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DOL Rescinds Form T-1 Trust Annual Report

The DOL has issued final regulations rescinding the requirement that unions file Form T-1 (Trust Annual Report) disclosing financial information for certain trusts they control, thereby eliminating the need for unions to file the Form T-1 in 2011 for benefit trusts such as those for apprenticeship programs, strike funds, building funds, and educational funds. (Trusts of plans that have to file the Form 5500 were excluded from the T-1 requirement.) The regulations also modify Form LM-2 and Form LM-3 reporting requirements, and exclude from coverage under the LMRDA intermediate bodies that are wholly composed of public sector labor organizations.

Background

On October 2, 2008, the Department of Labor's Office of Labor-Management Standards (DOL) issued the Form T-1 Trust Annual Report and implementing regulations, which required labor organizations with total annual receipts of at least \$250,000 to disclose financial information annually about certain trusts in which they are "interested" pursuant to the Labor-Management Reporting and Disclosure Act of 1954 (LMRDA). A trust in which a union is interested (a Section 3(l) trust) is a trust or other fund that was established by the union or has a governing body that includes at least one member selected by the union, and has a primary purpose of providing benefits to union members or their beneficiaries.

The Form T-1 annual filing requirement did not extend to all union trusts. Rather, the requirement attached only if the union (alone or with other unions) either appointed or selected a majority of the trust's governing board, or contributed more than 50% of the trust's receipts during the trust's fiscal year. For this purpose, the 2008 Form T-1 rule counted employer contributions to the trust made pursuant to a collective bargaining agreement as union contributions. The rule excepted certain trusts from the Form T-1 filing requirement, including trusts of plans (e.g., jointly trusteed multiemployer benefits funds) required to file a Form 5500 with the DOL.

BUCK COMMENT. *The Form 5500 exemption did not apply to Section 3(l) trusts that were eligible for an exemption from filing the Form 5500 or the Form 5500-SF.*

Trusts covered by the Form T-1 requirement included, for example, credit unions, strike funds, development or investment groups, training funds, apprenticeship programs, building funds, and educational funds.

The 2008 final regulations and Form T-1 were the culmination of a process started in 2002, which saw courts vacate earlier Form T-1 filing requirements. Under the 2008 regulations, the initial Form T-1 was to be filed no earlier than March 31, 2010. However, on December 30, 2009, the DOL extended the filing due date of all T-1 reports required to be filed in 2010 for one year. In February 2010, the DOL [proposed](#) the rescission of the 2008

Form T-1 rule, along with certain other changes. On December 1, 2010, the DOL issued [final regulations](#), effective January 1, 2011, essentially adopting the proposed regulations.

The Final Regulations

The final regulations eliminate the separate Form T-1 trust reporting requirement, return required “subsidiary organization” reporting to the Form LM-2 (Labor Organization Annual Report), and modify existing subsidiary reporting on the Form LM-3 (Labor Organization Annual Report). Importantly, the regulations also alter the DOL interpretation of the LMRDA definition of “labor organization” to exclude from LMRDA coverage intermediate bodies that are wholly composed of public sector organizations.

Rescission of Form T-1. The DOL concluded that the scope of the separate trust reporting requirement in the 2008 Form T-1 rule was overly broad because it covered many trusts (including Taft-Hartley trusts) without showing that reporting for such trusts is necessary to prevent the circumvention and evasion of the LMRDA’s reporting requirements. In light of this, the DOL rescinded the Form T-1 and its implementing regulations.

Form LM-2 and LM-3 Reporting. Prior to the 2005 reporting year, unions with annual receipts of at least \$250,000 were required to report on their Forms LM-2 financial information about organizations that were wholly owned, controlled and financed by them (i.e., subsidiary organizations). In anticipation that separate T-1 trust reporting would capture subsidiary information, the DOL eliminated the requirement from the Form LM-2. With the rescission of Form T-1, the DOL has reinstated subsidiary reporting on the Form LM-2. Thus, unions will now have to report on the Form LM-2, rather than on the Form T-1, the financial information of Section 3(l) trusts that are subsidiaries of the union in the same detail as it reports other union assets.

The final regulations also modify subsidiary reporting on Form LM-3 (filed by unions with annual receipts of less than \$250,000) by eliminating the option of the labor organization to use a separate LM-3 report for the subsidiary organization. Form LM-2 and Form LM-3 filers must now either:

- Consolidate their subsidiary’s financial information on the Form LM-2 or LM-3 filed for the labor organization; or
- File, with their Form LM-2 or LM-3, a regular annual report for each subsidiary accompanied by a separate certification by an independent public accountant.

The final regulations include specific revisions to Forms LM-2 and LM-3 and their instructions reflecting the changes in who must file, what form to file, and which funds to report. The DOL has also revised the instructions for the abbreviated annual report (Form LM-4) for labor organizations with total annual receipts of less than \$10,000.

LMRDA Definition of Labor Organization. Prior to 2003, the DOL interpreted the definition of “labor organization” under LMRDA Sections 3(i) and (j) to exclude intermediate bodies (i.e., bodies subordinate to a

national or international labor organization) that are entirely composed of public sector labor organizations from LMRDA coverage, including reporting requirements. In 2003, the DOL altered its interpretation to include entities entirely composed of public sector unions.

The final regulations revert to the DOL's pre-2003 definition of labor organization for LMRDA purposes. To implement this interpretation, the DOL revised instructions to Forms LM-2, LM-3 and LM-4 to state "labor organizations that include or represent only state, county or municipal government employees are not covered by these laws and, therefore, are not required to file."

Effective Date

The final regulations were effective on January 1, 2011. The changes to the annual reporting requirements with respect to subsidiary organizations will apply to reports required by labor organizations with fiscal years beginning on or after January 1, 2011.

Conclusion

Buck's consultants are available to discuss the rescission of Form T-1 and its impact on your LMRDA reporting and compliance obligations.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic