RECORD-KEEPING UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT (LMRDA): DO DOL REPORTING SYSTEMS BENEFIT THE RANK AND FILE?

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

AND THE

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

OF THE

COMMITTEE ON EDUCATION AND THE WORKFORCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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JOINT HEARING ON RECORD-KEEPING UNDER

THE LABOR- MANAGEMENT REPORTING AND DISCLOSURE ACT (LMRDA):

DO DOL REPORTING SYSTEMS BENEFIT THE RANK AND FILE?

Wednesday, April 10, 2002

Subcommittee on Employer-Employee Relations

Subcommittee on Workforce Protections

Committee on Education and the Workforce

U.S. House of Representatives

Washington, D.C.

The Subcommittees met, pursuant to notice, at 10:30 a.m., in Room 2175, Rayburn House Office Building, Hon. Sam Johnson, Chairman of the Subcommittee on Employer-Employee Relations, presiding.

Present: Representatives Johnson, Norwood, Hoekstra, Ballenger, Isakson, Andrews, Rivers, Tierney, Owens, and Solis.

Staff present: Stephen Settle, Professional Staff Member; Greg Maurer, Professional Staff Member; Travis McCoy, Legislative Assistant; Dave Thomas, Legislative Assistant; Ed Gilroy, Director of Workforce Policy; Jo-Marie St. Martin, General Counsel; Molly Salmi, Professional Staff Member; Kevin Smith, Senior Communications Counselor; Heather Valentine, Press

Secretary; Patrick Lyden, Professional Staff Member; Deborah L. Samantar, Committee Clerk/Intern Coordinator.

Camille Donald, Minority Counsel, Employer-Employee Relations; Peter Rutledge, Minority Senior Legislative Associate/Labor; Mariah Cuprill, Minority Legislative Assistant/Labor; Dan Rawlins, Minority Staff Assistant/Labor; Ann Owens, Minority Clerk

Chairman Johnson. We are glad you are able to join us today, Mr. Secretary. Thank you.

It is not unusual for the workforce Subcommittees of this Committee to meet together. Today, we do so to hear testimony in exercise of our capacity to conduct government program oversight inquiries. Since the Subcommittee on Employer/Employee Relations has sole jurisdiction over labor-management relations issues in general, and the Subcommittee on Workforce Protections has oversight jurisdiction for compulsory union dues, I have asked Chairman Norwood and the Members of his Subcommittee to join us in this hearing today. They have agreed, because of the oversight nature of the hearing, and because of a possible overlap in our jurisdiction.

Having said this, so that we can get to our witnesses, we have agreed to limit all opening statements to the Chairmen and Ranking Minority Members of each Subcommittee. All of the other Members will be able to put their statements in the record as usual. Following my opening statement, I will ask Mr. Andrews if he cares to make an opening statement, and then ask the same of Chairman Norwood and Mr. Owens. With that, I ask unanimous consent that the record remain open 14 days to allow Members to insert extraneous materials into the official hearing record. Without objection, so ordered.

OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

The cornerstone of union member rights in America is the Labor-Management Reporting and Disclosure Act, commonly referred to LMRDA, or also as the Landrum-Griffin Act. Written by then Senator John F. Kennedy and enacted in 1959, the Act was intended to ensure that rank and file union members have a full, equal, and democratic voice in union affairs. It allows for democratic participation by members and requires that union financial matters be publicly disclosed. It also protects workers' rights to free speech and assembly, to nominate candidates and vote in union elections, and to impose certain obligations upon union officers, particularly in the use of union funds. Simply put, it ensures freedom and justice for all.

Since 1959, the American workforce has modernized and changed; however, LMRDA has not. With the passage of time, we have seen some aspects of union democracy thrown to the side and often ignored. The erosion of union democracy is not an issue that should be taken lightly. A union, after all, belongs to its members, and the bottom line for any labor organization should be the will of its membership. Union leaders should respect the law, and the U.S. Department of

Labor, which is responsible for putting teeth into LMRDA, should aggressively enforce it. Unfortunately, neither has been the case. That brings us to why we are here today.

In July of last year, Chairmen Boehner, Norwood, and I sent a letter to the Department of Labor concerning union financial disclosure forms and the Department's enforcement of these regulations under LMRDA. What the Department reported back was less than impressive. In the Department's letter dated August the 15th, 2001 the Department told the Committee that in fiscal year 2000, there were over 30,300 active labor organizations that were subject to the financial disclosure forms under the purview of the Department of Labor. Of this number, 10,500 did not file on time, and I am appalled to say that 4,000 didn't file at all. Now it doesn't take a rocket scientist to see that there is a problem when a third of the unions are breaking the law.

What do you think the IRS would do if a third of Americans didn't file their income tax forms? You and I would both be in jail. I believe we would be remiss if we did not examine the lack of compliance and the transparency of labor organizations, and the lack of information for thousands of rank and file members.

To be clear, I am not suggesting we should go after the majority of the law-abiding unions. Today's hearing is not about creating burdensome regulation and reforms for all unions, but to shore up loopholes for the third of those union members who are not getting what they are entitled to; fair, accurate, and full disclosure of the facts as required by law.

It is my hope that we can look at creating a more efficient and effective financial disclosure recording system. I am pleased to have both panels here today including Deputy Secretary Findlay from the Department of Labor. I look forward to his testimony later.

WRITTEN OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX A

Chairman Johnson. Chairman Norwood will have the honor of chairing the second panel in this hearing.

And now I yield to the Ranking Minority Member, Subcommittee on Employer-Employee Relations, Mr. Andrews, for whatever statement you would like to make, sir.

OPENING STATEMENT OF RANKING MEMBER ROBERT ANDREWS, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman. Good morning. I look forward to hearing the testimony of the witnesses and welcome each of you to the Subcommittee, and welcome our colleagues from the

other Subcommittee as well.

It goes without saying that I have great respect and affection for the Chairman of the Subcommittee, and his fellow Chairman, and the Full Committee Chairman. And it also goes without saying that we have a responsibility as a Committee to look into the enforcement of the laws that fall under our jurisdiction. My concern about this morning's hearing, however, is its rather odd focus on what I would view as a fairly obscure issue confronting working people of America. While at the same time, the Committee spends virtually no time on issues of much greater importance.

The unemployment rate in this country went up to 5.7 percent, according to the most recent statistics. We belatedly extended unemployment benefits inadequately in my judgment a few weeks ago. And I know of no hearings the Committee has scheduled on plans to increase employment in the country.

There are 44 million Americans who have no health insurance, a number that has grown in the years when the economy grew. I know of no plans for the Committee to have hearings on dealing with the problem of extending health benefits to the uninsured.

On the labor laws side, certainly, the Committee should take a look at underreporting or failure to report under this law. It is a legitimate and serious inquiry, which we will approach today. I would ask when are we going to have a hearing on OSHA violation claims that have gone uninspected? How many of them are there, and why is that the case?

I would ask when are we going to have a hearing on why the Department of Labor stepped in to take over the Enron pension plan only after there was a public cataclysm with respect to that pension plan? Why weren't the early warning signals heeded more quickly?

When we are going to have a hearing on the hundreds of findings by the National Labor Relations Board, and its regional arms around the country, of violations of labor laws by employers, and by unions in some cases that have gone unenforced because of a lack of adequate remedies in that statute for people who are trying to organize?

We have a legitimate topic in front of us today. And it is our duty and our responsibility to examine that topic. But there are many legitimate topics that the leadership of the Committee has chosen not to pursue. And I think that this hearing is a reflection of the wrong priorities for the Committee to have.

We are going to pursue these priorities in whatever forum we are given, at every opportunity we are given, because we believe that the full range of questions affecting the working people of the country ought to be explored with great enthusiasm. And I would yield back.

Chairman Johnson. Thank you, Mr. Andrews.

We are considering other hearings. This is just one in a series. Unemployment actually went up after we increased and extended unemployment insurance. It didn't go down. Pensions

were being investigated by both the Department of Labor and Department of Justice, and investigations are still going on. So there was action being taken.

At this time, I would like to recognize Chairman Norwood. If you care to make an opening statement, please do so.

OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman.

Mr. Andrews, you will be interested to know that the Commerce Committee is having a hearing tomorrow afternoon regarding the 44 million Americans that don't have health care insurance presently. So this is another area we are working on some.

As of June 2000, the General Accounting Office study concluded that the reporting requirements under Title II of the Labor Management Reporting and Disclosure Act, and I quote, "are important because they ensure that union members will have all the necessary information to take effective action to protect their rights."

I hope they didn't spend a lot of money on that report. It seems to be self-evident. What is the fundamental right that may need protecting? That is really what this is all about. I still think that Thomas Jefferson put it best by stating, "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is simple and tyrannical." I couldn't agree with that more, and that is the crux of what we are concerned about here today. We want to be sure that workers are not compelled to support causes and activities which they simply do not believe in.

Would any union worker or would any of us, for that matter, want their monetary contributions to be used for the personal benefit of their leadership to the tune of stealing hundreds of thousands of dollars from union accounts? Or would any union worker want their leadership charging hundreds of thousand of dollars to their union supplied credit cards, or spending thousands of dollars of dues money at topless clubs? Of course we wouldn't, and we will bring some of that out today.

Would your average conservative union worker want their monetary "contributions" to support lawsuits to force the Boy Scouts to change their policy on homosexuals, or support political candidates who are pro-abortion or anti-Second Amendment? Of course not is the answer there, and certainly, of course not in my district. Yet, this happens to union workers quite often because the reporting requirements that are meant to ensure that workers have real and accurate and useful information about the finances of their unions have failed, Mr. Deputy Secretary.

The Department of Labor under both Republican and Democrat administrations has been very lax in its enforcement of the existing reporting regulations, as well as very lax in going after corruption. The reporting and disclosure provisions of Landrum-Griffin are a failure because among other things the LM-2 form only requires unions to report their expenses in very broad categories. International unions are regularly late in filings these forms. In fact, many local unions don't even bother to file any reports, as the Chairman so amply pointed. The result is that they can hide illegal or questionable disbursements.

The Department's performance in going after corruption in the unions has ranged from lackadaisical to downright lethargic. For instance, from the years 1998 to 2000, DOL audited only two of the 141 international unions, and no union was prosecuted for failing to file a financial disclosure form. Yet the law says you should, but a third didn't file.

And it is not like Congress has been unaware of these problems. In 1998, Congress directed the Department to establish an alternative system for the electronic submission of these reports, Mr. Deputy Secretary. We also called for an index computer database on the information for each report that is searchable through the Internet. This was supposed to be in place in January of 2000. Well, here we are two years later, and still no closer to having such a system although Congress put money in place for such a system.

The only thing I can compare this lack of enforcement to is the prohibition era when speakeasies operated openly because of paid off local police and politicians. Labor leaders know that they can do just about anything because the Department of Labor will look the other way in hopes of getting union support for the incumbent president, and there is little that the average worker can do about this.

This creates a permissive atmosphere that is ripe for a scandal like the Teamsters scandal. It also creates an atmosphere where the AFL-CIO can flaunt its own rules for removing officials who plead the Fifth Amendment when questioned by a grand jury, as Richard Trumka did when asked about his participation in the embezzlement of $150,000 of Teamster funds.

So we have a situation, ladies and gentlemen, where workers are kept in the dark about the ways in which their union representatives are using their union dues. And the government agency charged with oversight in this area has been asleep at the wheel. So you can guess what I am going to want to be told during the course of this hearing: (1) I want to know how the Department is going to ensure that no one will be allowed to take these very critical reporting requirements so lightly; (2) I want to know how the Department intends to begin enforcing these legal obligations; and, (3) I am going to want to know how this information in the reports can be put in a form that is useful to the average worker, so they can protect their own interests.

With that, Mr. Chairman, I yield back the balance of my time.

WRITTEN OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX B

Chairman Johnson. Thank you.

Chairman Norwood. I now ask Mr. Owens, the Ranking Minority Member of the Workforce Protections Subcommittee, if he would care to make an opening statement.

Mr. Owens?

OPENING STATEMENT OF RANKING MEMBER MAJOR OWENS, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman, for saving some time for me. I want to welcome today's witnesses and thank all of you for taking the time off to be here this morning. I hope that your time is put to good use.

My problem is that the jurisdiction of the Workforce Protections Subcommittee, of which I am the senior Democrat, for the subject matter of this hearing seems to be rather tenuous at best. The Workforce Protections Subcommittee has no legislative jurisdiction for either the National Labor Relations Act or the Labor Management Reporting and Disclosure Act. The extent of the Subcommittee's jurisdiction in this area is limited to oversight of compulsory union dues. A reasonable reading of that would mean that the Subcommittee has oversight jurisdiction as it relates to the right to work for less laws and is stretching it slightly for issues related to the big decision on the use of union dues.

It is claimed that this hearing is relevant because LMRDA reports include information regarding the receipt and the use of union dues money. However, workers have an independent right under the NLRA, apart from any rights under LMRDA, to obtain an accounting of that use of compulsory union dues. To contend that this is an LMRDA issue or should be an LMRDA issue is to ignore what the law actually provides and the rights workers already have. By calling this a joint hearing, my Republican colleagues appear to have either misrepresented the law or disregarded the Committee's rules establishing jurisdiction. However, having said that, I guess this is an oversight hearing intended to inform Members of Congress, and I strongly believe that all interested Members of the Committee should be able to fully participate.

I have a most serious objection to this hearing, and that is that union democracy is a serious subject deserving an honest discussion. It does not appear that such a discussion will happen today. Instead, the subject matter of today's hearing seems to be what can we do to impose even more regulatory burdens and paperwork requirements on unions.

The problem with the focus and the obsession of these requirements on unions is that this Committee and the rest of Congress ignores where the real problem is. The Enron pension funds and the Global Crossing pension funds involving billions and billions of dollars have not been

given the proper attention because we are focused in the wrong direction.

I believe unequivocally that the Subcommittee's time could and should be better spent. This is the eighth hearing, by the way, of the Subcommittee on Workforce Protections in this Congress. Of the eight hearings of this Subcommittee, this is the third time the Subcommittee has held a hearing on subject matter over which it has no legislative jurisdiction. Thirty-seven percent of the Subcommittee's time has been spent on issues it has no authority to do anything about. Of the remaining hearings, two have criticized the way both legal and voluntary health and safety standards are developed, and one hearing has looked at ways to reduce employer overtime costs at the expense of workers.

The other two legislative hearings conducted by the Subcommittee involve one bill that would take away the right of certain sales workers to receive overtime pay, and another bill that would undermine overtime pay for all workers by allowing employers to exclude bonuses from overtime calculations.

Congress has not increased the minimum wage since 1996. That does come under the jurisdiction of this Subcommittee. A full-time minimum wage worker makes less than the poverty level for a two-person family, yet we have not had a single hearing on raising the minimum wage.

At the beginning of this Congress, we repealed an ergonomics regulation that had been developed over a ten-year period. We repealed it with less than 48 hours of debate. Ergonomic injuries remain the single largest cause of injuries. An estimated 5,000 workers a day are injured as a result of ergonomic hazards, yet this Committee has not even raised the issue this year.

We are failing to address the issues that are most important to work and families. We are not helping workers. Instead, this is a record that clearly demonstrates a gross disregard by the Republican majority for the rights and welfare of workers and working families.

I yield back the balance of my time.

Chairman Johnson. Thank you, Mr. Owens. I appreciate your comments.

You know, the reason we are in joint jurisdiction today is because of a possible overlap in our jurisdiction, not necessarily that one or the other has direct jurisdiction over any issue. As I said in my opening statement today, we are assembled in a joint meeting to exercise our duty to conduct program oversight of the various functions of the agencies that discharge the statutory mandates of the laws under the jurisdiction of the Committee on Education and the Workforce.

Programs subject to our oversight inquiry today are the union reporting programs under the LMRDA. There is an LM-2 form over there on those boards which you are welcome to look at. Those are the basic forms, by the way. When you get the whole thing put together, it looks like this. This happens to be the Teamsters report, and it is this thick. There are 30,500 of those that are supposed to come in every year.

Accordingly, we have asked the Department of Labor to provide someone knowledgeable about these programs so we might discuss the performance of the programs. And we are honored today that the witness chosen by the Department is the Deputy Secretary of Labor, Mr. Cameron Findlay.

While most of us know Mr. Findlay and are aware of his outstanding background of accomplishment, for the record, let me just note that the Deputy Secretary of Labor is the number two official in the Department, and as such acts as the Department's chief operating officer, oversees the Department's $59 billion budget, chairs the Policy Planning Board, and serves as a principal advisor to the Secretary on a wide range of issues. In addition, the Deputy Secretary is responsible for coordinating the activities of all Department of Labor agencies to ensure an integrated approach to the development, funding, and delivery of the Department's programs and activities.

With that, I will ask you to begin with a brief summary of your written statement, Mr. Findlay, followed by questions. And if you could, sir, try to stay within our five-minute time limit. Thank you very much for being with us today.

STATEMENT OF D. CAMERON FINDLAY, DEPUTY SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C.

Thank you, Mr. Chairman, and thank you to all the Members of the Subcommittees. I appreciate the opportunity to be with you here today to talk about the Department of Labor's enforcement of Title II of the Labor- Management Reporting and Disclosure Act, which is commonly known as the Landrum-Griffin Act.

My department views Landrum-Griffin as just one of a number of important statutes that have been entrusted to my department to safeguard the rights of workers. We have the Occupational Safety and Health Act to protect the safety of workers. We have the Fair Labor Standards Act to guarantee worker wages. We have the ERISA statute to protect worker pensions, and then of course we have Landrum-Griffin to protect the right to know of union members. We take very seriously our obligation to enforce each of these worker protection statutes.

