopted the following definitions from Executive Order 13496 Implementing Regulations at

29 CFR § 471.1

Contract means, unless otherwise indicated, any Government contract or subcontract.

Contracting agency means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, that enters into contracts.

Contractor means, unless otherwise indicated, a prime contractor or subcontractor.

Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or non-personal services. The term “personal property,” as used in this section, includes supplies, and contracts for the use of real property (such as lease arrangements), unless the contract for the use of real property itself constitutes real property (such as

easements). The term "non-personal services" as used in this section includes, but is not limited to, the following services: utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federal financial assistance, as defined in 29 CFR 31.2.

Modification of a Contract means any alteration in the terms and conditions of that contract, including amendments, renegotiations, and renewals.

Prime Contractor means any person holding a contract with a contracting agency, and, for the purposes of subparts B and C of [29 C.F.R. part 471], includes any person who has held a contract subject to the Executive Order and [29 C.F.R. part 471].

Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or non-personal services that, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

Subcontractor means any person holding a subcontract and, for the purposes of subparts B and C of [29 C.F.R. part 471], any person who has held a subcontract subject to the Executive Order and [29 C.F.R. part 471].

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta-Nashville
Boston-Buffalo
Chicago
Cincinnati-Cleveland
Dallas-New Orleans
Denver-St. Louis
Detroit-Milwaukee
Los Angeles
Philadelphia-Pittsburgh
New York
San Francisco-Seattle
Washington, D.C.

Copies of labor organization annual financial reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://www.unionreports.gov .

Code of Federal Regulations (CFR) documents are also available on the Internet at: http://www.dol.gov/olms

Additionally, you can call the OLMS national office at (202) 693-0123 or email OLMS-Public@dol.gov.

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