MAR 26 2004

BY FIRST-CLASS MAIL AND FAX

Mr. Richard L. Trumka
Secretary Treasurer
American Federation of Labor and
  Congress of Industrial Organizations
815 Sixteenth Street, N.W.
Washington, D.C. 20006

Dear Mr. Trumka:

I am writing in reply to your letter of March 5, 2004, concerning the Department's
implementation of its new financial transparency reforms for the benefit of union members. In
the March 5 letter, you raise concerns about the Form LM-2 reporting software, which was made
available to the public in a beta version on February 3, 2004.

In your correspondence, you express the view that the Department has pursued a "go it alone
strategy" and that the testing of the electronic filing software has occurred without any "give and
take" with labor organizations and conclude that the software is "virtually unusable." We
disagree. In fact, labor organizations have been involved throughout the rulemaking process,
including the software development. Many national and international unions and their locals
have accepted the Department's invitation for briefings and offers of assistance in complying
with the rule and utilizing the Department's beta software. During these sessions, participants
have offered constructive ideas about making adjustments to accounting systems to comply with
the specifications of the revised Form LM-2 and new Form T-1. The cooperation of these unions
has been very helpful in making these new transparency reforms work for the benefit of rank-
and-file union members. To my knowledge, other labor organizations have not encountered the
problems in using the beta software described in your letter.

I regret that the AFL-CIO has not accepted the Department's prior offers to meet. Such a
meeting may have addressed and avoided several misunderstandings that appear to have resulted
in basic mistakes in attempting to import data into the beta software. For example, it is apparent
that in testing the software you have used unrealistically large data file sizes, failed to properly
configure the data files before attempting to enter them into the electronic form, and tried to
cause the software to perform functions it was not designed, and was never intended, to perform.

Your letter states that the software was unable to import a file of 3,100 records into the Form
LM-2's Schedule 1 (Accounts Receivable). As the form and the instructions make plain, this
schedule is used to report accounts of $5,000 or more that, at the end of the reporting period, are
90 days or more overdue, liquidated, reduced, or were written off during the reporting period,
and the total aggregated value of all other accounts. For a union to be required to import 3,100
records into this schedule, it would have to have at least $15.5 million in accounts receivable that

exceeded the $5,000 threshold (3,100 times $5,000 equals $15,500,000). Even if a union had such a volume of accounts receivable, the form and instructions require a union to report only those accounts that are in a delinquent status at the end of the fiscal year.

Your letter asserts that 3,100 records is a "typical amount of data," and that "a typical national union will easily have files that contain 100,000 records." The financial data actually submitted by unions in 2002 belie this assertion, showing that the largest 50 unions reported accounts receivable totaling, on average, $7,181,564. Even if every one of the accounts receivable were delinquent and valued precisely at $5,000, this would generate a maximum of 1,436 such accounts on average. The largest total of accounts receivable reported by any union was $62,099,544. If all of this union's accounts receivable were at least 90 days delinquent at the close of its fiscal year and valued at $5,000, this would generate a maximum of 12,420 records. The likelihood of such a confluence of events is infinitesimally small; so this maximum is possible only in the most theoretical sense. Far from "typical," just 8 unions, or 0.2 percent of all Form LM-2 filers, report accounts receivable that could even hypothetically result in 3,100 or more records, and, in all likelihood, they will have many fewer. As discussed below, unions with high volumes of records should use the attachment feature. The number of data files of the next largest unions will be dramatically lower. In fact, in 2002, unions with receipts of $500,000 to $49,999,999 reported an average of $55,852 in total accounts receivable. Based on this information, if each account included in the total equaled $5,000, and all such accounts were delinquent at the end of the year, the new Form LM-2 would require larger unions to report an average of 11 transactions in Schedule 1. Unions with receipts of $250,000 to $499,999, in 2002, reported an average of accounts receivable so low ($2,457) that no accounts at all would be reflected in Schedule 1.

Also, even if your reference to "100,000 records" of a "typical national union" was intended to mean all records in total that would be reported on new schedules of the Form LM-2, the estimate nonetheless grossly exaggerates the requirements of the rule. According to financial reports filed by unions in 2002, it appears that approximately 25% of the total dollar amount of each union's disbursements will be allocated to one of the categories on the new Form LM-2 that requires itemization of disbursements of $5,000 or greater. Most of the disbursement categories call for only aggregate sums, and do not require any transactions to be individually itemized. Thus, a union with 400,000 transactions, each of which is precisely $5,000, might be likely to theoretically generate 100,000 reportable records. Such a union, however, would also have $2 billion in annual disbursements – no such union exists. Therefore, the problem you have identified may be remedied by importing into the Form LM-2 only those data files that the rule calls for.