The roots of the Landrum-Griffin Act, as many Members of this Committee know, can be found in the famous McClellan committee hearings of the 1950s, which put the spotlight on a number of improper practices by union leaders such as embezzlement, shakedowns, and even the use of union funds to build luxury homes for union officials. In the wake of those hearings, in 1959, Congress overwhelmingly passed the Landrum-Griffin Act by a 95 to 2 vote in the Senate, and a 352 to 52 vote in the House. These majorities were the most lopsided votes ever on any major labor law legislation. This is, in short, an important and bipartisan law. No one is in favor of embezzlement. No one should minimize the importance to union members seeing their hard earned dues taken away from them.

The Act has five main titles, but the focus today is on Title II. Title II may well be the most important title of the Act because, as I said, it establishes a right to know of union members.

Simply put, transparency leads to more accountability, less opportunity for corruption, and enhanced union democracy. As the Enron example vividly shows, no entity should be allowed to shield its finances from its stakeholders. Because Title II empowers union members, people who believe in strong unions should support strong enforcement of Title II of the Act.

The question today is how good a job has DOL been doing in enforcing this statute. The answer, quite frankly, Mr. Chairman, is that DOL has not done as good a job in the past decade as it should.

First, a significant number of unions consistently fail to comply with the statutory requirements that they timely file annual reports with DOL detailing their finances. In recent years, approximately 1/3 of all unions were either untimely in filing their reports or they did not file at all.

Second, the number of OLMS compliance audits has fallen from a high of 1,583 in 1984, to just 238 in the year 2001; and today, 10 of the largest unions have never once been audited.

Third, OLMS existing forms, which were created 40 years ago and have been substantially unchanged since then, utilize such broad and general categories that many union members find it difficult to detect overspending, financial mismanagement, embezzlement, or other irregularities.

Fourth, many observers believe that OLMS does not have sufficient tools to enforce the law. In particular, OLMS lacks authority to impose fines on unions that fail to file timely reports.

Now if this level of noncompliance and decreasing enforcement were the case under the Occupational Safety and Health Act, under ERISA, under the Fair Labor Standards Act, or any of the other statutes that we enforce, it simply would not be tolerated, and it should not be tolerated. It should also not be tolerated under this statute. The Landrum-Griffin Act is a worker protection statute just like the others that we are charged with enforcing at our department.

How can we improve enforcement of this statute? Well, we do have a few suggestions.

First, we need to provide OLMS with sufficient resources to enforce the law. To this end, we requested in the President's fiscal year 2003 budget, $3.4 million in additional funds, which would fund 40 new FTEs to enforce this law. And I would like to thank both Subcommittee Chairs here today, as well as Chairman Boehner, for their support of this budget request.

Second, the Department of Labor intends to step up its efforts of compliance assistance and enforcement. Just as with our other statutes, compliance assistance is absolutely essential. Our aim is not to pursue after-the-fact enforcement against union filers that get their forms in late. It is, first of all, to work with unions to help them avoid being tardy filers in the first place. And if those efforts don't work, then we want to use the stick as well as the carrot.

Beyond stepping up our compliance assistance and enforcement efforts, we intend at DOL to look at everything we do. Our enforcement plans, our disclosure forms, and E-government initiatives, to ensure that we are doing the best job we can to enforce this important law on behalf

of individual union members.

The Department of Labor appreciates the interest of the Subcommittees in enforcement of the Landrum-Griffin Act, which is critical to safeguarding union members' hard earned money. Thank you again for giving me the opportunity to be with you today. And, at this time, I would be happy to answer any questions you might have.

WRITTEN STATEMENT OF D. CAMERON FINDLAY, DEPUTY SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C. – SEE APPENDIX C

Chairman Johnson. We appreciate your comments. Thank you again, for being here.

As I stated about a third, or 34 percent, of the unions didn't file on time, some never at all. You agreed with that, and to me it means that almost 10,500 active labor unions didn't file on time, and 4,000 never filed at all.

I am told that in fiscal year 2000, the Department of Labor conducted only 200 audits. That means only 1 out of 150 reports were audited and none of the largest unions at the national/international level in fiscal year 2000 were audited.

If these figures are correct, I am concerned about the Labor Department's performance in carrying out the law. Can you tell me what you are doing now to change this and make sure the law is followed in the future?

Mr. Findlay. Yes, as I said in my opening statement, Mr. Chairman, the Department is not proud of how the Landrum-Griffin Act has been enforced over the past decade. We intend to change that. As I mentioned, we believe that the first step is to get new resources for this agency.

In my written statement, I pointed out that in the mid-1980s this agency had 460 full-time equivalents to enforce the law. Over the past decade, that number was cut down to 260, essentially a loss of half their people.

We believe that as a first step to restoring the resources of this agency, we ought to add 40 people back. Now that does not get us back to the 460 levels of the mid-1980s. But it does take us from this very low level, which we consider to be below the minimum level, and gets the number back up to about 300, and that is a good first step.

Beyond getting OLMS more resources, I think the leadership of the Department is committed to enforcing this far better. We have asked OLMS to come forward with a compliance assistance plan to work with unions to assist them with compliance. And I am happy to say that OLMS was the first agency in our department to come up with a compliance assistance plan. We, as I say, are looking at everything OLMS does to improve their performance.

Chairman Johnson. Were there increases in the budget for that?

Mr. Findlay. Yes, as I mentioned, we saw it in the fiscal year 2003 budget, $3.4 million, which would increase the number of FTEs in that agency by 40.

Chairman Johnson. What is the remedy that you have for penalizing unions that fail to follow the law?

Mr. Findlay. Well, Mr. Chairman, we do not have in OLMS, as we do in OSHA, in the Wage and Hour Division, in the Mine Safety and Health Administration, any authority to fine unions that violate the law, in terms of the filing requirements. We have found it difficult, as a result, to make entreaties to unions to comply with the law. Because, really, currently there is no stick, there is only a carrot.

Our people at OLMS try very hard. They send out a disk at the end of the union's fiscal year, which helps the union file. They send out a letter to every union that has been delinquent in past years 30 days before the filing date. If a union does not file, they send out another letter 15 days after the filing date. But, right now, our efforts necessarily have been limited to jawboning because we don't have these enforcement tools that our other agencies have.

Chairman Johnson. You can bring civil litigation, and you can seek criminal prosecution through the Department of Justice for violations of LMRDA. In our reviews, zero cases were referred to the Department of Justice, and I was wondering why more cases weren't referred to your own solicitor's office.

Mr. Findlay. Well, the number you referenced was under the previous administration. It is true that during the year 2000, zero cases were referred to the Department of Justice. In the year 2001, we decided to begin looking at this. Of course, when we began doing that September 11th and the anthrax scare came along. Mail has been considerably delayed. And so we have been a little reticent about bringing actions this year.

But I can assure the Chairman that it is something we are looking at very carefully. As Chairman Norwood mentioned, the GAO issued a report in the year 2000. And the GAO noted that the Department of Justice, for better or worse, has not considered this to be a priority, but we want to work with the Department of Justice to use the tools that we have.

Chairman Johnson. We want to work together with you to make the program work. And I would just like to ask you one final question. What changes or tools are necessary for you to ensure efficiency in compliance?

Mr. Findlay. Well, I think, first of all, we have to use the tools that we have better. And we certainly are trying to change the culture at our department, so that we do aggressively engage in compliance assistance and enforcement where necessary.

But beyond that I think, first of all, OLMS needs greater resources, and we believe we have made a first step toward that. Second of all, we think that this Committee should look at whether

the enforcement tools are sufficient because our other agencies are able to levy fines, whereas, OLMS is not. I think that we have to look at everything we are doing, from the forms which have been unchanged for 40 years, to the compliance assistance efforts to see that we increase the level of compliance by unions.

Chairman Johnson. Thank you. I appreciate your testimony. The gentleman from New Jersey, Mr. Andrews, do you care to question?

Mr. Andrews. I do. Thank you, Mr. Chairman.

Mr. Findlay, I know that you wouldn't want to leave misimpressions from your testimony, so I want to get into some facts. I note that your written statement did not include your reference to union leaders building luxury homes for themselves, and the like, and I wouldn't want to leave the impression that that is the norm in American labor, but I think your statement does leave that impression.

I want to ask you some questions about these numbers. On August the 15th of last year, Deputy Assistant Secretary Todd wrote to Chairman Boehner and the other Members of the Committee, about failure to comply for the year with reports that were due on March 31st of 2001. And that is the 34 percent statistic that is flying around the room today. As Chairman Johnson just said, 34 percent were filed late or not at all, and that represents something over 10,000 reports that were due. But it is true, isn't it, that as of August the 15th about 60 percent of those late reports were actually filed? Isn't that right?

Mr. Findlay. I don't have the number in front of me, but that sounds about right.

Mr. Andrews. The number is 4,025. Now the kinds of reports that had to be filed are an LM-2 for a union that brings in more than $200,000, an LM-3 for a union that brings in between $10,000 and $200,000 a year or an LM-4 for a union that brings in $10,000 or fewer dollars per year. Is that correct?

Mr. Findlay. That is right.

Mr. Andrews. Well, let me ask you this question first. Since August the 15th, when this letter was written to the Committee, how many of the 4,025 delinquent filers have filed?

Mr. Findlay. I don't have that number, Congressman. I had better leave it at that, because I just don't know the answer.

Mr. Andrews. I would appreciate and request that you supplement the record by answering that question.

Mr. Findlay. We will do that.

Mr. Andrews. Now I am going to look at the breakdown of the 4,025 non-filers as of August the 15th. Can you tell us of those 4,025 non-filers, which represent about 12 percent not 34 percent of

all of those that had to file, what percentage were LM-3s that have revenues between $10,000 and $200,000?

Mr. Findlay. I think it would be a substantial percentage. As the letter we sent shows, the larger unions are better than smaller unions in terms of being on time. The record for any of these unions is not very good.

Mr. Andrews. I understand. According to the Department's own statistics in the letter, the answer is a little less than half. It is 1,962 that are in the category of unions with less than $200,000 worth of revenue. Do you know how much were for LM-4s, which are unions with less then $10,000 worth of revenue?

Mr. Findlay. Again, I would assume that it is a substantial percentage, but we consider any of these late filings to be too many.

Mr. Andrews. I agree with you. I think that the money of members in small unions is just as important as the money of members in larger unions. The answer is 1,613, according to your department. That means that of the reports that were still not filed as of August 15, 2001, 3,575 of the 4,025 non-filers were unions with less than $200,000 a year worth of revenue.

Do you know how many of those unions have paid staff?

Mr. Findlay. I don't know. But my assumption is, especially for the LM-4 filers, they are less likely to have paid staff than the 272 larger unions that didn't ever file.

Mr. Andrews. Of the LM-2 filers who had not filed as of August the 15th of 2001, which would be about 300 filers, how many of those have you conducted an audit of since August 15?

Mr. Findlay. I don't have that number.

Mr. Andrews. Could you supplement the record for that as well?

Mr. Findlay. I would be happy to.

Mr. Andrews. I want to say for the record, I think that if you are in a union that has $5 worth of annual revenue, you ought to know where your money is being spent. But the use of the statistic that a third of the unions in the country aren't filing is deceptive.

The use of that statistic in the context of anecdotes about union officials spending lavish amounts of money on themselves is even more deceptive. Your own statistics show that as of August the 15th of last year, 60 percent of the non-filers were simply late filers. You can't tell us how many of the non-filers as of August 15 have filed since then. And your own statistics tell us that the vast majority, about three-quarters of the non-filers as of August 15, are unions with less than $200,000 worth of revenue. So I think that we need to be careful and be specific about what these facts are.

Mr. Findlay. Thank you, Congressman. And certainly we do not want to leave the impression that it is the norm that this sort of embezzlement goes on, but every year we see very serious cases of mismanagement of union members' hard-earned dues by union leaders.

Just recently, in the Capital Consultants case, we found that union leaders in the Pacific Northwest were accepting payoffs for steering investments to another company. In my hometown of Chicago, just a few weeks ago, a man named John Serpico pled guilty to mail fraud because he had embezzled money from his union.

Mr. Andrews. Mr. Secretary, I appreciate that. And I could respond by giving you anecdotes of criminal misbehavior by corporate leaders across the country, and then extrapolate from that by using some statistic that if corporations filed some report like that there is systemic corruption in corporate America. I think we have to be very careful to look at the facts before us and not let that lap over into anecdotal mischaracterizations.

Mr. Findlay. Thank you, Congressman. We certainly don't want to leave the impression that the vast majority of union officials are corrupt, because that is not the case, but we do have a law that Congress has entrusted us to enforce. And we feel that any noncompliance is too much noncompliance, just as we do with the other statutes that we enforce. But I appreciate the Congressman's comments. We certainly do not want to leave the impression that all unions are corrupt, because they are not.

Chairman Johnson. Mr. Andrews, I might add that those reports are due in March, and you are talking about August. You know they are late by that time. You could not file your income tax that late and not get challenged. So I think we have to be careful as well because I think that as you stated, the small unions need just as much comfort as the large ones from us.

Mr. Andrews. If the Chairman would yield, I would appreciate in your next reference if you would point out that ..8 percent of large unions were not in compliance as of August 15, 2001, not 34 percent. Because of unions with more than $200,000 in revenue, who had not filed as of August the 15th, it was less than 1 percent of the 30,000 filers.

Chairman Johnson. Well, I don't think you have to differentiate between the unions. I think that large and small alike need to file and need to obey the law. Would you agree with that? Thank you.

Chairman Norwood, do you care to question?

Chairman Norwood. Thank you, Mr. Chairman. Mr. Andrews that was very well done. I thought you thought through that very well.

Mr. Andrews. It is like pulling teeth.

Chairman Norwood. That is easy to do. This is hard to do. I think we all could also agree though, that the law is the law and it doesn't matter how much funds your particular union has any more than it matters what your income is with IRS. You are supposed to file, and you are supposed

to file on time.

Mr. Findlay thanks for being here. I do appreciate that. Tell me what an ICAP is?

Mr. Findlay. An ICAP is the sort of audit we do with the largest international unions.

Chairman Norwood. How many ICAPs did the DOL perform in FY 2000?

Mr. Findlay. In FY 2000, I am sorry to say that under the previous Administration they performed no ICAPs.

Chairman Norwood. Well, what about over the past decade?

Mr. Findlay. I don't know the exact number. But it is a fairly small number, somewhere in the single digits or teens.

Chairman Norwood. Do you think it is correct to do it that way?

Mr. Findlay. We believe that we need to do more ICAPs. They are very resource intensive. It is my understanding that it takes 500 to 1,000 person-days to conduct one of these audits. And, frankly, the OLMS has not had the resources in recent years to conduct as many of these audits as they ought to.

Chairman Norwood. Well, isn't Landrum-Griffin in place to protect the worker?

Mr. Findlay. It certainly is.

Chairman Norwood. Okay. And does that mean that our excuse for not protecting the worker is we simply don't have the resources, or haven't prioritized our resources? Is that what you are telling me?

Mr. Findlay. Well, to some extent, the Landrum-Griffin Act itself prioritizes our resources. The Act requires OLMS to do union election disputes. And so, they have no discretion as to whether they can do those. What has happened in recent years is that OLMS has been forced to devote a large chunk of resources for these election disputes and there is not much left over to deal with these ICAP audits, which we do consider very important.

Chairman Norwood. The bottom line, we are not doing the job are we?

Mr. Findlay. I think it is fair to say that over the past decade OLMS has not done as good a job as they should have.

Chairman Norwood. These examples of corruption that you have mentioned, and I am going to mention some too, the ones in which DOL turned up or Justice turned up, was it discovery in court that gave us this information, or did your Department?

Mr. Findlay. I don't know the timing of events, but I know the Department of Labor was involved in both of those investigations.

Chairman Norwood. The LM-2 form doesn't really give the Department of Labor enough information to turn up any of that?

Mr. Findlay. Well, as I mentioned earlier, I think the LM-2 form has not kept up with the changes in financial practices over the past 40 years. It does utilize broad and general categories, but it doesn't break down within each of these categories in such a way that a union member can look at an LM-2 and really figure out what is going on. So I think one of the things we are looking at is whether improvements can be made to that form.

Chairman Norwood. Actually, even if everybody were on time, you are not going to see anything, or at least an average member who works in the union wouldn't have a clue.

Mr. Findlay. I think the LM-2 form, if used by a union official that wants to hide things, can be used to hide things.

Chairman Norwood. DOL sends out notices to unions before reports are due informing them of this duty. Is that a correct statement?

Mr. Findlay. That is right.

Chairman Norwood. If their reports are not filed in a timely fashion, then you send out late notices informing the union of these defects, is that correct?

Mr. Findlay. That is correct also.

Chairman Norwood. If the union does not respond to the first notice, and then the follow up late filing notice, what does DOL do next?

Mr. Findlay. We ask our OLMS field offices to go out and contact the union directly by letter, by telephone, by personal visit. And we are essentially in a position where we have to plead with these unions to file their legally required forms.

Chairman Norwood. You have to plead with them. And if they aren't turned in at that point could you characterize that as an intentional failure to act on their part?

Mr. Findlay. It would depend on the case obviously. But in a number of these cases, I think it could be classified as an intentional or willful failure to file.

Chairman Norwood. Maybe some of us will volunteer to try this on the IRS, and see what happens. Let's see if they will come plead with us to file our tax returns.

Mr. Chairman, I see my time is up. I hope we can have another little shot at the Secretary.

Chairman Johnson. Thank you. Mr. Owens, do you care to question?

