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Comments submitted by the National Right To Work Legal Defense Foundation regarding the U.S. Department of Labor (DOL) 2019 Form T-1 Proposed Rule (RIN 1245–AA09)

Introduction

The Secretary's Form T-1 proposed rule will help to reveal hundreds of millions, perhaps billions, of dollars of currently unreported union trust monies thereby hidden from the very workers whose wages, dues, and fees fund these trusts.

Union officials create numerous trusts with monies generated from the privilege of forced union fees and the power of exclusive monopoly bargaining agreements with employers. Various trusts take the form of union-sponsored non-profits, building corporations, bingo operations, real estate holdings, partnerships, health funds, welfare funds, training funds, and many other arrangements. Only the bounds of union officials' imaginations limit their creation of trusts.

These Labor-Management Reporting and Disclosure Act (LMRDA) "section 3(l) trusts" are created on the backs of hardworking people who make this country work. They deserve to know these 3(l) trusts exist and how union officials are funding them and spending the money. This need and right to know justify the Labor Secretary's creation of Form T-1. Congress commanded the Secretary to expose the management of the money and power entrusted to union officials, and the proposed Form T-1 is a step in the right direction.

However, if the Secretary does not eliminate several loopholes in the current proposed rule, millions of employees will be underserved and many thousands of union 3(l) trusts will remain unreported, excluded by the Form T-1 regime.

We offer our comments to help the Department improve the Form T-1 and increase transparency for the millions of hardworking men and women whose labor funded and continues to fund these

types of trusts. Foundation attorneys have represented tens of thousands of employees and know first-hand that the proposed loopholes will not serve their past and future clients well. In addition, these loopholes will only incentivize and encourage union officials to find ways to take advantage of trust-reporting loopholes.

By creating large loopholes, DOL's proposed regulation disregards the expanding ugly history of union corruption and union officials' dishonesty. The ongoing and historical exploitations of union resources remain the fundamental basis for Congress demanding financial disclosure reports and provide legitimate reasons for imposing an effective Form T-1.

It is obvious from the records of convictions the Office of Labor Management Standards (OLMS) regularly updates and frequent news accounts that labor union officials continue to misuse their positions. Imagine what corrupt union officials may already be doing with these undisclosed union assets. This new rule will bring sunlight to vast sums of union resources currently hidden, but it creates several disclosure loopholes.

DOL's sixty-year experience with the administration of the LMRDA has proven that tepid enforcement measures, tied to minimal reporting requirements, only embolden union officials to create and keep hidden trusts as private piggy banks. DOL's Notice of Proposed Rulemaking (NPRM) even cites the recent Fiat/Chrysler/UAW scandal as an example and justification for the proposed Form T-1:

> *The most disconcerting example of the corruption and evasion of reporting that the Form T-1 would combat is the ongoing investigation of the company-funded United Auto Workers International Union (UAW)/Fiat Chrysler Detroit labor management cooperation committee, established under section 302(c)(9) of the Labor Management Relations Act of 1947 (LMRA), as amended, 29 U.S.C. 186(c)(9). (6) In 2018, an investigation of auto industry corruption involving the UAW in Detroit, Michigan, and the city's automakers produced seven criminal convictions in the United States District Court for the Eastern District of Michigan. The investigations focused on a conspiracy involving Fiat Chrysler executives bribing labor officials to influence labor negotiations. (7) These convictions involved Fiat Chrysler officials illegally channeling funds from the UAW/Chrysler National Training Center, which like many other company-funded training centers would be covered by the Form T-1 reporting obligation, to the personal use of certain union officials and employees. This example provides compelling justification for the Form T-1, as the disclosure created by the form would help protect the financial integrity of union training centers and other union funds set up to benefit rank-and-file members.* (All comment in *italicized text* is directly quoted from RIN 1245–AA09 unless otherwise indicated.)

We are encouraged to see the Department's latest actions attempting to curtail illegal activities through disclosure, supported by the hammer of the Department of Justice (DOJ) when union officials violate LMRDA reporting and disclosure requirements.

The proposed Form T-1 is an improvement given that currently there is no trust disclosure. However, the proposal contains exemptions that undermine valuable statutorily and legally required disclosure to union members, union forced-fee payers, and the public.

Our comments focus primarily on the following:

1. Imprudent T-1 Reporting Limitations Based on Level of Receipts and Control
2. Counterproductive and Unnecessary Blanket Audit Exemptions
3. The Misnomer "Protection of Sensitive Information" Undermines Statutory Disclosure
4. ERISA Exemption Unnecessary
5. Subsidiary Disclosure on All LM Reports
6. Exemptions Should Include Signed Form T-1 and Clearly Identify Substitution
7. No Credit Union Exemption
8. Federal Political Action Committee (PAC) Exemption Only
9. Counterproductive Parent Union and Related Exemptions
10. DOL Example Illustrates Harm of Form T-1 Delays

The National Right To Work Legal Defense Foundation applauds the Department's effort and offers the following comments regarding the proposed financial disclosures to help improve union disclosure for employees like those Foundation attorneys represent, as well as for all other employees who may be adversely affected by continued non-disclosure of 3(l) Trusts.

