

American Federation of Labor and Congress of Industrial Organizations



815 Sixteenth Street, N.W.
Washington, D.C. 20006
(202) 637-5000
www.aflcio.org

EXECUTIVE COUNCIL

RICHARD L. TRUMKA
PRESIDENT

ELIZABETH H. SHULER
SECRETARY-TREASURER

TEFERE GEBRE
EXECUTIVE VICE PRESIDENT

Michael Sacco
Harold Schallberger
William Hite
Fred Redmond
Fredric V. Rolando
D. Michael Langford
Bruce R. Smith
Loretta Johnson
Laura Reyes
Kenneth Rigmaiden
James Grogan
Dennis D. Williams
Lori Pelletier
Joseph Sellers Jr.

Michael Goodwin
Clyde Rivers
Gregory J. Junemann
Matthew Loeb
Diann Woodard
Baldemar Velasquez
Lee A. Saunders
James Callahan
J. David Cox
Stuart Appelbaum
Paul Rinaldi
Cindy Estrada
Marc Perrone
Christopher Shelton

Robert A. Scardelletti
Cecil Roberts
Nancy Wohlforth
Randi Weingarten
Patrick D. Finley
Ken Howard
Terry O'Sullivan
DeMaurice Smith
David Durkee
Harold Daggett
Mark Dimondstein
Capt. Timothy Canoll
Jorge Ramirez
Lonnle R. Stephenson

R. Thomas Buffenbarger
Leo W. Gerard
Rose Ann DeMoro
Rogelio "Roy" A. Flores
Newton B. Jones
James Boland
Lawrence J. Hanley
Sean McGarvey
D. Taylor
Bhalravi Desai
Harry Lombardo
Sara Nelson
Eric Dean

August 18, 2015

Andrew R. Davis
Chief of the Division
of Interpretations and Standards
Office of Labor-Management Standards
U.S. Department of Labor
200 Constitution Avenue NW, Room N-5609

Re: RIN 1245-AA06

Dear Mr. Davis:

The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), a federation of 56 national unions representing 12.5 million working men and women across the United States, respectfully submits these comments in response to the Department of Labor's request for comments on the proposal to make electronic filing the exclusive means of submitting Form LM-3 and LM-4 reports. 97 Fed. Reg. 29096 (May 20, 2015). On behalf of its affiliated unions, the AFL-CIO strongly opposes this proposal. Requiring small local unions to file the forms electronically will impose an unreasonable burden on these labor organizations -- many of which have volunteer officers and no fixed office space -- for no significant public purpose. We urge the Department to withdraw its proposal.

1. The Proposal is Contrary to the LMRDA and its Recognition of the Needs of Small Labor Organizations

The Labor Management Reporting and Disclosure Act specifically directs the Secretary of Labor to "prescribe by general rule simplified reports for labor organizations or employers for whom he finds that by virtue of their size a detailed report would be unduly burdensome." 29 U.S.C. § 438. In recognition of this statutory mandate, the Department has provided for small labor organizations to file Forms LM-3 and LM-4. 29 CFR § 403.4. The organizations to which these modified reporting requirements apply are indeed small -- Form LM-3 is filed by labor organizations with fewer than \$250,000

in annual receipts; the Form LM-4 is filed by labor organizations with fewer than \$10,000 in annual receipts.¹

The proposed requirement that Form LM-3/LM-4 reports must be filed electronically will make reporting more “burdensome” for the majority of small labor organizations and thus is contrary to the LMRDA’s mandate in this regard.

2. The Department’s Own Statistics Show that Small Filers Prefer to File Paper Reports

The first point made in support of the proposal is that “[e]lectronic forms can significantly reduce the burden for filing the Forms LM-3 and LM-4.” 97 Fed. Reg. at 29097-98. However, the Department’s own statistics conclusively demonstrate that the persons who actually file Form LM-3/LM-4 reports do not believe that electronic filing is less burdensome.