Mr. Owens. Thank you. Mr. Secretary, you mentioned that among the responsibilities of your department was ERISA, correct, safeguarding pension funds of workers?

Mr. Findlay. Yes, sir.

Mr. Owens. While I agree that every union member has a right to some safeguards against corruption as a result of this Act, the volume of pension funds versus union dues is so much greater that if you have limited resources, it seems to me directing them where the greatest amount of activity is taking place and the greatest danger of real harm is an appropriate direction. Do you have any estimate of how many trillions of dollars there are in pension funds?

Mr. Findlay. I used to know that number. I don't know it now. But it is a substantial amount of money.

Mr. Owens. In the trillions, right?

Mr. Findlay. It is in the trillions.

Mr. Owens. And the union dues will not even reach a billion. If you put them all together, they wouldn't reach a billion dollars.

Mr. Findlay. I don't know, but I will take your word for it. I just don't know.

Mr. Owens. Maybe you can look that up and get back to us on it. Just to get the perspective straight, Mr. Andrews has said that the impact of late reporting for the largest unions is .8 percent. Was that correct? All right, so pretty low, although we like to see everybody comply with the law. The larger unions are the ones that really represent the most people, and they had the greatest amount of corruption.

I am not belittling the fact that corruption in the small unions is serious for the union member who is a victim, but let's keep our perspective straight. Would you say that the late reporting by the unions has any impact on the domestic economy at all? If they report late, will that impact negatively in some way on our economy?

Mr. Findlay. I think, of course, it does. Even if it is not in the trillions of dollars, it is substantial amounts of money. And if you are a union member who pays $600 a year to your union, and it is mismanaged or stolen, I think it matters a lot.

Mr. Owens. I am not saying it is malfeasance or mismanagement. I am stating the fact that they report late. We don't have a great problem with non-reporting. The problem is late reporting, right? Point .8 percent are guilty of late reporting for the larger unions?

What is the statistics for non-reporting, total non-reporting?

Mr. Findlay. I'm sorry?

Mr. Owens. Non-reporting by the largest unions, what is the percentage, totally non-reporting?

Mr. Findlay. Somewhere between 10 and 15 percent.

Mr. Owens. Between 10 and 15 percent could have an impact on the economy?

Mr. Findlay. I think the idea behind the Landrum-Griffin Act, which, as I said is a statute that has been given to us, is transparency. We did not ask for it, but we have to enforce it. The idea behind that law is that transparency will lead to more accountability with these hundreds of millions of dollars in the economy.

Mr. Owens. No, I agree. I just want to get the perspective back, you know. Do we have indignation in search of a scapegoat here? And should that indignation be directed in another direction, is the question? Is our competitive position in the world altered in any way by whether these reports are filed or not, or whether they are late? Is our productivity altered whether they are filed or not, or whether they are late? Do they have any impact on international matters?

You know, why is it so much more important than, for example, the impact that the mismanagement of the pension funds of Global Crossing or Enron, or other large corporations, may have on the economy domestically, on our reputation internationally, on the trustworthiness of our corporations internationally? They are all under your jurisdiction. So I would like to see your resources directed where it matters most, because we all have limited resources.

Mr. Findlay. We certainly have been directing substantial resources to those other matters. And I think it is not fair to say that there has not been a little bit of indignation about the Enron and Global Crossing matters. My own department, of course, had launched an investigation into Enron well before this became a large public issue. We proposed a new retirement security bill, which is before the Full Committee, and also the Finance Committee, or the Ways and Means Committee.

And so we believe that all of the laws are important. We don't think that because there is more money in the other area, that we can completely ignore this statute. For better or worse, Congress decided by very large majorities that the Department of Labor ought to enforce this law. And we feel like we would be disrespecting what Congress told us to do if we were to decide this doesn't matter. It is not as much money.

Mr. Owens. Do you think you could use more resources, more employees to adequately cover the problem presented by pension fund mismanagement?

Mr. Findlay. Yes, and we have sought more resources and more employees.

Mr. Owens. Thank you.

Mr. Findlay. And we will seek even more next year.

Mr. Owens. Thank you. I yield back the balance of my time.

Chairman Johnson. Thank you, Mr. Owens. Mr. Ballenger, do you wish to question?

Mr. Ballenger. Yes, sir, if I may.

Mr. Findlay, everything that we have said so far fits perfectly with one of the statements made over and over again in your testimony. You might remember that paragraph you had. It says scholars and experts believe that without Title II, all of the other components of the Landrum-Griffin Act would be difficult, if not impossible to achieve. In short, let's hope that more transparency would lead to more accountability.

In other words, this one thing we are discussing either makes or breaks the effectiveness of the Landrum-Griffin law, pretty much exactly as your statement says. Is that not true?

Mr. Findlay. Congress believed that Title II was at the heart of Landrum-Griffin because without Title II all of the other substantive protections against embezzlement or in favor of union democracy, and so on, would be very difficult to enforce.

Mr. Ballenger. That is sort of like saying that if we did not have to have Enron keeping books, they might have lasted for a couple of more years without going down the tubes.

Mr. Findlay. I think the idea behind Landrum-Griffin is very similar to the idea behind our securities law, which is that disclosure and transparency is a good thing for large organizations with lots of money.

Mr. Ballenger. Right. That disk that you have showed us earlier is something that you have sent out to all of the unions. I don't know what it does, but I am just guessing. Does it explain how to fill out the forms?

Mr. Findlay. Yes, it is very much like a Quicken program, or the tax programs where you can sit down at your computer and you just answer a series of questions, and it fills out the form for you.

Mr. Ballenger. In other words, even in a union that didn't have over 5 or 10 members, if one of the members happened to have a computer, it would not be difficult at all to fill out these forms?

Mr. Findlay. That is true. And not only that but also for the LM-4, which is the form used for the smallest unions, the ones without any full-time employees that Congressman Andrews spoke of. The LM-4 is a very simple form. It is kind of analogous to the 1040 EZ form in some ways. The LM-3, which is the form used for middle-sized unions, is simpler than the LM-2 as well. But this disk tells you how to fill out all of them, and it really should not be difficult to do if you keep your books and records in order.

Mr. Ballenger. I am just curious. Considering the fact that all of the taxpayers in this country are paying for the cost of what Landrum-Griffin mandates, do you believe that a civil monetary penalty for lack of filing might help you fund additional staff? You could catch the crooks, but at the same

time catch someone's attention about the fact that here is a simple little way of reporting. You stick it in your computer it will print it out. If you have a piece of paper, you can do it. I know that that is not going to strike a happy note with anybody. But the fact is that you are under funded and understaffed, and we have not given you the ability to enforce the law that almost everybody voted for

Mr. Findlay. I think it is human nature if you have two obligations. One is to file something with the IRS, where you could be subject to fines and criminal penalties if you don't file. Then you have another obligation where you file something with the Department of Labor, and the Department of Labor doesn't have any independent enforcement authority. You are more likely to take an obligation seriously when it is backed up by a sanction.

Mr. Ballenger. Almost everybody on the Committee knows that I have a small business back in North Carolina. And over and over again, you sit down and ask how much is it costing us to fill out the forms? You can get an extension from the Internal Revenue Service, but not from OSHA. And I might say that workmen's comp is not like that. If we are going to let labor unions not file the forms, how about taking the pressure off in a whole bunch of other situations?

I figure at least we have two people in a small company in North Carolina that do nothing but fill out government forms on various other things, responsibility being ours, or you go to jail, or at least that. That is almost as bad as having OSHA come into your plant.

Mr. Findlay. Well, I think we view OSHA, and Mine Safety and Health Administration, and the Wage and Hour Division, and OLMS all the same way. We think that all of them ought to be out there vigorously enforcing the law; all of them ought to be out there engaging in compliance assistance.

I think OSHA is a great agency. I think it has done a lot better than it has in past years, and under Secretary Chao's leadership we are trying to make it even better.

Mr. Ballenger. I would agree with that, having come from North Carolina where the previous OSHA head was from, we worked together trying to make it easier on business to at least participate in making the decisions.

Obviously, I think that nobody on this Committee, not even our legal friends on the other side, would recommend that we allow businesses of any size the right to file late without penalty forms that we have to give to the Federal Government. That is a completely biased statement, and I thought I would make it.

Mr. Findlay. We view this as a very simple question. Congress entrusted us with a law to enforce. We feel like we have to enforce it, and we feel that way about all of our statutes.

Mr. Ballenger. What would you think about a late fee? That makes a lot of sense to me. I mean you wouldn't really be penalizing anybody except somebody that wasn't playing the game properly.

Mr. Findlay. I think that is something the Committee would want to consider.

Mr. Ballenger. I will try to get a co-sponsor on the other side. Thank you very much, Mr. Findlay.

Mr. Findlay. Thank you.

Chairman Johnson. You get your "get out of jail free" card.

Ms. Rivers, would you care to question?

Ms. Rivers. I do. Thank you, Mr. Chairman, Secretary Findlay.

I happen to agree with you that all of these laws are important. And this issue of disclosure, and the importance of letting members know where their union dues are going is something that I think is important. Congressional oversight is also important.

It was interesting to me in the course of the questions that there was a discussion about the fact that the IRS has a good vehicle for this kind of oversight because they have penalties, and also because of the structure of that Agency.

Given that we are going to leave very soon today to go to the floor to vote on "527s", which are laws that are put in place through the IRS to force labor unions and other groups that engage in campaign expenditures to guarantee disclosure and oversight, do you think that the Administration would be inconsistent if they didn't support both the measures you are proposing and the publication of information from "527"?

Mr. Findlay. I am just not familiar enough with the "527" legislation to make a comment.

Ms. Rivers. Well, do you think in general we should always err on the side of disclosure and oversight, as opposed to secrecy?

Mr. Findlay. I wouldn't want to make as broad a statement as that.

Ms. Rivers. You think secrecy in some instances would be good? Why would that be?

Mr. Findlay. I think just as unions have some rights to not disclose every single penny they spend, it may well be that in other cases that is appropriate too. But, again, I don't know enough about the legislation to comment, or to distinguish between the two cases. I just don't know.

Ms. Rivers. If your concern is that members of unions or those who pay carrying charges to unions need to have the ability to know whether or not their contributions, or dues, or carrying charges are being used to campaign, or to help the campaigns of people whose views they don't share, don't you think we should at every level of the government make certain that that kind of disclosure is available? I mean wouldn't this 527 offer the same sort of information that you're concerned about?

Mr. Findlay. I don't believe I have testified that union members or anyone else should have an absolute right to withhold dues for views they don't share.

Ms. Rivers. I said they have a right to know if their union is spending money, which is of course what 527 is about, disclosure of where the money comes from and what it is being used for. And it seems inconsistent to me that, on the one hand in this Labor Subcommittee, we are going to talk about how important it is that there be no secrecy, and how people have a right to know what is happening to their money. But then we are going to go to the floor and argue that these organizations are going to be unduly burdened by having to say where their money is coming from and where is it going and have public oversight. I am trying to reconcile that.

Mr. Findlay. Well, I am trained as a lawyer, Congresswoman Rivers.

Ms. Rivers. Me, too.

Mr. Findlay. And you know what it means to distinguish two cases. But in order to distinguish two cases, one needs to know the facts of both of them, and I just don't know the facts of 527. So I am afraid I can't help you in terms of distinguishing them or explaining why they are consistent or inconsistent.

Ms. Rivers. All right. Thank you.

Thank you, Mr. Chairman.

Chairman Johnson. Thank you. I am going to recognize Mr. Tierney, if he cares to question.

Mr. Tierney. I do. Thank you, Mr. Chairman. I want to thank the witness, Mr. Findlay, for spending some time with us this morning.

Let's start with the assumption that when Congress passed by the wide margins that it did, that there was wide agreement in the need for Title II in its provisions. My understanding is that in 1998, we directed OLMS to establish an alternative system for electronic submission of reports. And I think that progress on that was supposed to be accomplished by the end of 2001, if I am not mistaken.

It would be important to us since it would allow over the Internet, as I understand it, every member of a union to be able to get in and get that information, as well as your office I assume, to be able to get ready access to it, or probably avoid any problem with the mail and things. Do you have the kind of resources that you need in your department to finish that job?

Mr. Findlay. I think we do, Congressman, and I think we are very close to finishing the job. As I noted, we have created a CD-rom that allows unions to put together the forms electronically. It has turned out that there has been software bugs that we have had to overcome in terms of facilitating electronic filing. We have had to get past the electronic signature issue. But we believe that we will be able to offer electronic filing sometime within the next few months.

Mr. Tierney. Hopefully, that will do away with some of the delay problems. So if anybody wants to blame the mail or anything of that nature, we will know as soon as the deadline arrives at least whether or not they are filed. Your office can go through the process presumably with fewer personnel.

Mr. Findlay. I think that is right. This is a very important step to make it easier for unions to get things in on time.

Mr. Tierney. Well, I think it is all about the tools, and probably why I am going into this line of questioning. On the ICAPs or the CAPs, you indicated that you have the authority to have a streamlined audit under the ICAP situation. The question here is whether or not you have the resources to perform those audits, and you indicated that you think perhaps you don't. The problem that I see with that is we have a lot of agencies that we don't think have enough resources to do the job it is supposed to do.

We have the conflict of people in the majority hating government, and a lot of times what that does is leave us with a shortage when they pare back budgets. One of the analogies we can make is with the IRS. You know, Commissioner Rossotti was here telling us that they were auditing far more low wage earners than people that file for business partnerships and trusts at a higher income level where he fears there is much more cheating. We are losing billions of dollars because he does not have the personnel to go where the money is.

I think a little bit of what you are telling us here is you don't have the personnel to actually do the CAPs and the ICAPs that you need to do. And I think we ought to discuss that and see whether or not we can help out in that area and move in that direction.

One of the other things that I noted in the correspondence that went back and forth between the Department and the Committee was that few of the record-keeping violations are considered intentional. You spend a lot of your time when you are doing the audits, if they are not intentional and if they are routine in terms of errors, actually helping the unions to correct and refile them. And I assume that in those instances penalization is not the goal that you are going after. It is getting the materials and getting the information, and eventually getting it up on the Internet if we are all successful on that.

Mr. Findlay. That is exactly right, Congressman. Our aim is not to go out and be punitive. That is not what we are about, and it is certainly not an effort to impose burdens that shouldn't be imposed. We, for that reason, have asked OLMS, as I mentioned, to put together a compliance assistance plan that will make it easier for unions to file these forms.

Along with the electronic filing, and some of the other innovations, we go out and give seminars, and we have prepared a lot of web-based materials that I think will be able to increase compliance efforts as well.

Mr. Tierney. It looks to me like you have the tools. The question is whether or not you can implement them, whether or not you can get the technology into the condition that you want,

whether or not you can get the personnel in to do what the statute allows you to do.

I am a little concerned with the flow of this hearing and some of the legislation that has been filed that takes you where you just said you don't want to go, or would point in the direction of being punitive, as opposed to getting accomplished what the statute wants to be accomplished. Before we start looking at new legislation, or giving your department more authority, I think we ought to get an assessment once you get your computer system up, once you get some personnel to do the CAPs and the ICAPs, and take a look at it then to see whether or not you are still having problems, and work on it that way.

I am very loath to give your department authority to start finding people. You can already bring a civil action. You can already pursue criminal penalties for a willful failure to file required reports. I think that is quite sufficient if you utilize the materials that you have within the statute, and you get those going, and you get the resources. Given the way we politicize this whole union issue and anything like it, I would be loath to give the administration any ability to just go out and fine or whatever, until you have fully applied those tools and resources and shown us that the statute is deficient somewhere.

I just think it causes us to put you in an awkward position. Because, certainly, I think anything you did along that line would be challenged, especially as it comes on the heels of administrations and policymakers who sometimes make no bones about their position with respect to unions.

I think that Congress, by a large bipartisan majority, has passed legislation that gave the tools. Let's implement them, and let's make sure that the resources are there, and then let's make an assessment before we put ourselves in the position of being accused of being vindictive or partisan in some way.

Mr. Findlay. Well, I certainly appreciate your point, Congressman. I guess I would analogize to our other agencies, like OSHA, where we are trying to put a greater emphasis on compliance assistance.

We are trying to be less punitive with respect to OSHA as well, but we still recognize that, while we are putting a greater focus on compliance assistance, that enforcement is also a necessary part of a balanced strategy.

Mr. Tierney. But you have the tools for enforcement here. You have the civil penalties.

Chairman Johnson. The gentleman's time has expired.

Mr. Tierney. The fact of the matter is that you don't have a track record with full implementation and full resources to show us that there is a need to go further, and that was my point. Thank you.

Chairman Johnson. Thank you, Mr. Tierney. Ms. Solis.

Ms. Solis. Thank you, Mr. Chairman. Also, thank you, Mr. Findlay, for taking the time to come out.

My concern is with respect to how well you have been communicating with the different unions that obviously would be affected by these types of decisions that we are discussing here. It seems to me that overall the other areas of the agency are out there trying to consult with the different parties that would be involved in trying to provide some regulation here. But I would like to know if there has been any discussion on your part with any of the large labor unions that we are discussing here today that you claim have not been audited.

Mr. Findlay. The ones that have not been audited?

Ms. Solis. Or any, for that matter.

Mr. Findlay. I am certain that OLMS is in contact with many of the unions, certainly, the ones that have not been filing on time. If your question is: Have we been consulting with them about not filing on time?

Ms. Solis. I mean where did this issue come up that there is a problem here? Have union members or individuals representing those unions come forward, and in what number, and who are they?

Mr. Findlay. We get about 50,000 requests a year for this information. So I think it is something that is of great interest to union members. And then, of course, as some of the examples I mentioned earlier show, often these complaints can lead to fairly serious charges by law enforcement authorities.