1. Imprudent T-1 Reporting Limitations Based on Level of Receipts and Control

> *The Department proposes to require a labor organization with total annual receipts of $250,000 or more to file a Form T–1, under certain circumstances, for each trust of the type defined by section 3(l) of the LMRDA, 29 U.S.C. 402(l) (defining ''trust in which a labor organization is interested''). ... Such labor organizations would trigger the Form T–1 reporting requirements where the labor organization during the reporting period, either alone or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts.*

a. The Secretary proposes that simply because a trust-controlling union fails to have total annual receipts of at least $250,000, its 3(l) Trust(s) could remain hidden. That exemption should be eliminated because it would allow labor organizations to conceal trusts worth tens of thousands to billions of dollars.

Section 208 of the LMRDA, 29 U.S.C. §438, provides the Secretary broad authority to set the conditions for submission of written financial reports by labor organizations and trusts:

> SEC. 208. The Secretary shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of

> reports required to be filed under this title and such other reasonable rules and regulations (*including rules prescribing reports concerning trusts in which a labor organization is interested*) as he may find *necessary to prevent the circumvention or evasion of such reporting requirements*. [*Emphasis added*]

The statute gives the Secretary authority to demand reporting without a limit based on labor organization receipts. Nothing in the statute suggests any limit on union annual receipts to trigger disclosure of a multimillion-dollar trust, or a trust of any value.

Is the Secretary aware that over 50 LM-30 filers (see Figure 1) currently control union assets exceeding a million dollars? Creating a $250,000 or less annual receipts exemption for unions filing Form LM-3 only allows those unions to conceal and more easily pilfer these large union assets. Consequently, union receipts make an imperfect bar when used for LM-2 reporting and for T-1 disclosures.

UNION_NAME	CITY	STATE	TTL_ASSETS
US AIRLINE PILOTS ASSOCIATION	CHARLOTTE	NC	$ 7,255,026
AIR LINE PILOTS ASN AFL-CIO	HERNDON	VA	$ 4,128,115
FED EMPL NFFE, DIST 1, IAM, AFL-CIO	REDSTONE ARSENAL	AL	$ 3,191,026
INDUSTRIAL TRADE UNIONS, IUJAT	JAMAICA	NY	$ 2,822,390
INDEPENDENT EMPLOYEES UNION	NEW LONDON	WI	$ 2,690,324
COMMUNICATIONS WORKERS AFL-CIO	LAKE SUCCESS	NY	$ 2,555,869
MACHINISTS AFL-CIO	GLADSTONE	OR	$ 1,992,433
STEELWORKERS, AFL-CIO	PONCA CITY	OK	$ 1,898,317
MACHINISTS AFL-CIO	CHULA VISTA	CA	$ 1,799,546
PLASTERERS AND CEMENT MASONS AFL-CIO	WASHINGTON	DC	$ 1,697,206
GOVERNMENT EMPLOYEES AFGE AFL-CIO	PHILADELPHIA	PA	$ 1,668,637
AUTO WORKERS AFL-CIO	MAUMEE	OH	$ 1,582,987
SEAFARERS AFL-CIO	CAMP SPRINGS	MD	$ 1,525,442
COMMUNICATIONS WORKERS AFL-CIO	ST. LOUIS	MO	$ 1,491,851
MACHINISTS AFL-CIO	SEATTLE	WA	$ 1,380,667
STEELWORKERS, AFL-CIO	COMMERCE CITY	CO	$ 1,349,962
MACHINISTS AFL-CIO	HAMILTON	OH	$ 1,343,691
LONGSHORE AND WAREHOUSE UNION	SACRAMENTO	CA	$ 1,318,117
MACHINISTS AFL-CIO	SPRINGFIELD	OR	$ 1,293,165
COMMUNICATIONS WORKERS AFL-CIO	SCOTIA	NY	$ 1,271,846
GOVERNMENT EMPLOYEES AFGE AFL-CIO	WASHINGTON	DC	$ 1,255,955
STEELWORKERS, AFL-CIO	MAYWOOD	CA	$ 1,244,126
AUTO WORKERS AFL-CIO	TILTON	IL	$ 1,192,472