The Office of Labor-Management Standards introduced the current Electronic Forms System at the beginning of Fiscal Year 2011. In Fiscal Year 2012, approximately 30% of Form LM-3/LM-4 reports were filed electronically. *OLMS, 2012 Annual Report* 10. The percentage of reports filed electronically has edged up slightly each year thereafter. But three years after the introduction of the Electronic Forms System, fully sixty percent of Form LM-3/LM-4 reports were still being filed on paper. *OLMS, 2014 Annual Report* 11.

Regardless of whether “[e]lectronic forms *can* significantly reduce the burden for filing the Forms LM-3 and LM-4,” 97 Fed. Reg. at 29097-98 (emphasis added), the people who file the forms have demonstrated in the clearest possible manner that *they* do not believe that electronic filing will *actually* reduce their burden. We are concerned that the Department’s proposal to make electronic filing mandatory may have the unintended consequence of leading some of these organizations to not file the form at all. This is obviously a result that the Department should make every effort to avoid.

3. Many Small Labor Organizations Lack the Resources to File Electronically

The proposal to require electronic filing is premised on the view that electronic filing is easier for the organization filing the report. As we have shown, the Department’s own statistics contradict this point. Many small labor organizations have volunteer officers who perform their union work in their spare time. Many of these organizations do not have office space with office equipment. They keep their books by hand and fill out paper copies of reports. It is unreasonably burdensome to require these organizations to find the resources and equipment to file the Form LM-3 and LM-4 electronically. Small local unions will be required to spend additional time and incur

¹ We note that the Internal Revenue Service requires electronic filing of annual Form 990 reports for not-for-profit organizations with \$10 million or more in assets. Smaller organizations – those with under \$10 million in assets – are permitted to file paper reports.

additional expense to arrange for electronic filing. In some cases, these local unions will end up paying an accounting firm or other third party to prepare and file the form – completely unnecessary expenses that the Department's proposal will impose upon small local unions that can least afford it.

4. The Department has Not Justified its Proposal

As we have shown, small entities have demonstrated through their actual practice of filing paper reports that they do not find electronic filing more convenient. Rather, the primary justification for the Department's proposal seems to rest on the convenience and cost savings to the *government* in being able to more efficiently post these reports on-line. Shifting these costs from the government onto small labor organizations is unfair and contrary to the spirit of the LMRDA which explicitly recognizes the special consideration needed for small organizations.

5. If the Department Wants More Electronic Filers, It Should Encourage and Assist Small Organizations to File Electronically

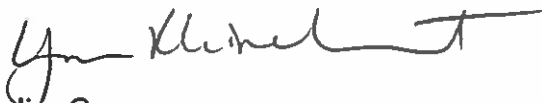
Notwithstanding the experience and preferences of small filers, as demonstrated by its own statistics, the Department appears to believe that electronic filing is less burdensome. If this is the case, then we suggest the better course is for the Department to undertake an outreach, education and technical assistance program to get this information in the hands of small unions and assist them with electronic filing. If, as the Department believes, electronic filing is actually easier, then presumably greater numbers of small organizations will begin to file in this manner. The Department can then evaluate its experience and the experience of small organizations and determine the appropriate next steps. If, after such an effort, the filers still demonstrate a strong preference for paper filing, the Department should inquire of the filers why they prefer paper filing in order to determine whether electronic filing can be made less burdensome. In the meantime, filers should be allowed to continue to use the paper forms that they so clearly prefer. This approach should increase the number of Form LM-3/LM-4 reports filed electronically and do so without unreasonable burden to small organizations or causing a reduction in the total number of reports filed.

The AFL-CIO urges the Department to withdraw its proposal to require electronic filing of the Form LM-3 and LM-4 reports. If the Department wishes to increase the number of electronic filers, it should undertake an outreach, education, and technical assistance program to encourage and assist small labor organizations to file electronically. In the meantime, however, small organizations should be permitted to file either electronically or via paper reports. To require otherwise would be an unjustified and undue burden on small labor organizations.

Mr. Andrew R. Davis
August 18, 2015
Page 4

Thank you for your consideration of these comments.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Jim Coppess", with a long horizontal flourish extending to the right.

Jim Coppess
Craig Becker
Lynn Rhinehart
AFL-CIO