So we think there is a significant problem here that needs to be addressed. In terms of consulting, I think we meet all of the time with the leaders of the unions here in town. Secretary Chao has had dozens of meetings with union leaders.

Ms. Solis. On this issue?

Mr. Findlay. I have not been in any of these meetings, so I can't say exactly what has been discussed. But union leaders certainly have had many opportunities to discuss these issues with us. And if they haven't raised them, then I don't know why that would be.

Ms. Solis. You said 50,000 complaints. Is it with respect to this particular issue?

Mr. Findlay. I wouldn't want to characterize it as complaints; 50,000 requests for information or contacts.

Ms. Solis. But not necessarily regarding this particular issue?

Mr. Findlay. No, about the LM-2, LM-3, and LM-4 forms.

Ms. Solis. I guess it would be nice to be able to get that information from you in terms of how that breaks down in specifics.

Mr. Findlay. I would be happy to try and supplement the record if we have that information. I don't know if we break it down that way.

Ms. Solis. Thank you. Also going back over the material, the majority of the unions are quite small and they don't really have full-time officers, and it appears those that do have union officers are serving on a volunteer basis. They are either representing the nursing groups, or Teamsters. It might be truckers or people that have another full-time job. It just seems ironic that people that are actually doing some of this work on a volunteer basis are really being asked to provide information, I mean let's be realistic about this, in the kind of role that some of these officers would play.

Mr. Findlay. Well, I think there are lots of small companies in this country too where it is really just one or two people like mom and pop stores, small partnerships, or small corporations. We require those people to file tax forms and other information with the government, and we think that the same should apply for small unions who are collecting hundreds of dollars from each of their members.

And I would say that, as I mentioned before, we do try very hard to minimize the filing requirements for the smallest unions. For the very small ones under $10,000 a year, we basically ask a very limited number of questions on that LM-4. The LM-4 itself is not a particularly onerous form either. I mean it is just a few pages. So we are trying very hard to minimize the paper work burdens, recognizing, as you say, that many of these unions are kind of mom and pop operations themselves.

We do feel like even small entities, just like small business entities, should comply with the law and file their forms.

Ms. Solis. Right, and I don't doubt that. I also am in support of fully disclosing how monies are spent. But I think at times that it is unnecessary if there isn't a big problem or issue. I haven't heard this from any of the unions in my area, and I communicate with them quite often. I haven't heard anything about problems there.

And I would just add that it would be good if you did begin consultations or set up some kind of a task force or advisory group where you could consult with some of the unions, so we can work out or hash out any foreseeable problems that there might be. That is a process that is probably more valuable than just some of us sitting up here trying to decide what is right and what is wrong, instead of asking those that are in the field for their responses.

Mr. Findlay. Well, we would certainly welcome any input from unions on how to improve our forms, how to improve our compliance assistance.

Ms. Solis. Would you go as far as maybe setting up an advisory board and allowing individuals to serve on that to give you that kind of information?

Mr. Findlay. I am hesitant to commit ourselves to set up yet another committee because we have a lot of them.

Ms. Solis. But if this is such an important issue, and we are talking about proposed legislation and putting more resources into this, I think it would be well advised to look at it.

Mr. Findlay. We will consider that. And, obviously, if we ever were to make regulatory changes, it would go through a notice and comment rulemaking process where everyone would have plenty of opportunity to tell us what we are doing right and what we are doing wrong.

Ms. Solis. Thank you.

Chairman Johnson. Thank you, Ms. Solis. It is the intent of the Chair to recognize Chairman Norwood for another question. But we are expecting a series of three or four votes in 10 or 15 minutes. So after his questioning, we will try to get the rest of the panel in.

Mr. Payne. In order to try to save time, I won't ask questions.

Chairman Johnson. Thank you, Mr. Payne. It is a pleasure to work with you.

Chairman Norwood, you are recognized.

Chairman Norwood. I thank the Chairman.

Mr. Findlay, I want to associate myself with some of Congressman Tierney's remarks, because I agree with him particularly about electronic filing, and maybe especially about Chairmen doing whatever they want to do. I have been here about seven years, and I don't see any hope any time soon for that to change.

I think, at least as far as I am concerned, we have perhaps established that there are 300 unions that simply don't follow the law and don't file LM-2s at all. But I want to get away from that because I think it has been well said in every way it can be said, that your obligation is to do something about it.

By the way, the electronic filing will be available in a couple of months? Can we count on that by July 1st?

Mr. Findlay. Our folks tell me that they should have it done by the end of May.

Chairman Norwood. Good. I will call you on June 1st then.

Mr. Findlay. You may call us on June 1st. And I am sure if we haven't gotten it done, you will.

Chairman Norwood. We are going to receive testimony from our second panel of witnesses that includes the following statement, and I am going to quote out of their testimony. “Unfortunately, using today's LM-2s, there is no way an outside observer can effectively determine whether a union

is spending dues revenue consistently with its fiduciary obligation to its members." Do you agree with that?

Mr. Findlay. I think I spoke earlier about the shortcomings of the LM-2. It is possible for an unscrupulous union official to use the broad and general categories of LM-2 to conceal things that he or she would like to conceal from his or her members. I think I do agree with that statement.

Chairman Norwood. I do. I am glad to hear you do, too. I think it is pretty clear. I want to talk about DOL's auditing of reported financial forms. Explain to me the procedure for determining which disclosures are subject to an audit and which are not.

Mr. Findlay. Well, for the CAP program, which was for the non-international unions, the decision is left to the career staff out in the OLMS field offices. And they do it, as any investigator would, based on tips, complaints and intelligence. If something just doesn't look right, then they might do an audit.

For the ICAPs, which are the audits of large international unions, the decision is made in the national office by a sort of systematic analysis. And there is actually a system in place that is supposed to flag particular unions for audits at particular times.

Chairman Norwood. Is that a better process than a random process for auditing?

Mr. Findlay. Well, I think if you did a random process with 30,000 unions, you could go about 150 years before a union was audited. And if you know your odds of having an audit are once every 150 years, and if your union official is only going to be there say 50 years, you only have a 1 in 3 chance of having an audit.

Chairman Norwood. Well, perhaps you could consider both, a few random every year, as well as a systematic approach. Once these LM-2 forms are collected electronically as of June, will they be made available to anyone who wants to review them over the DOL's website?

Mr. Findlay. Yes, we have been working with the Department of Commerce, which somehow hosts this disclosure system. We believe that we are working out the kinks in that system, and we ought to have that up and running by the summer as well, about the same timeframe as electronic filing.

Chairman Norwood. All right. And another thought about that form. Later today we are going to hear one of the witnesses make a suggestion that DOL be required to compile an aggregate data report from the LM forms, so that union members can effectively compare the financial performance of their union with others. What is your reaction to that kind of thinking?

Mr. Findlay. I think in an age of unlimited resources, it would be a great idea. I would think that we would want to focus our resources first on increasing the level of compliance, and also doing more audits.

And one other thing I would say about that is once we have the database up on the web, it will be searchable and people such as those on the next panel that follows me will be able to compile those sorts of reports themselves, I believe.

Chairman Norwood. So you think the electronic mechanism will be user friendly, so that there can be comparisons.

Mr. Findlay. We are already trying to make it as user friendly as possible. But I think your point is something that we will look at to see whether it is easy for us to do as well.

Chairman Norwood. Later this morning, or after the votes, we are going to receive testimony from one of our panelists that has been a labor beat reporter for many years. He is going to testify that he and many of his fellow reporters use the financial reports, but find them of very little value in terms of receiving useful information when they are investigating allegations of corruption.

The fact that seasoned reporters and labor lawyers find these reports of marginal utility, suggests to me that the information contained therein obviously is not represented in a way that is user friendly for a member of the rank of file. And that is really who I am trying to speak for.

What is your opinion on the value of this information for the average member of a union, and how do you think these reports can be made more user friendly?

Mr. Findlay. Well, I would have to defer the questions on how difficult it is for reporters and others to look at the forms to the next panel. As I mentioned, many observers have said that these forms are very difficult to follow, and that it is very easy to conceal through aggregation particular expenditures.

We are taking a hard look at the LM-2s, and the LM-3s, and LM-4s, as well, to see if they can be made more user friendly. There was a proposal in the prior Bush administration to break it out in a particular way. We are aware of that proposal. Others have made different proposals. So it is something we are looking at, but we have made no decision yet.

Mr. Payne. Mr. Chairman, may I have a point of personal privilege.

Mr. Chairman, I think it is really unfair. I, in deference to the witnesses on the other panel, was going to forego questions. I have many questions I could have asked, but I thought that because we were going to have votes, I would not ask a question. And here we have 10 minutes of additional questioning on a second round. I think we all have to try to be fair. We all have a lot of intelligence, and we have a lot of things to say, but it is unfair to the other witnesses. And, really, I feel it is unfair for me to give up my time, and then listen to 10 minutes of questioning. That is not fair.

Chairman Norwood. Mr. Payne, I am very grateful, and I am going to yield the floor.

Mr. Chairman, I do have a lot of other questions.

Chairman Johnson. Fine.

Mr. Payne, if you desire to question, you may.

Mr. Payne. No, I still have a concern about the other witnesses. It is unfair to them. I want to hear what they have to say, so I will not, as I said before, ask any questions. However, I think it is inappropriate, and actually rude that we do this to the witnesses.

Chairman Norwood. Mr. Chairman, point of personal privilege.

Mr. Payne, I have other questions that I am not going to ask. But I do want to submit them in writing to Secretary Findlay and ask that the answers be put in the record.

Chairman Johnson. All Members will be allowed to submit questions for the record, and the record will remain open for 10 days. I presume you would be happy to respond.

I want to thank you for joining us and once again, and to inform the Department through you that this Committee wants to work with you all to improve performance in these critical reporting areas. And with those words of thanks, I will dismiss the Secretary at this time, and ask our second panel of witnesses to please take the table. At this time, I will also turn the chair over to Chairman Norwood, who will introduce the second panel of witnesses.

Thank you for being with us.

Mr. Findlay. Thank you, Mr. Chairman.

Chairman Norwood. [Presiding] I believe that we have learned much from Mr. Findlay, and now we have a second panel of witnesses, who will add to this overall understanding. And my friend, Mr. Payne, can be assured he is going to have all of the time he wants.

First, my fellow Members, we have Mr. Robert Fitch, who is a freelance reporter from New York City. Mr. Fitch has covered the labor beat as a freelance reporter for many years and is prepared to share with us his perspective on how the information in reports we have been discussing is used by the news media. Second, we have Mr. James Coppess, Associate General Counsel of AFL-CIO, Washington, D.C. And third, we have Mr. Phillip Wilson, Esq., who serves as Vice President and General Counsel for LRI Management Services, Inc., located in Tulsa, Oklahoma.

Before asking our panelists to begin, I want to remind each of our witnesses that they have been invited to speak for approximately five minutes before this joint gathering of Subcommittee Members, summarizing their written statements and adding what they feel is appropriate. And I do thank all of you gentlemen very much for being here.

Mr. Fitch, you will begin, and Mr. Coppess, and finally Mr. Wilson will follow you.

STATEMENT OF ROBERT FITCH, FREELANCE REPORTER, NEW YORK, NY

Thanks for inviting me. And second, I want to thank you for your efforts to tear down the wall that separates union members from the information they need to hold their leaders accountable. Workers need unions to protect them from arbitrary dismissal, to win a measure of respect from their employers, to gain the share that they have earned of America's prosperity.

In the effort to make sure unions can accomplish these goals, they have been granted extraordinary and probably self-defeating privileges. In most states, unions are allowed to impose membership on employees where they have jurisdiction.

Unions are permitted to levy what amounts to compulsory taxes. They can collect those taxes through a compulsory dues check off system. Unions have the right of exclusive representation, which means that a union is allowed to act as a monopolist, depriving members of seeing how another union might handle the same issues of representation.

In the United States, no other nongovernmental organization is allowed these privileges. The Methodists don't have a jurisdiction, which forces all believers to become Methodists, similarly, fraternal organizations, educational organizations, or charitable organizations. Nowhere outside of Great Britain do western European countries grant unions these powers. At least they haven't since the age of medieval guilds. Given their monopoly status, unions have no incentive to provide information to their members.

It is up to the Federal Government, which has granted these monopoly powers, to ensure that members have the information they need to participate in the decisions that affect their lives. At least Congress thought so in 1959, when it passed the Landrum-Griffin Act. Since then I would submit the government still has not brought unions into the Information Age.

Four primary problems need to be addressed: availability, reliability, intelligibility, and comprehensiveness. Because these problems exist, however, it doesn't mean that the LM-2, as it presently stands, is worthless. I believe it has some deterrent effect.

Union leaders would prefer not to have their salaries and expenditures revealed. This was driven home to me in the '90s, when I was working as a consultant to a union. On the basis of my experience as a union organizer, I identified several targets for potential organization to a public sector union.

I was told by a top officer that the union would not be participating in any organization drives involving private companies because that would require the union to file the LM-2. Secrecy, in other words, trumped the expansion of the membership.

Potentially, however, if the material were more available, the LM-2 could provide a greater deterrent effect. Unlike federal documents, which researchers can generally depend on being there,

like the information required by corporations from SEC, when it comes to the LM-2, investigators find that the form, for one reason or another, is not available. They are in Washington; they are misfiled; somebody may be using them; or, as has been pointed out in the hearings, the unions simply don't file.

The timeliness of this information is very important for investigative journalists. Say, you have been assigned a story because there is a union election that particular week, maybe you have heard that the incumbent received a huge raise by an executive board dominated by his retainers. The problem is that you have heard that from a secondhand source, who is hostile. The union president has no comment. He can avoid exposure in the press, simply not filing the LM-2 until after the election. The membership is denied the facts that they need to make an informed decision.

Besides not filing, the information is simply not reliable in many cases because the union leadership can file false information. Can they get away with it? My impression is yes. Union leaders don't fear the Office of Labor Management Standards the way taxpayers fear an audit by the IRS. Depending on that category, auditing enforcement is from slim to none. Officials do check to see if there is a discrepancy between administrative expenses and dues. But what comes of it?

Perhaps, I am mistaken, but in New York City I don't know of any significant corruption case that has been initiated by an investigation carried out by the local Office of Labor Management Standards. This is not because union corruption is unknown in the jurisdictions of New York and New Jersey.

The minimal standards of information, audit enforcement, ought to be one that the SEC requires of corporations selling stock to the public. Why shouldn't workers be entitled to at least as much information about their union on the LM-2 as investors receive about their corporation on the Form 10-K? After all, investors don't have to buy the stock of any particular corporations. For workers, membership in a union can be compulsory.

WRITTEN STATEMENT OF ROBERT FITCH, FREELANCE REPORTER, NEW YORK, NY – SEE APPENDIX D

Chairman Norwood. Thank you very much, Mr. Fitch, for your insightful testimony.

Mr. Coppess, you have five minutes now please, sir.

STATEMENT OF JAMES B. COPPESS, ASSOCIATE GENERAL COUNSEL, AFL-CIO, WASHINGTON, D.C.

I will briefly summarize the testimony I have submitted in writing. Thank you.

The letter I received from the subcommittee last evening explaining the purpose of this hearing today stated the Committee's belief, and I will quote, "that a fully informed rank and file is the cornerstone of union democracy."

We believe that that sentiment provides the proper focus for the inquiry of the LM reporting forms for two reasons: First of all, it is clear under the Landrum- Griffin Act that the purpose of requiring union financial reports is to assist the membership in exercising the democratic rights within their unions granted by that statute. Secondly, in the end, it is the membership that must pay for any reporting that is required by the government through their dues. Their resources should not be wasted on generating reports that the membership does not find useful.

Given those two facts, which the Committee has recognized in calling the hearing, the need for any additional reporting requirements should be driven by membership demand, not by the needs of labor management, consultants, or reporters.

There has been no suggestion that I have heard that any members have come forward and suggested that the forms provide them with too little information, or that whatever delays there have been in filing have created problems for the membership in exercising their rights.

I would ask the Committee to keep its focus on the members, and not the other interests that can intersect on this issue. It was only through reviewing the materials to this Subcommittee that we learned that the Department was at all considering any changes in the form.

It is most certainly not true that the Department has made any attempt to consult with the labor unions about any needs in the reporting requirements, or any systemic problems that should be addressed in late reporting or a failure to report.

Something much like this occurred in the waning days of the first Bush Administration when the LM-2 forms were used opportunistically as a club to attack labor unions. The Department of Labor in the first Bush Administration proposed changing the forms in such a one-sided and ill-considered way that the effort was denounced by the very persistent Secretary of Labor, whose name the proposals appeared over, one Robert Guttman.

He called the proposals, I quote, "a lot of junk," that imposed, and I quote again, "unconscionable burdens on unions," and he complained that the Department hadn't conferred with labor unions at all in coming up with the proposal, but had only conferred with the Right to Work Committee in the single accounting firm. That was the very official in the first Bush Administration who is nominally responsible for this reporting requirement denouncing the very effort. And it seems as though that the Department of Labor in the second Bush Administration is well on the way to repeating those errors.

Reading the Department's testimony here today, it appears that there are two primary concerns that they have raised: the first is with late and non-reporting; and the second, more vaguely put, is with the broad categories of the forms.

With respect to late and underreporting, as the members have brought out during the testimony by the Department spokesman, the Department's figures reflect in fact a very high degree of reporting by the larger labor organizations; in fact, a figure of less than one-half of one percent of non-reporting, some 20 unions out of 5,000 filers in that category.