SHEET METAL, AIR, RAIL AND TRANSPORTATION WORKERS	JACKSONVILLE	FL	$ 1,188,804
STEELWORKERS, AFL-CIO	BILLINGS	MT	$ 1,141,550
STATE COUNTY AND MUNI EMPLS AFL-CIO	WEST COXSACKIE	NY	$ 1,130,857
STEELWORKERS, AFL-CIO	NORTH CANTON	OH	$ 1,126,952
STEELWORKERS, AFL-CIO	NEW CARLISLE	IN	$ 1,121,947
MACHINISTS AFL-CIO	HAWTHORNE	CA	$ 1,109,862
PROFESSIONAL AIRLINE FLIGHT CONTROL	CHICAGO	IL	$ 1,096,879
AIR LINE PILOTS ASN AFL-CIO	HERNDON	VA	$ 1,094,816
STEELWORKERS, AFL-CIO	MC INTYRE	GA	$ 1,077,222
COMMUNICATIONS WORKERS AFL-CIO	SALEM	VA	$ 1,064,901
MAINTENANCE AND SERVICE EMPLOYEES	WELLESLEY	MA	$ 1,052,576
STEELWORKERS, AFL-CIO	BELL	CA	$ 1,047,501
UNIVERSITY PROFESSORS, AM ASN, IND	GREENVALE	NY	$ 1,032,770
UNITED STAFF UNION	WASHINGTON	DC	$ 1,010,897
ACTORS AND ARTISTES AFL-CIO	NEW YORK	NY	$ 1,010,407
AIR LINE PILOTS ASN AFL-CIO	HERNDON	VA	$ 1,009,512
UTILITY WORKERS AFL-CIO	MOSCOW MILLS	MO	$ 1,000,544

Figure 1 2018 Form LM-3 Labor Organization filers with more than $1 million in assets. (Source: USDOL)

Examples make our point. The Charlotte Airline Pilots union has over $7 million in assets but only $42,393 in receipts. The Machinists (IAM) NFFE union only reports $1,247 in annual receipts but has assets of over $3 million. A UAW local union in Maumee, Ohio reported $1.6 million in assets but only $1,856 in receipts **and no members**. (This Ohio UAW local's international affiliate was used in the NPRM by DOL to justify the need for the Form T-1.) In addition, 163 LM-3 unions control assets between $500,000 and $900,000.

Employees whose paychecks directly and indirectly fund these large trusts deserve disclosure regardless of the amount of the controlling unions' annual receipts. Isn't it probable that a union struggling with low income would be more susceptible to schemes to pilfer an asset-rich trust?

For instance, the proposed union receipts exemption will shield unions from reporting in the following common types of scenarios:

1. A building corporation fund (Trust 1) is created during a union's heyday. (To get around the subsidiary reporting of 100% control, the union previously gave a retired union president 1% ownership of the building corporation.) Trust 1 owns a $500,000 building with no mortgage and has $75,000 in a bank account. The union no longer has active working members.

   Should not Trust 1 be disclosed? Don't past and retired members deserve to know how their money is being used? Perhaps Trust 1 just inked a

$25,000/year lawn care contract with the union president's son and daughter to maintain what consists only of a paved parking lot. Or Trust 1 takes out a $250,000 mortgage and loans the money to the union president at zero interest and no due date. This union no longer has any steady source of receipts. Under the proposed rule, Trust 1 will remain hidden.

2. An international union, via trusteeship, takes over an LM-2 filing union with $17 million in assets and 15,000 members in 2019. During 2019, the international union splits and transfers the 15,000 members to two other affiliated locals and appoints new officers for the old union, which now has no members. The international union ends the trusteeship and leaves all union assets with the shell. The old union now has negligible income for 2020 and no longer files LM-2 reports, and its disbursements are no longer trackable on its LM-3 or LM-4 reports.

   If the local union officers appointed by the international union transfer the local's money into a new not-for-profit, a new 3(l) trust (Trust 2) is born. Trust 2 would never need to appear on a Form T-1 if the local union receipts stay under $250,000 and the local never gives any other money to the trust. Under this scenario, the $17 million in union assets would disappear from LM-2 and T-1 reports. The proposed T-1 exemption would encourage and help hide this type of transaction.

3. An LM-3 filing labor organization with reported income of $225,000 creates and pays for union-sponsored semiannual golf tournaments by transferring all money in its treasury to a union officer-controlled charity (Trust 3) that funds the tournaments. All Trust 3 disbursements and loans would stay outside of the DOL proposed T-1 disclosure requirements.

The LMRDA was supposed to expose such activities so that union members, the public, and DOL know about, and DOL can remedy, any corrupt actions. Non-disclosure exemptions do not provide the sunlight protections that Congress promised.

b. The National Right To Work Legal Defense Foundation agrees with DOL that union "control" should trigger a report regardless of the level of financial support.