Your letter also recounts slow download times. According to your tests, "a hypothetically small local LM-2 filer" with "an average file size of 150 records for each of the six new functional category schedules " will consume 4 1/2 hours downloading data into the schedules. First, the rule added five new functional categories, not six, and one of these (Strike Benefits) does not require itemized reporting. Itemization is also required for a previously existing category (Contributions, Gifts and Grants), so a total of five categories have itemization schedules. As discussed above, a union will be required to report approximately 25% of its disbursements in

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these five categories. Thus, it is very unlikely that a union with less than $15 million in disbursements would be required to provide itemized information regarding 750 (150 times 5) disbursements of $5,000 or more, and only the 100 largest unions reported disbursements of $15 million or more in 2002. A union with this volume of data files should use the software's attachment feature, as explained in the User Guide, which will drastically reduce the download time. Our tests have demonstrated that using the attachment feature, and completing the schedules one at a time, will enable users to achieve a timely and accurate download even with records of the size you suggest.

Several of the problems you identify indicate misunderstandings regarding the functions that the software is intended to perform. As the User Guide indicates, the software was not designed to allow attachments to be edited in the viewer. Edits can be made by adjusting the import file and re-importing the data, thereby erasing the old information. Contrary to your assertion, individual schedules can be either overwritten by a new import, or individual items in the schedule can be edited within the form if the attachment feature was not used. Your letter faults the software for failing to determine whether a receipt or disbursement should be aggregated or individually itemized on the form. The software was not designed, and was never intended, to perform this function. As the Data Specifications Document (DSD), provided to the public on October 3, 2003, made clear, the union's import file must already indicate to which schedule a group of transactions should be allocated, and itemized transactions must be clearly marked as such. Prior to download, the aggregated transactions must already be summed by the union. The provision in the Instructions quoted in your letter specifically identifies the need to use "a properly configured electronic recordkeeping system that is compatible" with the Department's software, for which specifications were provided in the DSD on October 3. The need to properly configure files to be imported into the form was reemphasized in the compliance assistance sessions.

The fact that the software does not display a "cancel" button during the importation process is a result of an intentional design decision. This prevents partial imports and invalid data entries. When using any software program, it is always a good idea to save your work frequently to avoid lost data. The data validation function is designed to correct the errors that can be measured based on data entered relative to the filing instructions for the form. It is not designed to catch every potential error, but will help unions provide a more correct form, saving time and money associated with preparing amended reports. The Form LM-2 has always called for whole numbers, and the software was not designed to round figures to the nearest dollar. Your assertion that entities with the same name downloaded into Schedule 1 are treated as a single entity is inaccurate; the software does not aggregate data. Schedule 12 also was not designed to aggregate data concerning employees whose annual pay is $10,000 or less, and who thus need not be individually reported. In fact, if a reporting labor organization chooses to provide itemized data for employees compensated below the $10,000 threshold, the information will be accepted.

The perceived problems with the manual entry of data set forth in your letter appear to be related to a misunderstanding of the pre-fill function. The software is designed to require an explanation when a beginning balance is changed, because the final software will pre-fill this field with the
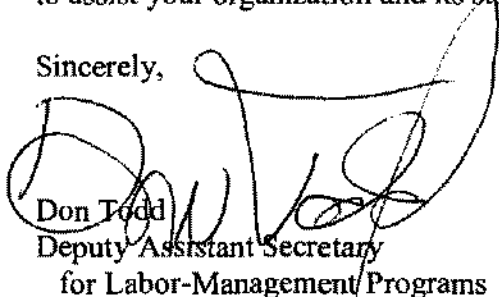
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ending balance from the union's report from the previous year. Absent an explanation, these figures should be identical. As stated in the User Guide, using the "thumbnails" on the left side of the screen is a preferred way of navigating the form. The software does indeed verify that percent allocations total 100%, and the error message alerts the filer to the row that contains the problem. If the row is incomplete, however, the filer must first address a preliminary error message before a second error message, concerning percent allocations, will appear. As the User Guide advises, use the mouse, not the tab key, to navigate fields.

Your concern that Schedule 1 does not permit the user to enter a liquidated receivable as a write-off is well-founded. This bug was caught during the beta period; the software has been corrected and the corrected function fully tested. Similarly, your concern that field lengths are too short had already been raised by the union officials who have been working with the Department, and the field lengths have been doubled, thus requiring fewer abbreviations. Two problems that you identified – problems with the delete key and error reports when entering correct information – have not been reported by other users, and we are not able to reproduce any such alleged problems. If you decide to take advantage of our offer of compliance assistance, which I repeat here, Office of Labor-Management Standards staff can help you address specific problems.

The Department plans to make the final, fully tested version of the software available in the very near future. During the time the beta software has been available, the Department has received no feedback, other than your letter, that the software is deficient. We will continue to provide filers with every opportunity to provide feedback about the software as long as it is in use. Although the AFL-CIO has declined to meet with the Department previously, the Department is encouraged by your organization's expressed willingness to now work with the Department in preparing to meet the requirements of the rule. The Department would be pleased to provide a briefing to you and other executive staff members of the AFL-CIO and to assist its technical staff and consultants in better understanding the rule and the operation of the reporting software. We look forward to your continued input and suggestions for any improvements.

Please call Kelley Andrews (202-693-1182) if you would like to schedule a compliance assistance session to learn more about the rule and to provide an opportunity for the Department to assist your organization and its staff to better understand the reporting software.

Sincerely,

Don Todd
Deputy Assistant Secretary
   for Labor-Management Programs

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