There have been late reports, that is true, by about a quarter of the filers, but these late reports are undoubtedly due to three factors:

First of all, as Chairman Johnson indicated, by holding up the very thick packet of paper that constitutes a typical LM-2 report, they are very complicated forms.

Secondly, the due date for the LM form is considerably before the due date for the 990 form required by unions to file with the IRS.

And, finally, unlike the IRS filings, there is no mechanism for requesting an extension of the filing of the LM form.

As to the broad categories, it may be that all of the categories need to be reconsidered. Some of them are ridiculously fine others may be too broad. But you would think that that would be a matter of consultation with the reporting organizations, and with the people who are supposed to be using the forms.

I will just rest on the rest of my written testimony. I can see everybody is in a hurry to get out of here.

WRITTEN STATEMENT OF JAMES B. COPPESS, ASSOCIATE GENERAL COUNSEL, AFL-CIO, WASHINGTON, D.C. – SEE APPENDIX E

Chairman Norwood. Actually, we are just going to go vote and come back. Thank you very much, Mr. Coppess, for your testimony.

Ladies and gentlemen, what we will do is finish Mr. Wilson's testimony, and then recess for one hour while we go through 1515 and 527, and then come back at whatever time that will turn out to be.

Mr. Wilson, you now have five minutes.

STATEMENT OF PHILLIP WILSON, VICE PRESIDENT AND GENERAL COUNSEL, LRI MANAGEMENT SERVICES, INC., TULSA, OK

Thank you, Mr. Chairman, Members of the Committee. I will try to keep my comments brief, so you can get to your vote.

The purpose, as has been testified here, of the Labor Management Reporting and Disclosure Act, is to give information to members so that they can democratically police their own unions. As has also been testified, it is clear that the enforcement and the administration of the LMRDA are failing in this regard.

I would like to agree with Mr. Coppess's testimony that the focus of this hearing and the focus of the legislation should be on the members. But I would disagree with him that it should be, for example, on the convenience of the labor organizations that would request to get either extensions or just simply choose not to file the information. That does not help union members.

Our firm, although it does help management, regularly gets requests from union members for copies of these LM forms. The fact of the matter is that unions do not distribute these forms readily. They are difficult to get a hold of. In fact, one of the reasons that businesses like ours exist is because of the fact that these forms are difficult to understand. They are very difficult to get a hold of for a layperson. And once they get a hold of the form, they really don't know what to make of the information.

I have done an extensive review of the history of the Act and of the latest filings by 10 of the largest labor organizations in the country, as well as the AFL-CIO's latest LM-2 filing, and have found numerous inconsistencies, both in their complying with the requirements of the Secretary of Labor, and, additionally with the requirements of the Labor Management Disclosure Act's Title II provisions. In many ways, the instructions on the LM-2 form, in my opinion, do not comport with the requirements of the Labor Management Disclosure Act's Title II provisions, whatsoever.

So even if a union were to comply with the instructions, which as we have learned today, doesn't happen that regularly, their report is still not going to give union members the information that Congress in the Landrum-Griffin Act wanted them to have.

The three major criticisms of the Act, and I won't go into detail on these because we have talked about them a lot, are that there is late filing and no filing. These forms are not distributed to union members. They are also often incomplete and inaccurate. There are no audits of these forms. And, finally, they are just not functional.

My testimony that I have submitted makes a series of recommendations. I would like to highlight four. The first recommendation is that Section 9(f) of the National Labor Relations Act should be reinstated. This section was repealed by the LMRDA back in 1959, and it provided basically that in order for a union to have access to the National Labor Relations Board process, that it would certify with the Department of Labor that it had complied with the requirements of filing its constitution, its bylaws, and its LM form, whether that be an LM-2, LM-3, or LM-4.

Additionally, the union had to certify that it had provided these documents to its union members. Now, if our focus here is going to be on the members, I think it makes an imminent amount of sense to include 9(f) back into the National Labor Relations Act.

This gets the enforcement out of the hands necessarily of private union members who very often do not have the resources to bring a private action. It gets it out of the hands of the Department of Justice and the Department of Labor, that we have heard today have other priorities, and, possibly, even more important priorities. And it gets it back into the hands of unions and companies that whenever the union wants to use the processes of the National Labor Relations Board, it should have to comply with its reporting requirements in giving information to its members.

The other three recommendations I make are to add civil penalties. I won't talk about that because it has already been discussed earlier. I think that there should be detailed schedules for all transactions over $250 by unions. This is the same requirement that is required by Schedule 1 of the current LM-2 form, and I think that it is the best reported section of the current form.

Finally, I think there should be functional reporting. By that, I mean that the union should have to report according to how much money they spent on organizing, how much they spent on contract administration, and how much money is spent on nonrepresentational issues. This will help both with the compliance with the Beck decision by the U.S. Supreme Court, and also will make the forms functional and understandable for union members. As we have said here today, this should be the focus of our discussion.

With that, I will close, and I am happy and looking forward to hearing your questions.

WRITTEN STATEMENT OF PHILLIP WILSON, VICE PRESIDENT AND GENERAL COUNSEL, LRI MANAGEMENT SERVICES, INC., TULSA, OK – SEE APPENDIX F

Chairman Norwood. Thank you very much, Mr. Wilson.

The Committee will be in recess until 1:15 p.m. Everybody please try to be back exactly at that time, because there is another hearing this afternoon. Have some lunch. We will be back as quickly as we can.

[Recess.]

Chairman Norwood. This hearing will come to order.

In returning, I would like to note that Mr. Coppess had a previous engagement and has asked us to note that he is very sorry he is not going to be here, but he would be delighted to answer questions for the record

Mr. Andrews, I would like to let you start with questions, and back to me, if you please.

Mr. Andrews. Thank you very much, Mr. Chairman. I appreciate the witnesses being here. I know it has been a long day, and please do not take the scheduling disruption as any disregard for your testimony, or disrespect for your time. It is the fault of the Majority on the floor.

Mr. Wilson, I wanted to ask you about a proposal I thought I heard you talk about here. Did I hear you say you thought there should be greater reporting descriptions of transactions by unions in excess of $250?

Mr. Wilson. Yes, that was one of my recommendations.

Mr. Andrews. Well, tell me more about what kinds of disclosures you think ought to be made in such transactions?

Mr. Wilson. Well, unfortunately, we haven't really talked very much today about what exactly is on the LM-2 form and Schedule 1.

Mr. Andrews. I did read your statement though.

Mr. Wilson. Okay.

Mr. Andrews. Schedule 1 that is on the current form requires unions to list any loan in excess of $250. In my review of all of the FY2000 LM-2 forms from the 10 largest unions I thought that that was probably the best reported section on the form. And I believe in many of these broad categories for example, professional fees, gifts, there is literally millions of dollars reported on the form with no follow-up schedule.

And by the way, I would say parenthetically, that I think that each of the two witnesses is right. The uses of generic categories on the reporting forms are not very helpful. You really can't do much to figure out where your money is going if you are a member.

But I want to ask you this question. If a union paid a $325 phone bill, what would they have to disclose about that transaction?

Mr. Wilson. I guess, first of all, I would say that the Secretary of Labor, probably in consultation with unions and their members, would want to come up with some type of reporting that makes sense. But, in my opinion, the payment of the $325 phone bill simply would just be reported as that.

Mr. Andrews. Would you require that the itemized phone bill be made part of the record?

Mr. Wilson. Again, I would probably think the Secretary after investigating it, would probably know better.

Mr. Andrews. What about bills submitted by law firms representing the union? How much disclosure would there have to be?

Mr. Wilson. Right now, that would be included in professional fees. My proposal is not just that the bills, or the amounts paid to people like law firms be disclosed, but also were those payments the matters that were being discussed, were they related to organizing, were they related to collective bargaining, or were they related to non-representational matters?

Mr. Andrews. How detailed does it have to be? What if a union under your proposal submitted a bill that said we paid a law firm $5,000 last month to give us advice on organizing? Is that good enough?

Mr. Wilson. Again, I would leave that to the Secretary. It would be vastly better than what we have now, which is as you know, "we spent $5 million on professional fees".

Mr. Andrews. Well, I appreciate you wanting to leave it to the Secretary, but it was your proposal, and I just want to flesh it out. The specific point that I raise is lawyer/client privilege. You are an attorney, I assume?

Mr. Wilson. Yes.

Mr. Andrews. If we were involved in a civil dispute, and I, in discovery, attempted to get from your client copies of the bills that you had submitted to the client, I assume that you would object, quite justifiably, on grounds of lawyer/client privilege. It might tell me about what advice you are giving them.

Mr. Wilson. Right.

Mr. Andrews. To what extent should lawyer/client privilege be accommodated in your proposal?

Mr. Wilson. Well, because I wouldn't have a fiduciary duty to the opponent in the lawsuit, I would feel differently about that case than I would in the case of a union.

Mr. Andrews. But, of course, you are talking about public disclosure, not just to those to whom a union has a fiduciary duty. Is that right? If it is going to go on the Internet, everybody could read it, right?

Mr. Wilson. Well, the idea is that it gets to the union members. And so for those purposes, in order for them to meet the burden of their fiduciary duty, I think that they should have to report those fees.

Mr. Andrews. But report what about them? Is the example I gave you sufficient?

Mr. Wilson. For what category? My proposal is that they report what category that they fit in. So is it advice on organizing? Is it advice on collective bargaining? Is it advice on non-representational matters?

Mr. Andrews. I will conclude. I just want to state the question one more time. What I am asking your opinion on is whether or not a disclosure that says, "We spent $5,000 for XYZ law firm to give us advice on organizing," is a sufficient disclosure, in your opinion?

Mr. Wilson. I believe so, or at least some matter that the fees were aligned to, so that a union member that was interested in finding out what fees were paid to what firm for what matter could figure it out.

Mr. Andrews. Thank you.

Chairman Norwood. Thank you, Mr. Andrews.

Mr. Fitch. Can I add on to what Mr. Wilson said about legal fees, in response to the Congressman?

Chairman Norwood. Certainly you can.

Mr. Fitch. In New York City, in the case of District Council 37, the American Federation of State County Municipal Employees, it eventually turned out that more than half of the locals were headed by people who were indicted and/or convicted of felonies. The case turned on a situation in a small local, where the president kicked back a half million dollar legal fee to a mob-connected attorney.

I feel that if the unions were required to identify their 10 largest vendors, which might very well include a law firm, it might be possible for members and reporters to smoke out some of these people, and that would act as a deterrent to a great deal of the corruption that we see day-to-day in cities like New York.

Chairman Norwood. Thank you, Mr. Fitch.

I will yield myself five minutes for questions. I am sorry Mr. Coppess is not here, because one of the statements he made is that he thought that we might be making a terrible error by asking the unions to report in detail how they spend their union members money.

I think that is really all I see this as. There should be a responsibility, to the people who pay their dues, for the people who run the unions to simply disclose to the members how they expend their funds.

Mr. Fitch, there has been a lot of talk this morning in this hearing about how corruption is not a problem in the labor movement. All of this is just after going after a few rotten apples. Now you have a great deal of experience in this area as an organizer, and a labor reporter. I would like for you to talk a few minutes based on your experience. How really serious do you think

corruption is in the unions today?

Mr. Fitch. Thank you, Mr. Chairman. I have a lot of experience in hearing the argument that it is only a few rotten apples. Almost every response to a major corruption case is that these cases are isolated. Even people who were strongly critical of union corruption will always minimize it, in terms of the existence of 6,000 locals in the United States. I submit that the efforts to identify corruption simply are nonexistent because it is just anecdotal, and has to fail because there haven't been any systematic studies of the kind you really need.

For example, when Erin Brockovich was finding all of these cases of cancer that were caused by PG&E, they were always dismissed as anecdotal, but it wasn't possible to find out exactly what the incidence was until much more research of a comprehensive kind had been done.

At the present time, because no such comprehensive examination has been done, we have to look at those instances that are most telling. And I would suggest two: One is the case of D.C.37, which I just mentioned, which was the largest municipal local in New York City, which had a membership of 125,000, but perhaps more importantly was identified by academic authorities as probably the outstanding municipal union in America. And it turned out that over half of the union presidents in that institution were guilty of felonies.

I would also suggest that the recent Global Crossing case is relevant. According to information that has been developed by the Wall Street Journal in last Friday's feature story, the board of directors of ULLICO appropriated approximately $7 million in insider trading income. Business Week has run several stories, and the Engineering News Record has also reported. Their ability to carry out this insider trading was completely connected to the price of Global Crossing stock, and they were a major stockholder in Global Crossing and had a member of their board on Global Crossing's board.

It seems to me that if you have well over a third of the entire leadership of the AFL-CIO involved in alleged conflicts of interest like that, it indicates a very serious problem.

Chairman Norwood. Would an LM-2 form that is extensive and clear explain that?

Mr. Fitch. Yes, sir.

Chairman Norwood. Or have discovered that?

Mr. Fitch. Yes, the proposal that I was suggesting would require that the outside income of labor leaders be reported. Then they would have to list the income they made from selling their ULLICO stock, which was hundreds of thousands of dollars.

Chairman Norwood. And as an investigative reporter with a good LM-2 form, or one that certainly is expansive, you could have determined that early on.

Mr. Fitch. This does not require a great amount of effort, just list your major outside sources of income, and it certainly would have been helpful. It is only until recently that I discovered that

ULLICO, which is a labor movement institution that goes back to the 1920s, had changed its corporate governance, so that it is possible for the directors to make large amounts of money on these kinds of trades.

Chairman Norwood. I see my time is up. Major Owens, would you like to question for five minutes?

Mr. Owens. Yes, his launch into corporate corruption interests me a great deal. I was going to let you go on. But I think seriously there is a question of why unions should have a duty to the LMRDA. They already must lead under NLRA.

If you want to refine this process, and I am all in favor of it, update the process so you get information that you really need. But when I hear you want to report on $250 loans, and break out what lawyers did, I would be willing to help develop the forms to do that if we are doing it for corporations as well as for unions.

It may be that wherever you find a species of homo sapiens corruption is a possibility, and usually corruption will take place if you don't have some kind of check and balance or some kind of safeguard. Let's assume that, but develop in a rational way.

When you are talking about a $250 loan being detailed, you breed contempt for the reporting process. So we ought to jointly try to develop some way to monitor and hold accountable all of these institutions. But the lopsided nature, with respect to corporate America, gets away with almost no significant exposure of what they are doing.

The people who are the little guys in the unions what with the 401(k)'s and the pension plans that companies have don't know what the board of director members are paid as stipends, let alone can they keep up with the amount of money the corporate executives are paid. Because you have to be a genius to figure out the combination of salary plus options and all of the things that go into financial enumeration for a corporate executive. So we could use some honesty all over, and I think it ought to be across the board universally.

I wonder even if you had had the top notch reporting on the present forms, how much would you really have learned, Mr. Fitch? Did you spend much time with these LMRDA forms? Do they really tell you much, or do you complain about the fact that the forms don't really tell you much?

Mr. Fitch. No, I didn't say that. I said the opposite. I said that they do produce a deterrent effect.

Mr. Owens. But D.C. 37, the form would not have caught them, would it?

Mr. Fitch. It certainly would have.

Let's take Al Diop. If Al Diop had been forced to indicate that in a union where the members talk about the little guys averaging $20,000 a year, he was making a quarter of a million dollars a year just on salary. I think that if members were outraged at that, they might have been

able to take care of Al Diop before the district attorney.

Mr. Owens. But they had reported.

Mr. Fitch. They did not.

The difference is this, Congressman. D.C. 37, the entire entity of the district council, does have to report because they represent private sector employees. But locals, like Al Diop's Local 1549, did not have to report because he is not covered by the Act.

Mr. Owens. So I would be willing to help you develop a better form of reporting, as long as it made sense, as long as it was across the board, and we reigned in corporate power that has billions and billions of dollars more at stake for ordinary people than for unions.

Mr. Fitch. But we have to acknowledge that there are union leaders who reinforce that corporate power by illegally colluding with them, Congressman.

Mr. Owens. Small fries, yes.

Chairman Norwood. Major Owens, are you done?

Mr. Owens. Yes, I believe I am done.

Chairman Norwood. Okay. There will be additional questions, gentlemen, in writing that we would all appreciate your attending to and answering, and we will submit those for the record.

And I want to say to both of you how much I appreciate your time, and effort, and energy to be here. I view this as a project that really should be bipartisan in nature, because I really believe we are all on the same page, and we are all interested in trying to protect those workers.

Let me summarize what I think we have learned today. The LMRDA reporting requirements and agencies at the Department of Labor that administer these laws are critical, in terms of ensuring that union members will have all of the necessary information to take effective action to protect their rights. I think that is what this is about. This is supported by a GAO study. And I will note for the record that basically Mr. Coppess did not agree with the testimony that we have received today. He actually said he thought it would be a great error for us to have unions report in detail how they spent their money.

Mr. Andrews. Chairman, may I?

Chairman Norwood. I will certainly yield.

Mr. Andrews. I want the record to reflect that that would not be my characterization of what Mr. Coppess said, and his words will speak for themselves. But he wanted to be sure that there were not unduly burdensome requirements on people unable to comply.

Chairman Norwood. You are correct. But he did say the other, too, and I'm correct because I copied it down as he said it. And the record will speak for itself.

Despite the importance of these programs and a general recognition that these programs are essential for the principles of union democracy, that we hold so dear, in order for unions to be able to function properly, these reporting programs have been undeniably plagued with a record of poor performance over the years.

First, data strongly suggests that many unions simply do not take these legal obligations that seriously. In too many instances, current information is not available due to the disregard for filing deadlines, or in some cases, a total failure to meet these obligations altogether.

