PROSKAUER ROSE LLP®

Client Alert

A report
for clients
and friends
of the firm

July 2005

The Obligations of Taft-Hartley Trust Funds and Their Trustees Under the Labor Management Reporting and Disclosure Act

This Client Alert discusses a very recent interpretation by the U.S. Department of Labor extending to Taft-Hartley benefit funds that employ any employees certain reporting requirements concerning the payment of things of value to a union or its officers or employees (including union trustees). This expansion will require immediate action by these Taft-Hartley funds and is therefore of critical importance to all plan trustees, administrators and sponsors.

As discussed in our June 29, 2005 Proskauer Client Alert, the U.S. Department of Labor ("DOL") announced last month that it would begin to mandate compliance with the reporting requirements of the Labor Management Reporting and Disclosure Act ("LMRDA") (Click here to access our June 29th Client Alert). Among other things, the LMRDA requires employers to report payments or loans of money to labor organizations or to officers, agents, shop stewards or other representatives or employees of labor organizations. It also requires union officers and employees (and their spouses and minor children) to disclose certain financial transactions and financial interests related to a business that deals with: (i) the individual's labor organization; (ii) an employer whose employees are represented by the individual's labor organization; or (iii) a labor relations consultant to an employer.

In light of this announcement, the DOL issued on June 22, 2005, a question and answer publication addressing numerous questions related to the circumstances in which payments from a trust fund in which a union is interested (*i.e.*, "Taft-Hartley" or multiemployer trust funds) are reportable by the trust fund on the Form LM-10 (the employer report) and by the union employee or officer on the Form LM-30 (the union officer and employee report).[1] This Client Alert discusses the obligations of Taft-Hartley trust funds and union trustees in connection with LMRDA reporting.

Must Taft-Hartley Funds Disclose Payments Made on the Form LM-10?

Based on the DOL's question and answer publication, it is clear that the DOL has taken the position that all Taft-Hartley trust funds with any employees will be required to file a Form LM-10 if anything of value was paid (or agreed to be paid) to a union or covered union representative.

The LMRDA defines the term "employer" broadly to include any employer, or a group or association of employers, within the meaning of any law of the United States relating to the employment of employees. The DOL has interpreted this definition exceedingly broadly to encompass any entity that employs employees, apparently without any regard to whether the entity's employees are represented (or may be represented) by the union involved. Under this formulation, any Taft-Hartley trust fund that employs employees would be considered an employer subject to the requirements of the LMRDA, including the filing of Form LM-10 for the payment of money (including the reimbursement of expenses) or for any other thing of value given to the union or union trustees who are also union officers or employees.

[1] The DOL's Q&A responses regarding Forms LM-10 and LM-30 are available on the DOL website at http://www.dol.gov/esa/regs/compliance/olms/LM30_LM10_Trusts_Info.htm.

Must Union Trustees Disclose Payments Received from Taft-Hartley Trust Funds on the Form LM-30?

The Form LM-30 is required to be filed by all union officials or employees (other than clerical or custodial employees). In its question and answer publication, the DOL clarified that this requirement applies to union officers and union employees even when they are serving in the capacity as union trustees of a Taft-Hartley trust fund.

The Form LM-30 identifies three scenarios under which a union official or a union employee is required to report receipt of payments or other things of value from employers (Parts A-C). For purposes of this Client Alert, we will focus only on Parts B and C. (A trust would not be required to report under Part A unless the officer's or employee's union represents, or seeks to represent, employees of the trust.)

Form LM-30 Part B

Part B of the Form LM-30 is used for reporting interests in, transactions with, or income or other benefits (including reimbursed expenses) from, a business: (i) a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with an employer whose employees the filer's union represents or actively seeks to represent; or (ii) any part of which consists of buying from, selling or leasing to, or otherwise dealing with the union or with a trust in which the union is interested.

According to the DOL, in order for a trust to be within the scope of Part B, the trust must: (i) be a business; and (ii) deal with the union or deal in substantial part with an employer whose employees the union represents or actively seeks to represent. The DOL strongly presumes that most Taft-Hartley trusts are businesses in light of the commercial activities engaged in by many trusts. Moreover, the DOL has taken the position that trusts typically engage in numerous "dealings" with their related unions, including receiving financial support directly from the union or from employers obligated to fund the trust under collective bargaining agreements negotiated by the union. If a trust meets those conditions, a union officer or union employee must report generally anything of value received from the trust.

Form LM-30 Part C

Part C of Form LM-30 is used for reporting interests in, transactions with, or income or other benefits from, an employer not covered by Part A or Part B if the transaction constitutes, or creates the appearance of, a conflict of interest. Because of the exceedingly broad interpretation of the term "employer" under the LMRDA, if a trust has employees, it is an employer. The DOL has also stated that a payment from a trust to an officer or employee of a union that negotiates with an employer concerning the financing of a the trust would present such a potential conflict of interest, and a union officer or union employee would be required to disclose such payments. However, an exception exists for payments and benefits as compensation for service as a *bona fide* employee of the employer. Therefore, any officer or employee of the union who is also an employee of the trust (a trustee is not considered an employee) would not need to disclose such payments in Part C.[2]

What Must Be Reported?

In its press release, the DOL listed the following circumstances as reportable for Taft-Hartley trusts under Form LM-10 and their union trustees under Form LM-30.

Form LM-10

- Taft-Hartley trust funds with employees must report expenses paid to or on behalf of union trustees (regardless of whether it reimburses the trustee or pays an expense directly) on a Form LM-10, unless the payments fall within an exception to Section 302 of the Taft-Hartley Act.

- These include, for example, lunches at trustee meetings, direct payments or reimbursements for travel, meals, lodging and expenses related to attendance at educational conferences or trustee meetings and so forth.