The NPRM describes control in the following manner:

> *If a labor organization selects or appoints a member of the trust's governing board, it could reasonably be expected to know how the other members are selected and whether the majority control prong of the reporting test is satisfied. In other situations, the section 3(l) trust in question will consist entirely of units of the same national or international labor organization. Here too, each labor organization participating in the*

> *trust will know whether the majority control prong of the test is satisfied and likely will possess information to determine whether the alternative financial domination prong of the test is met.*
>
> *... The trust can determine whether labor organizations have financial dominance by examining their usual accounting records; a trust would add all income received from labor organizations within its most recent fiscal year, divide that sum by the figure representing Net Income from the Income Statement from its most recent fiscal year, and if the dividend is more than .50, then the trust has established that labor organizations have financial dominance.*

Any officer or board member of a 3(l) Trust exerts some control over the trust and could potentially act nefariously against the public interest. Therefore, the control rejiggering reporting should not be limited to "majority control," but should include any amount of control. The union and the potential 3(l) Trust should carefully consider how essential it is to have union officers acting as board members or officers. However, that union officers and outside organizations choose to enter into these complicated reportable relationships does not justify DOL exempting disclosure of an activity simply for union officers' convenience, at the expense of disclosure to workers who subsidize the officers' salaries and benefits.

The Secretary's dollar thresholds for disclosure exemptions also are insupportable on grounds of supposed "burden." Today, most private citizens, local and international unions, and employers use electronic digital filing, electronic billing, and keep their financial records in digital format. During the Obama Administration, DOL mandated that all LM-2, LM-3, LM-4, LM-20, LM-21, and LM-30 reports be filed electronically. This requires individuals to file electronically and thus shows that any reporting union or 3(l) Trust is capable of communicating with the DOL using electronic data.

There remains little reason to require a high-dollar trust minimum on reporting to accommodate a nonexistent or slight burden on filers. Therefore, these arbitrary reporting thresholds should be eliminated from both the Form T-1 and LM-2.

Similarly, there is no reason to limit the reporting to labor organizations "contribut[ing]" more than 50% of the trust's receipts. This artificial threshold is unrelated to the Secretary's Section 208 authority. The Secretary only needs to find that reporting may be "necessary to prevent the circumvention or evasion of reporting requirements." The statute's goal is "to stop all questionable financial practices.... To determine the meaning of the word, it is appropriate to resort to the context in which it is used. Ibid. The LMRDA imposes serious fiduciary responsibilities on union leaders. They must take the utmost care in their stewardship of their members' funds. Section 501 of the LMRDA." *United States v. Budzanoski*, 462 F.2d. 443, 452 (3d Cir. 1972).

In any particular year where more than one labor organization contributes to a fund, DOL should assume that any contribution allows for the contributing union to exercise some "control" over the fund's expenditures. What interest or motivation would a union have to contribute to a fund if it or its officials have no control over the fund's outflows? Fund contributions here are not unencumbered charitable gifts.

c. Use of an annual receipts' threshold creates an unnecessary disclosure loophole. Consider a situation where no union is contributing annually to a trust, but a union creates a lump sum-funded trust. Take the earlier example of Trust 2. Here the LM-3 filing union funds the entire $17 million trust, but the union does not have "control" in the sense DOL proposes over the new trust's board, nor does it provide the trust any annual contributions.

DOL's fixation on labor organizations' annual receipts and annual disbursements to a trust creates large transparency holes. This multimillion-dollar Trust 2, fully funded by union monies, will be exempt from Form T-1 disclosure under the current proposal even though that trust was fully funded by an LMRDA-covered union and holds $17 million in union assets.

A reasonable rule might include the following: If an LMRDA-covered union creates a 3(l) Trust, that trust must file T-1 reports for the duration of its existence. And, if an LMRDA covered union supplies 10% or more of the trust's assets, then the union has a permanent T-1 reportable interest.

DOL should not make the same mistake with the Form T-1 that it did with Form LM-2. The amount of union receipts should not be a limiting criterion for Form T-1 reporting as it is with the LM-2. Union members and forced-dues payers involved with these "smaller" unions also deserve LMRDA protection of their statutory rights.[i]

2. Counterproductive and Unnecessary Blanket Audit Exemptions

The Department proposes accepting an audit, in lieu of the Form T-1 filing, modeled after a similar provision in ERISA. The audit must meet the requirements (modeled on section 103 of ERISA, 29 U.S.C. 1023, and 29 CFR 2520.103-1, relating to annual reports and financial statements required to be filed under ERISA) described in the Form T-1 instructions. The Department recognizes that the audit option may not provide the same detail as required by the Form T-1, but it believes that this approach is an acceptable alternative for reducing the overall reporting burden on the labor organization and the section 3(l) trust. Under the audit option, a labor organization need only complete the first page of the Form T-1 (Items 1-15 and the signatures of the organizations' officers) and submit a copy of the audit of the trust that meets all the following standards:

- *The audit is performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles or Other Comprehensive Basis of Accounting.*
- *The audit includes notes to the financial statements that disclose, for the preceding twelve-month period:*
    - *Losses, shortages, or other discrepancies in the trust's finances;*
    - *The acquisition or disposition of assets, other than by purchase or sale;*
    - *Liabilities and loans liquidated, reduced, or written off without the disbursement of cash;*
    - *Loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and*
    - *Loans made to officers and employees that were liquidated, reduced, or written off.*
    - *The audit is accompanied by schedules that disclose, for the preceding twelve-month period:*
        - *A statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; and*
        - *A statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in $10,000 or more of commerce and the total of the transactions with each party.*

Although adding a simplified disclosure option that all trusts can submit an audit may reduce the Rule's financial impact on filers, it decreases transparency. Any payments to or for union officers, employees, and their spouses should be included in the audit option. Because many unions argue that most potential T-1 trusts are charitable organizations or retirement funds, then no financial gains for union officers should be expected and disclosure costs would be nominal.

The Department need only look to the recent 116 count indictment[ii] of Philadelphia construction union bosses and others. The Department of Justice alleges that "the Apprentice Training Fund [was used] for personal and other unauthorized expenses, contrary to the provisions of the Apprentice Training Fund's trust agreement and ERISA." The union funds used to create a non-profit 3(l) Trust called "Neighborhoods for Fair Taxes" were used for personal expenses.

We know, from the pre-Obama era, LM-30 Union Officer and Employee conflict-of-interest reports that were filed, union officials managed to obtain jobs for spouses with insurance companies and 3(l) Trusts they influenced.

For example: In 2004, Amalgamated Bank of New York was owned by a holding company known as the UNITE-HERE union. John W. Wilhelm was president of "UNITE-HERE" and

filed an LM-30 (File Number U-01888). He received board of director fees from Amalgamated Bank, a 3(l) Trust. Wilhelm's spouse received $137,203 from another 3(l) Trust, the "H.E.R.E. International Union Welfare Fund."

The current proposed audit exemptions will allow union officials to conceal disbursements to officers and employees of a 3(l) Trust. Union officials receiving salaries, wages, reimbursements, or fees from these audit filing trusts should be included in the Form T-1 disclosure.

Allowing private audits in lieu of reports will conceal vendors, payments, and sources of revenue, with none of the usual personal liability OLMS federal forms impose. 29 C.F.R. § 403.6. An auditor verifying payments would unlikely be aware or mindful of surreptitious behavior, while union officers verifying the report themselves would more likely be aware.

Requiring the Form T-1 signature section to be included with the audit submission will allow the LMRDA-related criminal provisions to be effectuated. The hammer of DOL criminal enforcement should provide added incentive for honest reporting.

The LMRDA seeks sunshine on financial records in a consistent manner. "The searchlight of publicity is a strong deterrent." Allowing any trust to substitute an audit for reporting undermines the Act. There must be an overriding reason to allow a trust to choose less disclosure that outweighs the interests of members and forced-dues payers in transparency. The Secretary's NPRM does not give such a reason.

3. The Misnomer "Protection of Sensitive Information" Undermines Statutory Disclosure

> ***Protection of Sensitive Information*** *This proposal protects the disclosure of personal information about members of labor organizations and the disclosure of sensitive information about a labor organization's negotiating or bargaining strategies, subjecting the Form T–1 to the same confidentiality provisions contained in the Form LM–2 regulations, 29 CFR 403.8.*
>
> *The Department also proposes to provide labor organizations the same reporting options available under the Form LM–2 for reporting certain major transactions in situations where a labor organization, acting in good faith and on reasonable grounds, believes that reporting the details of the transaction would divulge information relating to the labor organization's prospective organizing strategy, the identification of individuals working as ''salts'' (persons having sought and attained employment at a company in order to organize its workers), or its prospective negotiation strategy. Consistent with the instructions provided, this information may be reported without itemization. Under the proposal, a labor organization that elects to file only aggregated information about a particular receipt or disbursement, whether to protect an individual's privacy or to avoid the*

> *disclosure of sensitive negotiating or organizing activities, must so indicate on the Form T–1. A labor organization member has the statutory right ''to examine any books, records, and accounts necessary to verify'' the labor organization's financial report if the member can establish ''just cause'' for access to the information. 29 U.S.C. 431(c)*

This exemption, like those in the Form LM-2, appears to be a proposal concocted by a union lobbyist. These exemptions undermine the LMRDA's purpose of informing employees about who is trying to influence and persuade them to join or not join a union. For forced-fee payers to be compelled to unknowingly support any activity, simply because the union wants to be secretive, obliterates the reason the LMRDA was passed: transparency. Publicity constrains fraudulent activity.