Secondly, this flaunting of the law is understandable because of a total lack of enforcement by the DOL. I view them as just as guilty. This lack of enforcement stems from three strange phenomena. DOL lacks an effective statutory authority to compel timely filing of the reports. Voluntary compliance has resulted in a terrible track record of performance in which as many as one-third of the universe of reporting entities reported late or not at all. DOL severely lacks the resources to adequately enforce these reporting requirements. What statutory authority they do have now is severely hampered by legal and program conflicts that render these important reporting functions of secondary importance. And one wonders if DOL has had the desire to effectively enforce these laws.

While lack of legal authority and resources are critical components of failure, so is doing little to nothing to try to maximize a program outcome with what DOL has had available to them. We learn that the process of auditing the information received is severely lacking. DOL has conducted few audits of large international unions in recent years, and has conducted few audits on the smaller unions. As a result, no one seems to be able to tell us whether the information we have reported is accurate and complete. We learn that while these reports were seen as critical in empowering union members, the value of the required information to be reported is really of very marginal use. Simply stated, it is not user friendly and must become so if it is to have any real value for union members in their efforts to oversee the financial management of their organizations.

And, finally, and of most importance, we learned that DOL wants to work with Congress to improve the value and performance of these reporting programs. We have agreed to work together to see that these programs fully achieve their statutory mandate. And I underline we have agreed to work together. I really do believe strongly that both sides of the aisle need to come together to do what we set out to do, which is to help the actual members of the union.

Mr. Andrews. I assume that the record is being kept open for the addition of further comments from Members of the Subcommittees.

Chairman Norwood. So ordered.

Mr. Andrews. With that, I would yield back.

Chairman Norwood. Thank you. Gentlemen, we now stand adjourned.

Whereupon, the Subcommittees were adjourned.

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Statement of Chairman Sam Johnson

Subcommittee on Employer-Employee Relations

April 10, 2002

"Record Keeping under the LMRDA: Do DOL Reporting Systems Benefit the Rank and File?"

The cornerstone of union member rights in America is the Labor-Management Reporting and Disclosure Act—commonly referred to as the "LMRDA," or Landrum-Griffin Act. Written by then Senator John F. Kennedy and enacted in 1959, the Act was intended to ensure that rank-and-file union members have a full.... equal...and democratic voice in union affairs. It allows for democratic participation by members and requires that union financial matters be publicly disclosed. It also protects workers' rights to free speech and assembly, to nominate candidates and vote in union elections, and to impose certain obligations upon officers, particularly in the use of union funds. Simply put, it ensures freedom and justice for all.

Since 1959, the American workforce has modernized and changed. However, the LMRDA has not. With the passage of time, we have seen some aspects of union democracy thrown to the wayside and often ignored. The erosion of union democracy is not an issue that should be taken lightly. A union, after all, belongs to its members, and the bottom line for any labor organization should be the will of its membership. Union leaders should respect the law—and the U.S. Department of Labor, which is responsible for putting teeth into the LMRDA, should aggressively enforce it. Unfortunately, neither has been the case.

That brings us to why we are here today. In July of last year, Chairmen Boehner, Norwood and I sent a letter to the Department of Labor concerning union financial disclosure forms and the Department's enforcement of these regulations under the LMRDA. What the Department reported back was less than impressive. In the Department's letter dated August 15, 2001, the Department told the Committee that in FY 2000, there were over 30,300 active labor organizations that are subject to the financial disclosure forms under the purview of the Department of Labor. Of this number, 2,100 filed on time. Sadly, over 10,000 did not. Now, it doesn't take a scientist to see that there is a problem when 1/3 of unions are breaking the law.

What do you think the IRS would do if 1/3 of Americans didn't file their tax forms?

I believe we would be remiss if we did not examine the lack of compliance and transparency of labor organizations and the lack of information for thousands of rank and file members. To be clear, I am not suggesting we should go after the majority of the law-abiding unions.

Today's hearing is not about creating burdensome regulations and reforms for all unions, but to shore up loopholes for the 1/3 of those union members who are not getting what they are entitled to -- fair, accurate, and full disclosure of the facts as stated by law. It is also my hope that we can look at creating a more efficient and effective financial disclosure reporting system.

I am pleased to have both panels here today including Deputy Secretary Findlay. I look forward to his testimony on the lack of compliance by unions on financial disclosure reports. Mr. Norwood will have the honor of chairing the second panel.

APPENDIX B - WRITTEN OPENING STATEMENT OF CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Opening Statement of
Congressman Charlie Norwood (GA-10)
Chairman, Subcommittee on Workforce Protections
House Education and Workforce Committee

April 10, 2002

A June 2000, General Accounting Office study concluded that the reporting requirements under Title II of the Labor Management Reporting and Disclosure Act (LMRDA) "are important because they ensure that union members will have all the necessary information to take effective action to protect their rights."

And what is the fundamental right that needs protecting here?

Well, I still think that Thomas Jefferson put it best by stating that: "to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical."

And, that is the crux of what we are concerned about here. We want to be sure that workers are not compelled to support causes and activities which they do not believe in.

Would any union worker, or would any of us for that matter, want their "contributions of money" to be used for the personal benefit of their leadership to the tune of:

- stealing hundreds of thousands of dollars from union accounts, or
- charging their union supplied credit card hundreds of thousands of dollars, or
- spending thousands of dollars of dues money at topless clubs!

Of course not!!

Would your average conservative union worker want their "contributions of money" to support lawsuits to force the Boy Scouts to change their policy on homosexuals? Or support political candidates who are pro-abortion or anti-Second Amendment?

Of course not!!

Yet, this happens to union workers quite often because:

> 1) the reporting requirements that are meant to ensure that workers have real, accurate and useful information about the finances of their union have FAILED, and
>
> 2) the Department of Labor – under both Republican and Democrat administrations – has been very lax in its enforcement of the existing reporting regulations, as well as, lax in going after corruption.

The reporting and disclosure provisions of Landrum-Griffin are a failure because among other things the LM-2 form only requires unions to report their expenses in broad categories. The result is that they can hide illegal or questionable disbursements.

The DOL has been lax in enforcing the reporting requirements for the LM-2 form. International unions are regularly late in filing these forms. In fact, many local unions don't even bother to file any reports!!

The Department's performance in going after corruption in the unions has ranged from lackadaisical to downright lethargic! For instance, from the years 1998 to 2000, DOL audited only 2 of the 141 international unions. And no union was prosecuted for failing to file a financial disclosure form!

And it is not like Congress has been unaware of these problems. In 1998 Congress directed the Department to establish an alternative system for the electronic submission of these reports. We also called for an indexed computer database on the information for each report that is searchable through the Internet.

This was supposed to be in place in January 2000. Well here we are over two years later and still no closer to having such a system.

The only thing I can compare this lack of enforcement to is the prohibition era when speakeasies operated openly because of paid-off local police and politicians. Labor leaders know that they can do just about anything, because the Department of Labor will look the other way in the hopes of getting union support for the incumbent President. And there is little the average worker can do about it.

This creates a permissive atmosphere that is ripe for scandal, like the Teamster's scandal. And it also creates an atmosphere where the AFL-CIO can flaunt its own rules for removing officials' who plead the 5th Amendment when questioned by a grand jury, as Richard Trumka, did when asked about his participation in the embezzlement of $150,000 of

Teamster funds.

So we have a situation where workers are kept in the dark about the ways in which their union representatives are using their union dues. And the government agency charged with oversight in this area is asleep at the wheel.

So you can guess what I am going to want to be told during the course of this hearing.

First, I will want to know how the Department is going to ensure that no one will be allowed to take these very critical reporting requirements so lightly.

Second, I will want to know how the Department intends to begin enforcing these legal obligations.

And lastly, I will want to know how the information in these reports can be put in a form that is useful to workers, so they can protect their interests.

Thank you

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APPENDIX C - WRITTEN STATEMENT OF D. CAMERON FINDLAY, DEPUTY SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, WASHINGTON, D.C.

STATEMENT OF D. CAMERON FINDLAY
DEPUTY SECRETARY, U.S. DEPARTMENT OF LABOR

SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES

APRIL 10, 2002

Mr. Chairmen and Members of the Subcommittees:

Thank you for the opportunity to appear before the Subcommittee on Employer-Employee Relations and the Subcommittee on Workforce Protections to present testimony and answer questions regarding enforcement of Title II of the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act).

My testimony focuses on three key areas: first, the origins of the Landrum-Griffin Act and its major provisions; second, a report on the Department of Labor's (DOL) enforcement of the Act; and third, some steps that could be taken to help DOL better enforce the Act's important provisions.

The DOL views the Landrum-Griffin Act as one of a number of important statutes that have been passed over the years to safeguard the rights of workers. We have the Occupational Safety and Health Act to protect worker safety, the Fair Labor Standards Act to guarantee worker wages, the Employee Retirement Income Security Act to protect worker pensions, and the Landrum-Griffin Act to protect the rights of union workers. We take very seriously our responsibility to enforce each of these statutes. Congress passed each of these statutes in order to protect the rights of American workers, and the Department is not permitted to treat one of these statutes as less important than any other statute.

Congress' passage of the Landrum-Griffin Act does not in any way suggest that all unions are corrupt, just as Congress' passage of these other statutes does not suggest that all employers are bad actors. Just as most employers we oversee under all of these statutes want to do the right thing and safeguard their workers' health and economic security, most unions also want to do the right thing and comply with the law.

Indeed, it is encouraging that some major unions are making tremendous strides to reform past improper practices and to ensure greater transparency and

accountability to their members. We applaud these efforts.

But the central message of the Landrum-Griffin Act is that financial transparency is critical to protecting workers. It establishes the basic "right to know" for union members. As the Enron example shows, no entity should be allowed to shield its finances from its shareholders.

As these subcommittees are aware, the Landrum-Griffin Act was an attempt to eliminate union corruption and extend union members' rights for democratic participation.

The roots of the Act can be found in the famous McClellan committee hearings of the 1950s, which put the spotlight on a number of union practices, which included stuffing union ballot boxes during elections, use of union funds to purchase luxury homes for union presidents, "shakedowns" of employers, connections to organized crime, and other abuses.

The parade of witnesses testifying about fraudulent union elections and other unsavory tales was so powerful that many began to call for government action to safeguard union financial integrity and union democracy. In fact, a Gallup poll conducted in November 1958 discovered that, other than dealing with school integration, the public felt that Congress' most important job was to clean up corruption and racketeering in unions.

As a result, in 1959 Congress overwhelmingly voted for the Landrum-Griffin Act by a 95 to 2 vote in the Senate, and a 352 to 52 vote in the House. These large majorities reflected a broad bipartisan consensus that the federal government needed to be more involved in safeguarding union members' rights. Indeed, we believe that these majorities for Landrum-Griffin were the most lopsided votes ever on any major labor law legislation.

The provisions of the Act centered on two key fundamental goals – promoting union democracy and ensuring union fiscal integrity.

Title I created a Bill of Rights for union members – including the right to vote in elections and on dues, the right of free speech and assembly, and other basic rights.

Title II – the main focus of today's hearing – centered on disclosure of union financial activities, and granted DOL the power to require unions to report and retain certain types of information. Knowledge and information are among the most powerful tools for democracy, and Congress determined that union members were entitled to such information.

Title III established guidelines for the administration of trusteeships over affiliated local unions by national and international unions. Unions that impose trusteeships over subordinate bodies must file reports with DOL justifying the necessity of the trusteeship.

Title IV established strict standards for the democratic elections of union officers.

Title V sought to punish and deter union embezzlement by creating a fiduciary relationship between union officials and members, and detailing the civil and criminal provisions for violations of that trust.

Some scholars and experts believe that without Title II, the other components of the Act would be difficult if not impossible to achieve. In short, it was hoped that more transparency would lead to more accountability.

People who believe in strong unions, strongly committed to advancing members' welfare, should want a strong Landrum-Griffin Act that brings union finances out into the sunshine and ensures that union leaders are working for their members, not against them by preying on union funds and member dues. As AFL-CIO President George Meany noted at the time, "if the powers conferred [in the Landrum-Griffin Act] are vigorously and properly used, the reporting requirements will make a major contribution towards the elimination of corruption and questionable practices."

Much progress has been made in advancing union democracy and worker rights. But, that does not mean that we can stop enforcing the law.

Given that unions have consolidated to form larger, more complex and powerful organizations, and finances have become more complicated, union members need the protections offered by the Landrum-Griffin Act more than ever.

So how good a job has DOL been doing in enforcing Title II of the Landrum-Griffin Act?

The answer is, quite frankly, that DOL has not done as good a job as it should. Past administrations have not provided the leadership to vigorously enforce the Act.

First, a significant number of unions consistently fail to comply with the statutory requirements that they timely file annual reports with DOL detailing their finances. These unions are either delinquent in providing mandated financial information, or even worse, they fail to file altogether.

In report year 1998, for instance, over 30 percent of required union filers were either untimely in filing their submissions or did not file financial disclosures at all. Report year 1999 saw a noncompliance rate of almost 29 percent. In report year 2000, the most recent year for which this information is available, over 34 percent either were late or failed to file at all. I am sorry to say that past strategies have done little to improve the timeliness of unions' financial reporting. The President's 2003 Budget funds resources to significantly improve this record.

Second, the Department's Office of Labor-Management Standards (OLMS) conducts compliance audits to verify the reports filed by unions, detect financial

mismanagement and embezzlement, and provide compliance assistance to union officers. OLMS compliance audits have fallen from a high of 1,583 in 1984 to only 238 in 2001. Today, ten of the largest unions have never been audited.

If this level of non-compliance and decreasing enforcement were the case under OSHA, Wage and Hour, or PWBA, it would not be tolerated. It should not be tolerated under the Landrum-Griffin Act either. The Act is a worker protection statute like any other that we are charged with enforcing at the Department of Labor.

Third, OLMS' existing forms, which were created 40 years ago and have been substantially unchanged since then, simply have not kept pace with changes in financial practices. The existing forms utilize such broad, general categories that union leaders could easily use them to hide overspending, financial mismanagement, and other irregularities from their members.

It is impossible, for example, for union members to evaluate in any meaningful way the management of their unions when the financial disclosure reports filed with DOL include items like $7,805,827 for "Civic Organizations," $62,028,329 for "Grants to Joint Projects with State and Local Affiliates," or $7,863,527 for "Political Education." Such aggregate entries make it virtually impossible for members to determine how their dues money was spent.

Fourth, many observers believe that OLMS does not have sufficient enforcement tools to punish wrongdoers. The Department is closely reviewing the Act to determine whether additional authorities would help facilitate union compliance or strengthen agency enforcement efforts.

Clearly, any law, to be effective, must be enforced. However, without the resolve to enforce the law, the law becomes hollow and union member rights are potentially compromised.

How do we improve our enforcement of this statute? We propose taking a few modest steps.

We need to restore OLMS's resources to reinvigorate compliance audits. We requested in the President's FY 2003 budget an additional $3 million and 40 full-time positions. This is a good first step in this era of belt-tightening. I would like to thank both Subcommittee chairs here today as well as the Chairman of the Education and Workforce Committee for their support of our budget request for this activity.

The Department of Labor firmly believes in both compliance assistance and enforcement. Our program for other worker protection statutes includes both.

We at DOL will look carefully at everything OLMS does – its enforcement plans, compliance assistance, and disclosure forms – to ensure that we are doing the best

job we can to enforce this important law on behalf of individual union members.

In closing, I think it is helpful to remember what Robert P. Griffin, one of the two named sponsors of the Act, said about how the law has been enforced by DOL. Representative Griffin, who would later be elected to the U.S. Senate, knew that the Landrum-Griffin Act was not a perfect reform but that its success or failure would depend upon vigorous enforcement by DOL and union members committed to keeping unions clean. In 1979, twenty years after passage of the Act, Senator Griffin lamented that DOL had "failed in the performance of its statutory duties" by demonstrating a "studied reluctance" to enforce the provisions of the law. This criticism resonates today after steady reductions have prevented OLMS from fully enforcing the provisions of the Act.

The Department of Labor appreciates the interest of the Subcommittees in enforcement of the Landrum-Griffin Act and looks forward to working with you on this issue which is critical to ensuring union democracy and fiscal integrity.

Thank you again for giving me the opportunity to address this issue. At this time I will be happy to take your questions.

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APPENDIX D - WRITTEN STATEMENT OF ROBERT FITCH, FREELANCE REPORTER, NEW YORK, NY

Committee on Education and the Workforce. House of Representatives. April 10, 2002 Statement, by Robert Fitch

I would like to thank Chairman Norwood and Chairman Johnson. First for inviting me. And second, for your efforts to chip away at the wall that separates union members from the information they need to hold their leaders accountable.

Workers need unions to protect themselves against arbitrary dismissal; to win a measure of respect from their employers; to gain the share they've earned of America's prosperity. In the effort to make sure unions can accomplish these goals, they've been granted extraordinary and probably self-defeating privileges.

In most states, unions are allowed to impose membership on employees where they have jurisdiction; unions are permitted to levy what amounts to compulsory taxes; they can collect those taxes automatically through a dues check off system. Unions have the right of exclusive representation -- which means each union is allowed to act as a monopolist, depriving members from seeing how another union might handle the same issues of representation.

In the U.S., no other non-governmental organization is allowed these privileges. Certainly not churches; or political parties; fraternal; educational, or charitable organizations. Nor outside of Great Britain, do western European countries grant unions these powers. At least they haven't since the days of the medieval guilds.

Given these extraordinary powers to draft, tax and govern workers, it might seem reasonable to expect union leaders to provide some minimal information. Reliable facts about who they are; how much they make; whom they've hired and what they've done with their members' money. [1] At least Congress thought so in 1959, when it passed Landrum-Griffin, the Labor Management Reporting and Disclosure Act.