Form LM-30

- Union trustees must report direct payments by a Taft-Hartley fund or reimbursements for such expenses, unless the Taft-Hartley trust fund is neither an employer nor a business.

- Union trustees must also report, among other things, meals, golf outings, tickets for theatre, sporting and similar events, gifts, or any other thing of value from a trust fund or from vendors or service providers such as accountants, attorneys, investment managers, brokers, banks, etc. that deal with the trust fund or the union or substantially deal with the employer in which the union is interested.

- Union trustees must also report attendance at vendor or service provider dinners, parties or receptions (including receptions at educational conferences).

[2] However, no such exception exists under Part B. Therefore, the payment of compensation by a Taft-Hartley trust fund to a union officer or employee who is also a trust fund employee is reportable.

- A union officer or union employee is required to file a Form LM-30 if his/her spouse or minor child is employed by a Taft-Hartley trust fund or its vendors or service providers.

- Union trustees also must report transactions or interests with other employers or service providers even if not doing business with the fund, union or employers if there is an actual or potential conflict of interest.

Union employees or officers should, of course, contact their union counsel and/or accountant to discuss the scope of their reporting obligations.

De Minimis Exception

The DOL has advised that payments will be considered *de minimis* and need not be disclosed if: (i) they have a value of $25 or less; (ii) are sporadic or occasional; *and* (iii) are given under circumstances unrelated to the recipient's status in a labor organization. However, the DOL has stated that, unless all three prongs of this exception are satisfied, any items of value must be reported. The DOL suggests that a Christmas gift (the value of which is $25 or less) *might* meet all three criteria. In its Fact Sheet for the LM-30, the DOL also notes that "if any employer frequently provides a catered lunch during long meetings with various groups, a union officer would not have to report the receipt of such a lunch if it has a value of $25 or less." This would imply, for example, that meals served at joint trustee meetings that cost $25 or less per person may not need to be reported.

Furthermore, if a union officer or union employee attends a dinner, party or reception provided by a vendor or service provider (whether or not in conjunction with an educational conference), he or she is not required to use the host's per person costs in determining whether to report that in his Form LM-30. Instead, the DOL has instructed that the union officer or union employee may use a greater or lesser figure, depending on his or her actual consumption of food and beverage at the reception, so long as the estimate is made in good faith.

When to File

Both the Form LM-10 and the Form LM-30 must be filed within 90 days after the end of the fiscal year of the trust fund or the union officer or employee, respectively. If, however, the official was an officer or an employee for only a portion of the fiscal year, the official may limit the Form LM-30 to that portion of the fiscal year.

Significantly, for the 2004 Form LM-30, the DOL has established a grace period through July 15, 2005. The DOL has stated that, absent extraordinary circumstances, there will be no enforcement action for late Form LM-30 filing during this grace period and that new filers that file within the grace period will avoid enforcement for the failure to file such reports for prior years.[3]

While no similar grace period has been announced with respect to the 2004 Form LM-10 filing, we understand that the DOL intends to announce in the very near future a similar grace period that may extend beyond the July 15th extended deadline for filing the Form LM-30.

Recordkeeping

Every person required to file any report under the LMRDA is responsible for maintaining for five years the records necessary to verify, explain, or clarify the Form LM-10 or Form LM-30, including but not limited to vouchers, worksheets, receipts, and applicable resolutions.

Penalties

The individual required to file the Form LM-30 is personally responsible for its filing and accuracy. Furthermore, the equivalent of the President and Treasurer of an employer (or in the case of a trust fund, individuals in comparable positions) are personally responsible for the filing and accuracy of the Form LM-10. Under the LMRDA, willful violations of reporting or recordkeeping requirements, false statements of fact with knowledge of falsehood, material non-disclosures, and false entries in (or willful concealment of) books and records are criminal offenses that carry a fine of not more than $10,000 or one year imprisonment, or both. Moreover, the individuals responsible for the filing (and, in the case of the LM-10, the employer as well) are also subject to civil prosecution for violations of filing requirements.

Implication for Other Laws

Clients should take note of the fact that the reporting requirements of the LMRDA relate *only* to disclosure of specified financial transactions and interests. They do not address whether the underlying transactions or interests are permissible under any other law, including, for example, the Taft-Hartley Act or the Employee Retirement Income Security Act. We strongly recommend that all Taft-Hartley benefit plans and their trustees take this opportunity to review immediately their practices to ensure compliance with these other statutes as well.

[3] This "amnesty" period only applies to the failure to file the form, not to enforcement actions for any underlying Taft-Hartley violations disclosed on the forms.

NEW YORK • LOS ANGELES • WASHINGTON

BOSTON • BOCA RATON • NEWARK

NEW ORLEANS • PARIS

Client Alert

The Employee Benefits and Executive Compensation Law Practice Group at Proskauer Rose LLP counsels clients on the full spectrum of benefit and compensation issues, communicating technical and complex legal concepts in an intelligible, pragmatic manner.

The following individuals serve as contact persons with respect to this Client Alert and would welcome any questions you may have:

Rory Judd Albert
212.969.3005 – ralbert@proskauer.com

Robert M. Projansky
212.969.3367 – rprojansky@proskauer.com

Roy P. Salins
212.969.3324 – rsalins@proskauer.com

Proskauer Rose is an international law firm that handles a full spectrum of legal issues worldwide.

This publication is a service to our clients and friends. It is designed only to give general information on the developments actually covered. It is not intended to be a comprehensive summary of recent developments in the law, treat exhaustively the subjects covered, provide legal advice or render a legal opinion.

© 2005 PROSKAUER ROSE LLP. All rights reserved.