



September 4, 2026

Re: Request for Advisory Opinion – LMRDA First Elections and Section 402(a)

Dear **Name***:

Thank you for your email requesting an advisory opinion regarding the application of Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or the Act) to first elections conducted by newly formed labor organizations, and the application of Section 402(a)'s internal exhaustion requirement where no internal remedies exist. We have reviewed your email and the issues you raised.

This letter responds to the three interpretive questions you presented:

1. Whether LMRDA Title IV protections apply to first elections conducted by newly formed labor organizations;
2. Whether §402(a) exhaustion may be required when no internal remedies exist; and
3. Whether elections conducted prior to bylaws adoption must nonetheless comply with §401(c) and §401(e).

This letter supplements the letter you received from the Office of Labor-Management Standards (OLMS) San Francisco-Seattle District Office regarding your complaint. That letter noted that you had not yet pursued internal remedies and that the initial selection of officers by newly formed or merged labor organizations is not subject to Title IV (29 C.F.R. § 452.14). We write to clarify that because the initial selection of officers is not covered by Title IV, OLMS cannot accept a complaint under that title, and the question of internal exhaustion is not applicable in your case. The interpretive questions you raise are addressed below.

I. Whether LMRDA Title IV Protections Apply to First Elections Conducted by Newly Formed Labor Organizations

The initial selection of officers by a newly formed or merged labor organization is generally not subject to the election requirements of Title IV of the LMRDA (29 U.S.C. § 481 et seq.).

Title IV's election requirements apply to the regular, periodic election of union officers, not the initial election or selection. Section 401 sets maximum terms of office and prescribes procedures for certain elections, including secret ballot voting, advance notice of nominations and the election, and nomination and voting rights, for those recurring elections. The Department's implementing regulations make explicit that "[t]he initial selection of officers constituting the governing body of a newly formed labor organization is not subject to the requirements of [Title IV]." 29 C.F.R. § 452.14. However, this interpretation does not create a blanket exemption from OLMS oversight. Although 29 C.F.R. § 452.14 exempts the initial selection of officers from

Title IV's election requirements, such carve-outs from the LMRDA's protections are rare, and newly formed labor organizations otherwise remain subject to the Act. For example, Section 201(a) requires every labor organization to adopt a constitution and bylaws and to file them with the Secretary of Labor, along with a Form LM-1 report, within ninety days of becoming subject to the Act. That report must describe, among other things, the manner in which officers were selected. Additionally, apart from OLMS' jurisdiction, the Bill of Rights provisions of Title I (29 U.S.C. § 411 et seq.), including the right to equal participation in the organization's affairs, may provide members certain protections enforceable by private civil action even where Title IV does not apply.

We recognize that this interpretation means Title IV's specific election safeguards, including the Secretary's complaint and supervision authority are not available to members who believe the initial selection of officers was conducted unfairly. The Department is aware of the concerns you raise regarding the potential that the initial election can be run using practices not otherwise permitted in later elections. However, the text of the statute dictates—and the Department's regulation supports—that Title IV does not apply to the initial selection of officers of a new labor organization. Title IV's requirements are applicable once the organization is established and conducts its regular elections of officers, which must occur in accordance with the Act's prescribed election intervals. Under the Act, those elections must be held at least every three years for local labor organizations, every four years for intermediate bodies, and every five years for national or international unions. 29 U.S.C. 481(a), (b), (d).

II. Whether Section 402(a) Exhaustion May Be Required When No Internal Union Remedies Exist

Section 402(a) conditions the Secretary's authority to investigate an election complaint on the member having first exhausted available internal union remedies or having pursued such remedies for three calendar months without obtaining a final decision. 29 U.S.C. § 482(a). This exhaustion requirement reflects Congress' intent to afford unions the first opportunity to correct their own errors before the Department's intervention.

Because Title IV does not apply to the initial selection of officers in a newly formed labor organization, whether conducted by elections or other means, a complainant cannot file a protest under Title IV because the underlying process is not covered by the Act's election provisions in the first place.

Once the labor organization conducts its first LMRDA-covered election, a union member who wishes to file a complaint with the Secretary about that election must first give the labor organization an opportunity to address the complaint by following the protest procedure provided by the union. If a union does not have specific election protest or appeals procedures, the member must invoke whatever appropriate protest or appeals procedure may be available under the constitution and bylaws of the union. If no appropriate procedure is available, the member should submit a written protest to the union, addressed to the union officers, within a reasonable time after the election. If the member does not become aware of a violation until after the election is completed, the member should submit the protest within a reasonable time after discovering the violation. OLMS Interpretative Manual § 473.007, 473.100.

If the union provides a final decision to the protest, the member may submit a complaint to OLMS within one month after receiving the decision. If the union does not provide the member with a final decision within 3 months of the initial protest, the member may also submit a complaint to OLMS within one calendar month.

III. Whether Elections Conducted Prior to Bylaws Adoption Must Nonetheless Comply with Sections 401(c) and 401(e)

For the reasons explained in response to the first question above, an initial officer selection by a newly formed labor organization is not subject to Section 401's requirements, including the adequate safeguards requirement of Section 401(c) and the nomination and voting rights requirements of Section 401(e). Title IV is inapplicable to the first selection of officers for newly formed labor organizations even if the union had adopted bylaws at the time of the selection.

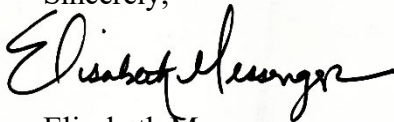
Once a labor organization is established and begins conducting regular, periodic officer elections, which are the elections covered by Title IV, those elections must comply fully with the requirements of Section 401, including Sections 401(c) and (e), regardless of whether the union's constitution and bylaws contain similar procedures. The union's own rules must also be followed insofar as they are not inconsistent with the Act. For future officer elections subject to Title IV, Section 402(a)'s exhaustion requirement would apply to require that members protest an election by following the internal union remedies that are available under the labor organization's constitution, bylaws, or other governing procedures.

IV. Additional Matters

Your submission also notes that OLMS had no officer reports or any identifying documents on file for the **labor organization*** at the time of your initial complaint. OLMS is reviewing the union's compliance with the reporting and disclosure requirements of Title II of the LMRDA, including the requirement to file an initial Form LM-1 report and a copy of the union's constitution and bylaws within ninety days of becoming subject to the Act.

We hope this response addresses the questions you raised. If you have additional questions, please contact OLMS at (202) 693-0123.

Sincerely,

A handwritten signature in black ink, appearing to read "Elisabeth Messenger".

Elisabeth Messenger
Director

***Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(6).**