This special exemption for unions, their subsidiaries, and their contractors (e.g., salts) that pursue clandestine union "strategies" rewrites the statute and creates an unbalanced reporting scheme for actors in the labor-management field. Allowing labor organizations to conceal their actions, while requiring Employers to report and disclose their "sensitive information," creates an imbalance the LMRDA statutorily prohibits.

If this "Protection of Sensitive Information" exemption actually is reasonable, then DOL should apply it to all current LM forms, not just those union officers file.

Preferably, DOL should eliminate this proposed Orwellian-titled disclosure exemption. That will provide all members and affected employees with the sunshine Senator Kennedy and others intended in enacting the LMRDA.

4. ERISA Exemption Unnecessary

The National Right To Work Legal Defense Foundation does not agree with the Department's statement that "The enactment of ERISA has ameliorated many of the historical problems…." We question the sufficiency of ERISA disclosure and do not believe ERISA disclosure should supplant LMRDA Form T-1 disclosure. No intervening evidence proves that ERISA disclosure is sufficient. ERISA and the LMRDA have different purposes and thus focus on different priorities. ERISA works as a shield to blunt inquiry, except by "participants, beneficiaries, and fiduciaries." 29 U.S.C. § 1132(a)(3).[iii]

The 2003 ULLICO scandal exposed the fact that American Federation of Labor-Congress of Industrial Organizations (AFL-CIO) bosses concealed millions for personal gain. Senior officers were implicated, including Morton Bahr (president of the Communications Workers of America); Douglas McCarron (general president of the Carpenters); Martin Maddaloni (president of the Plumbers and Pipefitters); and Robert Georgine (president of AFL-CIO's Building and Construction Trades Department (BCTD) from 1974-2000). They settled with DOL for $20 million. "Self-dealing by pension fiduciaries at the expense of workers' retirement plans cannot be tolerated," said Secretary of Labor Elaine L. Chao. "This $20 million settlement is a loud and

clear message to all plan fiduciaries that they will be held accountable when their actions are detrimental to workers' benefit plans."[iv]

DOL cannot consider ERISA a panacea.

DOL does recognize evasion of LMRDA reporting requirements can occur when a union can transfer money from its books to a trust's books. 84 Fed. Reg. at 25134. Providing an exemption where a labor organization appoints or selects most trust board members will allow reporting evasion to occur. The union can conspire with unrelated third parties to assume an influential position, with total control remaining in the contributing union, as occurred in the ULLICO scandal.

The recent UAW-Chrysler National Training Center apprenticeship fund scandal also shows there must be no exception to reporting. All trusts must report. Otherwise, union members and the public lose.

Further evidence of this is inescapable. OLMS's own criminal enforcement actions show the potential for misdeeds exists in union-related funds:

> The business manager for Laborers Local 657 in Washington, D.C., was sentenced to four years in prison for embezzlement in February 2017 and was ordered to pay $1,632,000 in restitution. Two contractors were also sent to prison and ordered to pay restitution.
>
> The executive director of the Hawaii Painting & Decorating Contractors Association embezzled $1,483,800 from the hourly wages of union members deposited in the Hawaii Painters Trade Promotion & Charity Fund in Honolulu.
>
> In 2016, the business manager for Allied Novelty and Production Workers Local 223 in New York and former president of Teamsters Local 810, pleaded guilty to soliciting and receiving kickbacks to influence the operation of an employee benefit plan and committing theft of $1 million.

The proposal for an exemption based on trust composition or existing ERISA Form 5500 reporting will provide a safe harbor for unscrupulous officials who desire to embezzle or steal in violation of the LMRDA.

Both the ERISA Form 5500 and the majority control exemption proposals should be eliminated.

5. Subsidiary Disclosure on All LM Reports

> *The proposed rule also leaves in place the Form LM–2 requirement that labor organizations report their subsidiaries on the union's Form LM–2 report. See Form LM–2 Instructions, Part X (defining a ''subsidiary organization'' as ''any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or*

controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization.'')

The National Right to Work Legal Defense Foundation agrees these entities should be disclosed. Subsidiary disclosure should always include receipts on the LM-filing union's report because DOL uses receipts as a reporting trigger.

These types of entities are often funded with union member contributions. An example would be a union's building fund that receives rental income for the building owned and paid for by union members.