During the debate over Landrum-Griffin, union leaders warned that the heavy hand of the regulatory state would crush organized labor. It's true that since then, membership in the AFL-CIO has shrunk substantially. But not because unions have to report their shrinking totals. Any more than the laws requiring much more substantial information be provided to the Securities and Exchange Commission by the dot.coms were what caused their income to fall.

The problem since 1959, I would suggest, is very different. Americans can discover a great deal about what's in their food; their corporations; their consumer products, but American unions have still not been brought effectively into the Information Age. Four

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[1] As courts have interpreted it, Landrum-Griffin doesn't require union leaders to tell the members what's in the contracts they've negotiated for them. Unions often do provide members with full information. But it's not something they're legally bound to do. See William B. Gould IV, *A Primer on American Labor Law*. (Cambridge, Mass: The MIT Press, 1993),163-166. Nor do unions have to allow members to vote on the contract.

main problems need to be addressed: availability; reliability; intelligibility; and comprehensiveness.

Because these problems exist doesn't mean that the LM-2 as it presently stands is worthless. It probably has some deterrent effect. Union leaders prefer not to have their salaries or their expenditures revealed. This was driven home to me in the 'nineties, when I was working for a public sector union – public sector unions don't have to file the LM-2. I identified some private sector organizing targets where the workers wanted union representation. I was told by a top officer that the union wouldn't be launching any private sector organizing campaigns because it would be necessary to file LM-2's. Even though the union was shrinking, secrecy for the leadership trumped expansion of the membership.

Availability. Potentially, the LM-2 could serve as an even greater deterrent. Unlike other federal documents, which researchers can generally depend on being there – like the information required of corporations by the SEC -- when it comes to the LM 2 -- for one reason or the other, documents are often temporarily unavailable from the regional offices. They're in Washington. They're misfiled. Or someone may be using them. Usually what you're looking for turns up in a day or two.

But then again perhaps not, because the documents may never have arrived. There's a filing date deadline. Practically speaking, though, unions don't incur any significant penalties if they ignore it. The difficulty is -- particularly if you're a working journalist doing a story or a dissident researching your union boss -- the information being sought can be time-bound.

In the former case, say you've been assigned the story because there's a union election that particular week. Maybe you've heard that the incumbent received a huge raise from an executive board dominated by his retainers. The problem is that you've heard the claim second hand; from a hostile source. The union president has no comment. He can avoid exposure in the press simply by not filing the LM-2 until after the election. The membership is denied the facts they need to make an informed decision.

Reliability. Besides not filing, the union leadership can simply file false information. Can they get away with it? My impression is yes. Union leaders don't fear the Office of Labor Management Standards the way taxpayers fear an audit by the IRS.

Depending on the category, auditing enforcement is from slim to none. Officials do check to see if there is a discrepancy between administrative expenses and dues. But what comes of it? Perhaps I'm mistaken. But in New York City I don't know of any significant union corruption case in the city that's been initiated by an investigation carried out by the local office of Labor Management Standards. This is not because union corruption is unknown in the jurisdiction of New York and New Jersey.

There are some areas, where, admittedly, there is no check going on at all. Membership is one. It's not clear what the standards would be anyhow. What's a member? Are retirees

members? Are apprentices members? This isn't necessarily a corruption issue. But it's important fact about the success of the union in maintaining its membership. Are there more or less members? How successful is organizing? Is the leadership telling the truth? The implications are great especially for unions with Taft-Hartley, multi-employer pension plans

Comprehensiveness. The lack of significant corruption cases initiated by the Office of Management Standards is due chiefly I think, to the limits of the LM-2 itself. The LM-2 requires information about dues and administrative expenses. But substantial union fraud isn't perpetrated by stealing the dues directly. More common methods are embezzlement, bribes and kickbacks. Of course it's unrealistic to expect corrupt leaders to itemize their bribes. But if there were a requirement to identify the top 10 union vendors and the amounts paid out to them, it might have a deterrent effect.

Intelligibility. Much of the language of the LM-2 is written in jargon, not likely to be understood by the average intelligent member. You shouldn't have to be a forensic accountant to know what many of the terms mean. But even if you are, it doesn't help that much. For example, item 24 asks if the organization has any "contingent liabilities." A member may not know that this is corporate speak for pending lawsuits, judgments under appeal, disputed claims. But even if he did, it wouldn't help much. The union doesn't have to go into the particulars of the claim. If a member wants more information, he can hire a lawyer and sue.

Other accounting categories are simple, but unilluminating. UNITE may be the richest union per capita in America. Where does it get all its money? It turns out, according to its LM-2, that the second most important source of its income – larger than the dues the union takes in -- is "other receipts." I think I have an idea what "other receipts" are: its likely income from the corrupting system of liquidated damages which this committee has investigated. But why shouldn't the source of income be clearly identified? Income from the employer.

Conclusion. The deterrent effect does exist. It could easily be amplified: why not put the LM-2 on the internet? Why not require union leaders to list all their salaries from labor organizations. Not just from the organization that's filing. And while they're listing union income, why not their sources of outside income?

What if the union presidents who served as directors of Union Labor Life Insurance Co (ULLICO) had to list the windfall profits they received from selling their stock back to the company? These profits came at the expense of the pension funds they were supposed to be protecting. They were deals that that could only have been done in the dark.

The minimal standard of information, auditing and enforcement ought to be the one the SEC requires of corporations selling stock to the public. Why shouldn't workers be entitled to at least as much information about their union on the LM2 as investors receive about their corporation on the form 10K? After all, investors don't have to buy the stock of any particular corporation. For workers, membership in a union is usually compulsory.

APPENDIX E - WRITTEN STATEMENT OF JAMES B. COPPESS, ASSOCIATE GENERAL COUNSEL, AFL-CIO, WASHINGTON, D.C.

TESTIMONY OF JAMES B. COPPESS
ON BEHALF OF
THE AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS
BEFORE THE
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
SUBCOMMITTEE ON WORKFORCE PROTECTIONS
COMMITTEE ON EDUCATION AND THE WORKFORCE
U.S. HOUSE OF REPRESENTATIVES
APRIL 10, 2002

My name is James B. Coppess. I am Associate General Counsel of the AFL-CIO, the national federation of 66 national and international unions representing over 13 million working men and women.

I appreciate the opportunity to appear today, with the important and relevant caveat that it was only Monday that the AFL-CIO learned of this hearing, and of the initiative that is evidently well underway at the Department of Labor to revise the content and enforcement of the Landrum-Griffin reporting and disclosure requirements for labor organizations. That point is relevant because if substantial changes in those requirements are being considered, and if the Subcommittees believe this matter warrants public hearings, then the complete lack of notice and consultation with the very organizations whose conduct apparently is at issue -- the 30,000 labor organizations that file reports with the Labor Department every year -- raise the unavoidable suspicion that the merits of these important matters are being subordinated to political and other inappropriate considerations.

Labor Organization Reporting

The Supreme Court has observed that, in drafting the Landrum-Griffin Act -- formally, the Labor Management Reporting and Disclosure Act of 1959 ("LMRDA") -- "Congress was guided by the general principle that unions should be left free to 'operate their own affairs, as far as possible.'" *Steelworkers v. Sadlowski*, 457 U.S. 102, 117 (1982), quoting S.Rep. No. 1684, 8th Cong, 2d Sess., 4-5 (1958). Congress believed that, "[g]iven certain minimum standards, 'individual members are fully competent to regulate union affairs." *Sadlowski*, 457 U.S. at 117, quoting S. Rep. No. 1684. The annual financial reports filed by labor unions with the Department of Labor are intended to assist union members in regulating the affairs of their unions.

Experience has shown, however, that these reports are viewed by some as presenting an opportunity to hobble labor unions with onerous reporting requirements having nothing to do with facilitating membership participation -- requirements that would, indeed, interfere with the ability of unions to effectively carry out the membership's direction.

For example, in the waning days of the first Bush Administration the Department of Labor proposed changing the reporting requirements in ways that were criticized by the press and others -- not just unions themselves -- as politically motivated and patently anti-union. Most significantly, that proposal was denounced by then-Assistant Secretary of Labor Robert Guttman -- the very official over whose name the proposal was made -- shortly after he left office. *See* "Departing DOL Official Doubts Legality of *Beck* Changes to Union Financial Forms," *BNA Daily Labor Report* No. 125, pp. A-3-5 (June 29, 1992).

Assistant Secretary Guttman explained that the first Bush Administration had ignored his advice to consult with all interested parties, including union accountants and officials, congressional staff and the National Labor Relations Board, before attempting to formulate changed and new reporting requirements. Instead, the Department conferred only with the virulently anti-union National Right to Work Committee and with a single accounting firm. The results of this hasty, highly partisan effort were predictable. Assistant Secretary Guttman rightly described the proposed reporting requirements as "a lot of junk" that would impose what he called an "unconscionable" burden on labor organizations.

Despite the low opinion held of the reporting requirements by the very Department of Labor official responsible for proposing them, the requirements were formally adopted by the first Bush Administration in its waning days -- indeed, and, we would submit, not coincidentally -- one week before the November 1992 presidential election. Fortunately, the requirements subsequently were carefully reviewed by the Department of Labor again in the new Clinton Administration, and they were substantially modified in December 1993, following a further public rulemaking process, because of the problems they raised, the heavy financial costs they would impose on reporting organizations, and the questionable benefits they would confer. See Final Rule, "Labor Organization Annual Reports," 58 Fed. Reg. 67594, 67596-67600 (December 21, 1993).

We hope that the present Bush Administration is not going down that same road. But all indications are that it might be.

While the Department of Labor has loudly proclaimed its willingness to confer with regulated employers before adopting, for example, sorely needed occupational safety and health regulations such as rules addressing ergonomic hazards and injuries, we are aware of no effort whatsoever by the Department to confer with labor unions over how to improve their financial reporting, or even to acknowledge that such consultation would be useful, let alone necessary, to craft sensible regulatory changes. Indeed, the Administration across the board has followed an aggressive policy of consultation with affected industries in formulating energy, environmental and other policies. Why, we would ask, would unions be treated any differently?

The labor movement takes seriously the reporting requirements of the LMRDA. We are anxious to confer with the Department of Labor over how to improve the enforcement of these requirements -- as they apply to both unions and employers -- and how to improve the reports themselves. Talking to each other through Members of

Congress in public hearings is no way to conduct such serious public business.

Our understanding, on short notice, is that the Department is looking at two areas to address in regulatory or enforcement initiatives: untimely reporting and inadequate report content. Let me address each in turn.

Last August 15, Labor Department Deputy Assistant Senator Don Todd responded to written questions posed to the Department by Chairman Boehner of the Committee on Education and the Workforce. That letter included statistics concerning the number and lateness of annually required union reports: the LM-2, required of unions with annual receipts of $200,000 or more; the LM-3, required of unions with annual receipts between $10,000 and $200,000; the LM-4, required of unions with less than $10,000 in annual receipts; and the "Simplified Annual Report," required of unions with no assets, liabilities, receipts or disbursements -- that is, organizations that for all practical purposes do not exist.

In the real world, all or virtually all filers of LM-4's are very small unions with no paid staff and very little means or activities. And, most LM-3 filers have no or very few paid staff as well. Only the LM-2 filers are truly likely to employ any full-time staff -- and those filers comprised, for reporting year 1999, just 17.8% of the unions from which any report was due in 2000. Our experience is that, except for national and international unions -- and even often there -- virtually all officers of all unions in the United States work not for the union but at their regular calling -- as nurses, retail clerks, sheet meal workers, janitors, teachers and the like -- and devote their energies to their volunteer union positions during work breaks, evenings and weekends. Yet they are all responsible for complying with the LMRDA reporting and disclosure requirements.

Now let's look at the compliance figures. According to Mr. Todd, as of August 15, 2001, 34.0% of the reports due the previous March 31 -- 4½ months before -- had been filed late or not at all. In fact, however, just 13.2% overall had not yet been received, including just 5% of those that were due from the most substantial organizations, the LM-2 filers.

Now let's look at the compliance figures for the reports that were due on March 31, 2000 for reporting year 1999. As of August 15, 2001 -- 16½ months after the due date -- Mr. Todd's chart shows that 28.9% of those reports were filed "late or never," including 13.1% of the LM-2 reports. But that chart also shows that the subsidiary "not received to date" category amounted to 3.8% of all reports due -- that is, one in 26 or so. Yet even that figure was heavily weighted toward the very small organizations; for LM-2 filers, the "not received" figure was 0.04% -- just 1 in 270 -- or, to be exact, 20 out of 5,433.

And, these Labor Department charts also show that in every category most late filers submit their reports within 60 days of the due date.

I recite these figures not to excuse late reporting. Governmentally required reports should be submitted on time. But in considering whether new enforcement initiatives

fining late filers is appropriate, we would ask whether the Department has considered a number of matters.

First, is the March 31 deadline reasonable in light of the time it takes for many organizations to collect records and undergo annual audits that often go hand in hand with the report-filing? Notably, for most other tax-exempt Section 501(c) non-profit organizations, the annual financial report -- on the relatively less demanding Internal Revenue Service Form 990, under Section 6033 of the Internal Revenue Code -- is not due until May 15.

Second, is the Department considering a system under which unions could seek reasonable extensions when circumstances warrant? Such extensions are routinely available to Form 990 filers -- not to mention individual federal taxpayers.

Third, is the Department considering the impact of fines on unions who can ill afford to do anything, let alone complete the required LMRDA forms?

Fourth, is the Department considering new means of compliance assistance to alleviate the phenomenon of late filing insofar as it does exist?

Fifth, could the problem be addressed by improving the Department's ongoing liaison program with national and international unions to secure delinquent reports from their local affiliates? Mr. Todd's letter states that 45 international unions participate in that program, a significant cooperative effort indeed.

Sixth, are union members complaining about these late filings? We are unaware of any discernible level of concern among union members, who, after all, democratically elect all the officers responsible for all these reports.

Of course, we don't know the answer to any of these questions, as the Department, to our knowledge, has consulted with none of the regulated community about any of these matters.

We would appreciate the Department's attention to all of these questions, and would recommend that the Subcommittees expect nothing less before there is any action taken to punish report-filers or otherwise revise the enforcement of these reporting requirements.

With respect to the related issue of union records underlying the reports themselves, it is important to note that the Department's experience demonstrates a stellar level of union compliance with the law. Mr. Todd advised in his letter that "the 'overwhelming' majority of [union] recordkeeping violations were unintentional. The Department has discovered relatively few intentional recordkeeping violations." And, as Mr. Todd also reported, only a tiny fraction of audits under the Department's compliance audit programs lead to any legal action concerning a possible embezzlement. Again, this experience must inform any new enforcement initiatives that the Department undertakes.

As for the contents of the reports themselves, we have not been apprised of what changes are under consideration, and Deputy Secretary Findlay's testimony is rather vague on that point other than to assert that some of the reporting form categories are too general. Certainly, that is worth looking at; but it is also true that the LM forms request a great deal of information in excruciating detail, such as the precise compensation paid to virtually every union officer and employee, requirements no other private organization in the United States is required to disclose. Surely a balanced review of these requirements is in order rather than a selective and reflexive demand for more detail, and corresponding burden.

Any changes in the reporting and disclosure requirements warrant a deliberative process of consulting all those affected and evaluating competing costs and benefits, as well as carefully considering what ought reasonably and fairly to be expected in light of the actual circumstances of thousands of volunteer-led labor organizations.

Employer and Consultant Reporting

DOL's approach to the reporting issue before us today stands in sharp contrast to its recent approach with respect to another – and in our view, equally important – reporting requirement. Here, despite the fact that the Department does not have any documentation of a serious under-reporting problem by unions, and despite the fact that DOL admits that inadvertence accounts for the bulk of late filings, it is urging Congress to arm it with yet another type of statutory weapon to be used against those who file their LM-2s, -3s or 4's late, or who don't file at all.

On the other hand, there is strong, documented evidence that employers and consultants deliberately flout the intent of the LMRDA's reporting requirements that apply to them, through a loophole created by the Department's interpretation of the "advice" exception. The previous Administration tried to correct that anomaly by issuing an interpretation of this exception. One of the first actions of the Bush Labor Department, however, was to rescind that interpretation.

As a preliminary matter, I want to remind the Committee that the LMRDA does, in fact, impose on employers, and those consultants and others they hire to assist them in their labor relations activities, certain reporting requirements. Congress viewed these requirements as an integral part of the statutory scheme, which depends upon full disclosure of required information in order to prevent coercion of employee free choice. This fact is often overlooked in the search to impose more stringent requirements on unions. For example, despite the Department's push in the last few years to post union reports on the Internet, there has been no attempt to do the same with respect to employer and consultant reports.

Under Section 203(d) of the LMRDA, 29 U.S.C. § 433(d), anyone who is hired by an employer to perform "activities where an object, either directly or indirectly, is to persuade employees to exercise or not to exercise . . .the right to organize and bargain collectively through a representative of their own choosing" must report that activity within 30 days to the Department on a form known as LM-20. Employers have a corresponding obligation to report this activity on Form LM-21.

There are limited exceptions to this reporting requirement. Under Section 203(c), no report has to be filed on account of "giving or agreeing to give advice to [an] . . . employer." 29 U.S.C. § 433(c). Since 1962, however, the Department has taken the position that when a consultant is hired by an employer to produce any kind of materials for the employer's use with its employees, this constitutes nonreportable advice so long as the consultant has no direct contact with those employees.

