OBAMA-BIDEN TRANSITION PROJECT

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Meeting with AFL-CIO and Change to Win on Union Financial Reporting
Friday December 5, 2008

Participants:

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Leon Dayan-Bredhoff & Kaiser
Andy Roth-Bredhoff & Kaiser
Larry Cohen-Sherman Dunn
Mitch Kraus-TCU
Dick Griffin-Operating Engineers (IUOE)
Pat Szymanski-Change to Win
Larry Weinberg-AFSCME
Leslie Tarantala-Seafarers' Union
Duncan Crabtree Ireland-Screen Actors Guild (SAG)
Jim O'Connell-O'Donoghue Law Firm
Chuck Hobbie-American Federation of Government Employees
Keith Secular-Cohen Weiss and Simon
Teresa Idris-American Federation of Teachers (AFT)
Sam Lieberman-AFT
Brendan Kenny-Airline Pilots (ALPA)
Betty Ginsburg-ALPA
Clay Warner-ALPA
Cecile Conroy-Boilermakers
Bridget O'Connor-Bricklayers
Richard Resnick--IBT
Darryl Anderson-Postal Workers (IPWU)
Baldwin Robertson-IAFF
Nick Clark, UFCW Legal Dept
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SUMMARY PRODUCED BY AFL-CIO

Office of Labor Management Standards (OLMS). The Bush administration has used OLMS as a weapon against unions, imposing burdensome new reporting requirements that produce information with little or no value to union members and launching a series of burdensome financial audits with meager results. Meanwhile, the Bush administration has lavished budgetary resources on OLMS, which now spends about $2700 per labor organization under its jurisdiction, compared to $26 per covered workplace for OSHA and WHD, respectively. The administration should refocus the mission of OLMS on the original purpose of the LMRDA—to provide union members with meaningful information about unions *and* employers—and reallocate resources among OLMS, WHD, OSHA, and MSHA in the same proportion as the baseline FY 2001 budget.

LM-30. Changes promulgated in 2007 to the LM-30 report, which union officers and employees must file if they engage in certain transactions that have the potential to raise a conflict of interest with their union, radically expand the universe of individuals who must report, including approximately 80,000 union volunteers such as shop stewards, and the types of transactions that must be reported, including personal financial transactions such as credit card bills and mortgage loans. The effective date of the LM-30 revision was August 16, 2007, and the first reports for taxable year 2008 are due March 30, 2009. The new administration should extend the effective date and revise by notice and comment.

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T-1. In 2003 DOL proposed a requirement that unions file detailed financial reports with respect to "significant trusts in which they are interested" on a new T-1 report, which the D.C. Circuit struck down in 2005. DOL proposed another T-1 requirement in 2006, which the D.C. District Court struck down in 2007. DOL has now promulgated a third T-1 requirement effective December 31, 2008, with the first T-1 reports due on March 30, 2010. The new administration should extend the effective date and revise or rescind by notice and comment.

LM-2/LM-3. In 2003, DOL promulgated a wholesale revision of the LM-2 form, the annual financial report filed by the largest labor organizations, effective for fiscal years beginning 2005. Complying with the revised LM-2 requirements entailed huge expenditures for unions, and recordkeeping and reporting continues to impose a financial burden. Unions now produce an avalanche of minutely detailed information on the LM-2, much of which is not meaningful, and the current form does not comply with generally accepted accounting principles. OLMS should evaluate what changes should be made to the LM-2 to produce meaningful information with a view toward reducing unnecessary burdens on unions.

In May 2008 DOL proposed substantial additional revisions to the LM-2 that would require unions once again to make costly changes to their accounting systems without producing meaningful information for union members. DOL also proposed procedures for revoking the right of smaller unions to file the simplified LM-3 report, applicable to unions with annual receipts of at least $10,000 but less than $250,000, if the union files a delinquent LM-3, files a materially deficient LM-3 that remains uncorrected after notice, or if "other circumstances" warrant. DOL is expected to promulgate final rules by the end of 2008, with the first reports due in March 2010. The new administration should rescind these proposals.

Intermediate Labor Organizations. The LMRDA does not apply to labor organizations whose members are solely government employees, as DOL has long recognized. However, in 2003 DOL applied LM-2 reporting requirements to intermediate labor organizations whose members are solely government employees if they are subordinate to a national or international labor organization that has other affiliates with private sector members. DOL should withdraw its 2007 policy statement and issue a new statement reflecting the previous longstanding DOL position.

ICAP Audits. DOL has placed tremendous emphasis on financial audits of local and national/international unions, carried out by a newly-staffed division of OLMS under the I-CAP program. These audits have lasted from several months to over a year and have required unions to dedicate several staff members, often at the top level. A review of I-CAP closing letters (posted on the DOL website) fails to reveal any evidence of the widespread corruption or lack of transparency that DOL has used to justify its investment in this program. Within the first year, OLMS should conduct a study of the effectiveness of the I-CAP program and carefully scrutinize its allocation of resources.

LM-20 and LM-21 Persuader Reports. In contrast to its imposition of additional reporting requirements on unions, DOL has made it easier for employers and anti-union consultants to escape their LMRDA reporting obligations. The Clinton administration reversed a longstanding interpretation that anti-union consultants did not have to file LM-21 "persuader" reports if they had no direct contact with employees. However, in 2001 the Bush administration quickly nullified the Clinton interpretation, once again shielding anti-union consultants from their disclosure

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requirement. Within 100 days, the new administration should reinstate the Clinton-era interpretation. DOL should also conduct stakeholder meetings to determine what information should be required on the LM-20 and LM-21 persuader reports that would be most meaningful to workers, then revise the forms by notice and comment. Once the revised forms have gone into effect, DOL should design a program to ensure maximum compliance.

Union Elections. Title IV of the LMRDA sets forth standards for the conduct of labor organization elections and provides union members with the right to file a complaint with DOL alleging violations of those standards. DOL must investigate such complaints and, if it finds probable cause that a violation has occurred, file suit in federal district court to set aside the election and direct a rerun election under DOL supervision. OLMS has repeatedly exceeded the scope of the complaints it receives and broadened its investigations into other areas of elections under scrutiny. In this way, it has attempted to undermine union self-government in violation of congressional intent. Within 100 days, the new Deputy Assistant Secretary should issue a directive instructing OLMS staff not to exceed the scope of complaints when investigating allegations of misconduct.

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