In *Bembry v. New York Metro Postal Union,* 2009 WL 690245, 186 L.R.R.M. (BNA) 2408 (S.D.N.Y. 2009), the union members argued that reporting requirements were being evaded. The union contended its building fund was not a "subsidiary organization." The Court determined that "[i]f disclosures regarding a subsidiary organization, that is separate in name alone from the Union, were not required, unions could easily circumvent and evade reporting requirements," even if the 2003 rules did not explicitly cover reporting. Therefore, the Court held the union "may not hide behind the technical requirements of the forms."

DOL should require that all subsidiaries' receipts be reported on every union LM form. This might cause some LM-3 and LM-4 filers' total reported receipts to be larger and thus meet the current LM-2 disclosure threshold of $250,000 in receipts.

6. Exemptions Should Include Signed Form T-1 and Clearly Identify Substitution

If DOL allows Form T-1 reporting exceptions, which it should not do, there should be a Form T-1 identity (file number) for the trust and a clear statement identifying the alternative report, any file numbers associated with it, and the online location where a complete copy of the report can be found without charge. An example would be a union Political Action Committee (PAC), reports by which are available on the FEC website. Most importantly, there should be a signed form by every related labor organization's officers, making the criminal sections of the LMRDA applicable to any substituted report submitted in lieu of a Form T-1.

7. No Credit Union Exemption

No Exemption should be allowed. Labor union-controlled banking and financial institutions create a tremendous opportunity to covertly influence actors in the labor-management field to create hidden boycotts and other potentially illegal actions. Non-disclosure serves no LMRDA purpose.

8. Federal Political Action Committee (PAC) Exemption Only

Because the current reporting and disclosure requirements for PACs filing Federal Election Commission (FEC) reports are supported by federal enforcement, this is a legitimate exemption.

- FEC reports are easily accessible by the public through several online resources.

- FEC reports are prompt, often requiring several filings in one year.
- FEC reports often require a significantly lower threshold for reporting transactions than does the proposed Form T-1.
- FEC reports are federal disclosure reports and would require notice and comment to change. Thus, DOL could comment and exert influence on the FEC should it propose reducing political disclosure.
- FEC disclosure violations are accompanied by the hammer of federal criminal penalties.
- But, some T-1 Form still must be filed to apply LMRDA criminal enforcement on the substituted report.

No such uniformity of disclosure and enforcement exists in state and local political campaign finance disclosure reports. Therefore, only FEC reports should qualify as Form T-1 substitutes. Nor should there be exemptions for 527 organizations.

9. Counterproductive Parent Union and Related Exemptions

> *The Department proposes that only the parent union (i.e., the national/international or intermediate union) would need to file the Form T-1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test. The affiliates would continue to identify the trust in their Form LM-2 report, and, under the proposal, would also state in their Form LM-2 report that the parent union will file a Form T-1 report for the trust.*

The trust could easily prepare a Form T-1; make blank signature copies for each affiliated labor organization; have each sign and submit the Form T-1 with their LM filing. This would create an insignificant added burden. If the labor organization and Form T-1 cover different reporting years, then the union's LM report can be explained in the T-1 notes. Unless all related unions are required to file a Form T-1, labor organizations can conceal their relationship with multi-union trusts. This scenario illustrates the need for all LM filing labor organizations to submit Form T-1 reports if they have a 3(l) Trust situation regardless of annual receipts or other exemptions.

10. DOL Example Illustrates Harm of Form T-1 Delays

> *The most disconcerting example of the corruption and evasion of reporting that the Form T-1 would combat is the ongoing investigation of the company-funded United Auto Workers International Union (UAW)/Fiat Chrysler Detroit labor management cooperation committee, established under section 302(c)(9) of the Labor Management Relations Act of 1947 (LMRA), as amended, 29 U.S.C. 186(c)(9).* [(6)] *In 2018, an investigation of auto industry corruption involving the UAW in Detroit, Michigan, and the city's automakers produced seven criminal convictions in the United States District Court for the Eastern District of Michigan. The investigations focused on a conspiracy involving Fiat Chrysler executives bribing labor officials*

to influence labor negotiations. [7] *These convictions involved Fiat Chrysler officials illegally channeling funds from the UAW/Chrysler National Training Center, which like many other company-funded training centers would be covered by the Form T-1 reporting obligation, to the personal use of certain union officials and employees. This example provides compelling justification for the Form T-1, as the disclosure created by the form would help protect the financial integrity of union training centers and other union funds set up to benefit rank-and-file members.*

The following examples illustrate other recent situations in which funds held in section 3(l) trusts have been misused: [8]

- *In 2011, a former secretary for a union was convicted for embezzling $412,000 from the union and its apprenticeship and training fund.* [9]
- *In 2015, an employee of a union pled guilty to embezzling over $160,000 from a joint apprenticeship trust fund account that was used to train future union members.* [10]
- *In 2017, a former business manager and financial secretary for a Rhode Island union local pled guilty to charges that he embezzled between $250,000 and $550,000 in union funds from an operational account and from an apprentice fund.* [11]
- *In 2018, a former trustee of a trust fund for apprentice and journeyman education and training was sentenced for submitting a false reimbursement request in connection with training events. In his plea, the former trustee admitted that the amount owed to the training fund totaled $12,000.* [12]

We agree the T-1 will help prevent these types of nefarious acts. However, the Secretary's delay in fixing this disclosure problem has been frustrating to watch. Because of the long and extensive comment history of the Form T-1 documented in the NPRM, there is no need to delay further Form T-1 implementation by extending the comment period.

Nor should the Department rush to provide significant LMRDA reporting exemptions that serve mostly to undermine the purposes of that Act.

The continued reliance by the Department on union receipts is unnecessary, and more importantly, it is seriously flawed.

In 1995, Universal Pictures released the movie "Casino" based partly on a DOL-OLMS investigation. In the movie, the money was skimmed[v] before it was ever reported (counted) as income or what an LM report would consider a receipt. The movie demonstrated that it is much easier to skim (steal) money if you can do it before it is ever recorded.

When companies are audited by the SEC, they must produce sources of both income and expenses. However, the DOL-OLMS reports do not require disclosure of the primary sources of union receipts. Therefore, to have these unverified receipts as the threshold for LM or T-1

reports increases the potential for fraud. As "Casino" demonstrated, it is less complicated to skim money before it is reported than afterwards.

In the movie "Casino," in one scheme money was skimmed before it was counted, which made it easy for the mob to conceal the theft from government oversight. DOL should require disclosure of the source of receipts on LM reports and not use receipts as a threshold for reporting.

For decades, the Department of Labor has allowed the sources of billions of dollars in receipts to remain hidden, creating a giant loophole in public disclosure and allowing ample opportunities for unscrupulous union officials to skim money from union treasuries before it is ever reported on an LM form.

In June 2019, a United Brotherhood of Carpenters union president was charged for illegally converting union assets. The Carpenters union president allegedly was "soliciting and accepting [$1,500] cash bribes from potential union members … Once payments were made, [the union officer] would then use his authority to ensure that the prospective members would receive union membership cards, even though many of the bribe payers did not have union jobs and were not eligible for admission to the union, the indictment says."[vi]

In that example, a union president collected union receipts but did not report or disclose the receipts. Although this scheme was clearly unlawful, it illustrates how unscrupulous officers do take advantage of the opportunity to skim funds before they are ever reported to DOL.

Continuing to use unverifiable union receipts for limiting union disclosure is a problem for LM and T-1 transparency. If the Secretary cannot see the problem, then it is kind of like what Casino's Sam "Ace" Rothstein said: "If you didn't know you were being a scam, you're too dumb to keep this job. If you did know, you were in on it."

These comments are submitted for The National Right To Work Legal Defense Foundation, Inc. in the interest of the employees whom Foundation attorneys represent and for every American worker.

Respectfully submitted,

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President, National Right To Work Legal Defense Foundation, Inc.

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[i] Small unions are not immune from LMRDA violations. For example, OLMS's 2019 criminal activity investigation reports an LM-2 filer falsified information:

On March 26, 2019, in the United States District Court for the Northern District of California, Jonathon Ortino, former President of National Treasury Employees Union (NTEU) Chapter 165 (located in San Francisco, Calif.), was charged in a three-count indictment with making false entries with respect to the filing of the union's LM-3 Report for fiscal years 2014, 2015, and 2016, all in violation of 18 U.S.C. 1001(a)(2) & 2 (False Statements to a Government Agency). The indictment follows an investigation by the OLMS San Francisco-Seattle District Office.

[ii] https://www.justice.gov/usao-edpa/pr/local-98-leader-john-dougherty-philadelphia-city-councilman-robert-henon-0

[iii]Federal courts long ago chose to consider "funds" covered by ERISA to be independent from their sponsoring labor organizations, thus insulating trust fund expenditures from the very entities that have an interest in spotting corruption, *i.e.*, contributing employers. E.g. Central States Southeast & Southwest Pension Plans. v. Gerber Truck Serv., Inc., 870 F.2d 1148 (7th Cir. 1989) (union fraud irrelevant to employer obligations; discovery is unavailable).

[iv] https://www.dol.gov/newsroom/releases/ebsa/ebsa20071116

[v] http://gangstersinc.ning.com/profiles/blogs/the-truth-behind-movie-classic-casino

[vi] https://www.silive.com/news/2019/06/staten-island-man-charged-in-carpenters-union-scheme.html