In 2001, the Department formally recognized what unions have known all along, namely, that because this consultant activity is shielded from the LMRDA's reporting requirements under DOL's own interpretation of "advice," employers have license to hire union busting consultants who script and direct systematic campaigns to defeat organizing drives. Even though this activity clearly has as its object -- whether direct or indirect -- persuading employees not to vote for a union, it remains hidden from public view, despite the fact that the statute requires such persuader activity to come to light. The Department found that "There is persuasive evidence that th[is] . . . interpretation has led to the under-reporting of activities that Congress believed should be disclosed to employees and to the public, particularly given the apparent growth in the use of labor relations consultants beginning in the 1970's," 66 Fed. Reg. 2782, 2785 (2001), because "the direct object, or at least the indirect object, of preparing persuasive material that is intended to be transmitted to employees is to persuade employees." Id. The Department found not only that "[i]n the 25 years since the enactment of the LMRDA there has been a dramatic increase in management's use of consultants to counter the unionization efforts of employees or to decertify existing unions," but that "[t]his well-documented increase has been most pronounced in the past 10 years. According to the Department, there is also substantial evidence that consultants are using increasingly aggressive and sophisticated means of persuading employees to vote against the union. See, id. at 2785-2788.

As a result of its findings, DOL announced on January 8, 2001, that henceforth, it would interpret the reporting requirement to include consultant activity if "persuading employees is an object (direct or indirect) of the person's activity," even without direct contact between the consultant and employees. 66 Fed. Reg. at 2788. On April 11, 2001, the Bush Labor Department, without any consultation with labor organizations, rescinded this interpretation, despite the evidence that this would result in a return to the under-reporting of employer and consultant activities that the LMRDA was designed to bring to light. Against that backdrop, it is difficult, if not impossible, to view the Department's current concern with union reporting, as well as the staging of this hearing, as anything but an attempt to target unions and force them to waste their time, money, and resources on complying with the needless requirements of a government bureaucracy. Of course, this Administration is all about freeing the business community from government regulatory burdens, and has made it clear to unions that it is carefully watching how they spend their members' dues. Until the Department takes seriously its obligation to enforce the reporting requirements imposed by the LMRDA on employers and their consultants, and gives unions the same consultative and compliance options it has granted to employers, the proposals under discussion today are simply more evidence of its anti-union bias.

APPENDIX F - WRITTEN STATEMENT OF PHILLIP WILSON, VICE PRESIDENT AND GENERAL COUNSEL, LRI MANAGEMENT SERVICES, INC., TULSA, OK

Suggested Reforms to Title II of the LMRDA

By Phillip B. Wilson, Esq.

The Federal Government was not functioning efficiently if thousands of reports, filed each year, were never looked at much less examined and served only to take up space in government buildings.

Robert F. Kennedy, *The Enemy Within*

Introduction

Shareholders of Enron and ULLICO are looking for answers. So too are those more fortunate, who wonder whether the company they have invested their savings in is next on the list. The Enron and ULLICO/Global Crossing scandals have focused the American public's attention on the fiduciary responsibilities of corporate and union officials. These betrayals of the public trust have led shareholders and union members to call more loudly than ever for transparent disclosure by fiduciaries. If there can ever be a silver lining to the colossal loss of jobs, shareholder wealth and investor confidence resulting from these enormous bankruptcies, it is this: policymakers may take steps to ensure that shareholders and union members can once again trust those in whom they invest their hard-earned money.

Enron's collapse, the largest bankruptcy in U.S. history, has been well chronicled. Enron transformed itself during the 1990's from a gas-pipeline company into a sophisticated trading giant and one of the largest and most profitable companies in the world. Yet Enron's complex and secretive financial structure confused most investors (and many Wall Street analysts). A number of partnerships owned in part by senior Enron officials and funded with Enron stock came under intense scrutiny from the SEC in the fall of 2001. Based on these investigations Enron was forced to restate its earnings from prior years, taking enormous losses. These disclosures led to a precipitous fall in its stock price and, ultimately, Enron's bankruptcy.

In the aftermath of the collapse it was discovered that, in addition to questions about conflicts of interest with the partnerships, the top managers of Enron sold millions of dollars of Enron stock at a time that they encouraged Enron employees to continue investing in the firm. Enron, its former management and its accounting firm, Arthur Andersen, face potential criminal and civil penalties due to their parts in the firm's collapse.

The ULLICO scandal is of even more recent vintage and is less well chronicled than Enron's collapse. Yet its implications may be even more far-reaching than that

of Enron, impacting not only the financial strength of numerous pension funds, but also the leadership of a number of unions. ULLICO, formerly known as Union Labor Life Insurance Company, provides insurance and financial services to unions and their members through a group of subsidiaries. ULLICO has recently been sued by the Department of Labor for an imprudent $10 million dollar Las Vegas investment. Perhaps more troubling is a current grand jury investigation surrounding the firm's investments in Global Crossing, a now bankrupt telecommunications firm.

The grand jury investigation focuses on trading privileges that allegedly allowed ULLICO board members (most of whom are also current or former officials of unions, including AFL-CIO President John J. Sweeney) to profit from the purchase and sale of its shares. ULLICO board members were allegedly given the opportunity to purchase shares of Global Crossing at the IPO price and later allowed to purchase shares of ULLICO in anticipation of gains on Global Crossing. Later these Board members are alleged to have sold back shares of ULLICO stock before its value had been reset after Global Crossing shares plummeted. Union pension funds (to which many of these union officials owe fiduciary duties) did not enjoy the same opportunities to purchase and sell ULLICO shares or the Global Crossing shares at the IPO price.

The Enron scandal has resulted in numerous congressional inquiries and many proposals for reform of both SEC rules and requirements for accounting professionals. Questions about the financial transactions of unions and their officials inevitably focus attention to Title II of the Labor Management Relations and Disclosure Act of 1959 (LMRDA hereafter), which provides for detailed financial reporting by labor organizations in the United States. The LM-2 financial disclosure form for unions has existed since late 1963. Over the years, however, there has been relatively little critical attention paid to union reporting requirements under Title II.

The LM-2 reveals considerable information about the unions required to file them. Perhaps more revealing is the number of questions the current form fails to answer. A detailed review of the LM-2 documents filed by several of the nation's largest unions in the year 2001 (for the fiscal year ending in 2000) reveals a number of issues. Unfortunately using today's LM-2, there is no way an outside observer can effectively determine whether a given union is spending its dues revenue consistently with its fiduciary obligations to its members.

This paper argues that the current LM-2 and financial reporting requirements of Title II can be significantly improved in the following respects:

Section 9(f) of the NLRA, repealed by the Landrum-Griffin Act, should be reinstated.

Financial reporting categories should be modified to report based on functional areas.

Schedules should be required to provide detailed reporting of all items on the LM-2.

All lawsuits occurring during the reporting year in which the union or a union officer is a named party (whether settled, completed or pending) should be reported.

Unions should report consistently. The Department of Labor should regularly audit forms submitted by unions to ensure consistency.

Unions should be required to provide either paper or electronic copies (via the internet) of their annual financial reports to each union member.

Congress should amend the statute to include civil monetary penalties for intentional or negligent filing of inaccurate financial reports.

Department of Labor should have authority to administratively enforce inspection requirements of the statute and to bring actions under Section 501(b).

History of the LM-2

The LMRDA was enacted in response to growing concern about the corruption and other abuses of power by both companies and unions. Its stated purpose was to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants and their officers and representatives.

Between 1957 and 1959 the Senate Select Committee on Improper Activities in the Labor or Management Field (commonly known as the McClellan Committee) investigated alleged misconduct and corruption within the labor movement. As a result of this investigation President Eisenhower proposed before Congress a 20-point program to eliminate irregular and improper conduct in labor-management relations identified during the McClellan hearings. These events were largely responsible for the enactment of Title II of the LMRDA.

There was considerable debate and numerous proposals about the best way to regulate the improprieties uncovered by the McClellan Committee. Supporters of reform argued that government regulation was the only way to ensure that principles of union democracy were upheld. There was concern on the part of some supporters of the labor movement that government regulation would effectively

destroy organized labor.

The LMRDA was premised on the belief that responsibility for reform in the labor movement rested predominately with unions and union members, relying on openness and democratic processes to ensure fairness and accountability. Title II was intended to provide union members with information about the finances and financial practices of their union, to ensure that they had the information necessary to make informed decisions about union issues. It was hoped that disclosures under the reporting requirements of Title II would deter improper activities and eliminate the need for further federal regulation of unions and management.

The congressional history to the LMRDA highlights the important role full disclosure of financial information has on the ability of members to self-regulate their unions. The congressional history states,

> Given the maintenance of minimum democratic safeguards and detailed essential information about the unions the individual members are fully competent to regulate union affairs.

Even AFL-CIO President Meany testified before the House Labor Committee in June 1959 that,

> We have been criticized for supporting these provisions. We recognize that they are far reaching and perhaps subject to abuse, nevertheless, we think that they are necessary and that if the powers conferred are vigorously and properly used, the reporting requirements will make a major contribution towards the elimination of corruption and questionable practices.

The LM-2 form was created by the Department of Labor pursuant to its duties under the Section 201(b) of the LMRDA. The Secretary of Labor adopted a number of regulations interpreting and enforcing the statutory requirements of Section 201. The regulations essentially mimic the statute, except they define the term fiscal year and provide for the filing of the financial statement within 90 days of the end of the fiscal year.

The requirements of Title II can be enforced by either the Secretary of Labor or union members. The Secretary of Labor is granted specific authority to enforce title II in Section 210 of the Act. It provides that the Secretary of Labor may bring a civil action for relief (including injunctive relief) to force compliance with Title II. This right of action arises when the Secretary has reason to believe that any person has violated or is about to violate Title II, but not to compel the union to allow inspection of records. It does not provide for civil money damages; nor does it authorize the Secretary to bring an action on behalf of union members.

Union members are granted independent rights of action to compel enforcement of the Act. Union members receive authority to bring private enforcement actions under Sections 201(c) and 501(b) of the Act. The right of action under section 201 (c) is limited to compel inspection of its books for just cause. The right of action under section 501(b) is to enforce a general fiduciary duty and gives the union member the right to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. Both provisions provide for recovery of litigation costs and attorney fees.

Criticisms of the LM-2

Since the enactment of the Landrum-Griffin Act several commentators have reviewed its effectiveness and suggested possible changes. Unfortunately the provisions of Title II receive very little scholarly attention. As mentioned earlier, this is due in part to the fact that Title II was less controversial than other provisions of the Act and because the reporting requirements of Title II are very difficult to investigate.

The basic criticisms of the Act fall into the following three categories:

> Many unions fail to comply with the Act's reporting requirements and the Department of Labor does not appear to aggressively force compliance with the reporting requirements.
>
> The information collected under the Act is not distributed to members, is difficult to obtain, is rarely audited, and is inaccurate and therefore of little value to researchers or union members.
>
> The data collected under the Act is reported in such broad categories that researchers and union members have difficulty in evaluating whether a union is meeting its fiduciary duties.

An analysis of the LM-2 filings for fiscal year 2000 of the ten largest international unions was conducted to identify whether these criticisms continue to be an issue with LM-2 filings.

Inconsistencies in FY 2000 LM-2 Filings and Suggested Changes to the LM-2 Form and Instructions

The LM-2 filings for the 10 largest unions in fiscal year 2000 reveals a number of inconsistencies in the amount of data reported and the backup included in the filing. These are discussed item-by-item and schedule-by-schedule.

Line Item 15 Misappropriation of Funds

Unions are asked in Item 15 to identify whether they discovered any loss of funds or property during the fiscal year. Unions are further requested to provide details in Item 75 on page 1 as explained in the instructions for each item. The instructions to Item 15 require the reporting organization to specifically describe the amount or property lost, how it was lost along with any efforts to make recovery.

In fiscal year 2000 only two of the ten largest labor organizations (the Teamsters and the United Auto Workers) reported any losses under Item 15. Each union reported its loss differently. The Teamsters 2000 LM-2 states yes to Item 15. On Item 75 the union lists in detail the misappropriation of $3,400 by an employee of the union, along with all actions taken (including restitution from the employee and that employee's termination). The UAW, on the other hand, reports yes to Item 15, but does not disclose the amount misappropriated or any detail regarding the details of the misappropriation.

The other eight unions examined reported no to Item 15. It is surprising that these unions, several with over $100 million in annual revenue, did not discover any loss of funds or property during the reporting year. Unfortunately there is no way a non-member without just cause can identify whether these answers are accurate under the current enforcement regime.

Auditing this item is almost impossible. The law as currently formulated only allows the Secretary of Labor to litigate when it appears that, any person has violated or is about to violate any of the provisions of Title II. This begs the question of how the Secretary can become aware of when a labor organization has violated or is about to violate the reporting requirements of Item 15. Typically the Secretary can only become aware of a violation of this reporting requirement if there is something outside the report that alerts the Secretary to a violation.

Currently there is no way the Secretary can identify whether a union has violated the reporting requirement of Item 15 by failing to report. Ironically, only unions that actually report a loss on their form (like the Teamsters and UAW in 2000) are likely to ever be audited on this item.

Of the 10 unions examined in this study, the UAW in fiscal year 2000 is a likely audit target due to the fact that it failed to comply with the instructions for Item 15. This is despite the fact that one or more of the remaining unions may have violated the reporting requirement by answering no to this item.

Today the only means the Secretary has to identify potential failure to report is if it receives information from a union member or is aware of litigation against a union employee for embezzlement. Given the fact that audits are currently very unlikely, a union has very little incentive to report accurately or truthfully on this item.

For this reason the Secretary should require an itemized listing of any loss or

shortage of funds or property, and what actions have been taken to recover the funds or property. An effort should be made to systematically audit both organizations that report as well as those suspected of underreporting. Barring an amendment of the Secretary's enforcement authority, efforts should be made to track publicly available embezzlement charges against union officials and employees and to relate those back to LM-2 documents to verify compliance.

Line Item 16 Income From Other Sources

Unions are required to report under line Item 16 certain employees or officials that hold an additional position in another labor organization or employee benefit plan. The instructions explain that if the answer for Item 16 is yes that the labor organization must list in Item 75 the name of each officer, the name of the labor organization or benefit plan and the officer's position in that organization or plan.

This item appears to be reported according to the Secretary's instructions by each of the unions examined. For example, the SEIU 2000 LM-2 lists 21 individuals receiving more than $10,0000 from other sources (2 of whom received more than $10,000 from 2 sources other than the international union). The Laborers 2000 LM-2 lists 2 individuals receiving more than $10,0000 in salary and allowances from other sources. The Teamsters 2000 LM-2 lists 34 individuals receiving compensation of more than $10,0000 from other sources, 7 of the 34 received $10,000 or more from 2 sources other than the international union.

Other unions examined appear to follow the letter of the Secretary's instructions for Item 16. AFSCME listed 31 individuals under Item 16 with no description other than the item number. UFCW listed 30 people on a list of additional positions of officers. The IBEW listed 8 officers on a list titled additional position of officers. The AFL-CIO, Carpenter's, UAW and Steelworkers 2000 LM-2's list no individuals receiving more than $10,0000 from other sources.

No union lists the additional dollar amounts received by any of the officers listed in their answers to Item 16. This is not surprising given the wording of the Secretary's instructions for Item 16, which asks only for the name of the officer, the organization or benefit plan and the position of the officer in that other organization.

However, these instructions do not seem to comport with the requirements of the statute. Section 431(b)(3) requires that the financial report contain the *salary, allowances, and other direct or indirect disbursements (including reimbursed expenses)* to each officer and also to each employee who, during such fiscal year, received more than $10,000 in the aggregate *from such labor organization <u>and</u> any other labor organization* affiliated with it or with which it is affiliated, or which is affiliated with the same national or international organization (emphasis added).

Item 16 on the LM-2 form and the Secretary's instructions for Item 16 appear violate the statute in at least three respects. First, the instructions to Item 16 exclude from reporting individuals Congress meant to cover. The Secretary only requires

reporting for officers that receive more than $10,000 from more than one labor organization. The statute requires reporting of the salary, allowances and disbursements for all employees receiving more than $10,000 from both the reporting labor organization as well as any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international organization. This certainly appears to include payments or disbursements to non-officers by affiliated labor organizations.

Second, the instructions to Item 16 exclude from reporting critical information required by the statute. The Secretary's instructions require only that an officer receiving more than $10,000 from affiliated organizations report two items: the name of the affiliated organization and the office held in that organization. Yet the statute requires that these individuals report the salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) received by them from both the reporting labor organization and the affiliated organization. Again, the instructions (and the actual reporting of all ten labor organizations surveyed) fail to provide the information required by the statute. This information is critical to a union member's understanding of exactly how much money is received by union officials in his or her organization and the sources of that income.

Finally, the Secretary's instructions on Item 16 exclude monies Congress specifically wished to include. The instructions state that when calculating whether an officer meets the $10,000 threshold from an affiliated organization that officer is to exclude allowances paid on the basis of mileage or meals or amounts officers received as reimbursed expenses. Yet the statute itself specifically states that each person receiving more than $10,000 in the aggregate, inclusive of reimbursed expenses, must report. The instruction is exactly the opposite of the statutory requirement and could also lead to underreporting by individuals Congress expected to cover.

Line Item 18 – Definition of Member

Item 18 asks the labor organization to list the number of members at the end of the reporting period. The instructions to Item 18 ask unions to include all categories of members. However, the number of members is reported at the end of the year as an aggregate amount. This is nearly useless information for members. It is impossible to determine from the current report any trends in membership level, what types of memberships are held by how many individuals or the industry or business classifications in which members are represented.

Breakdowns by membership category and industry classification are valuable when evaluating the strength and stability of a labor organization. Prospective members can determine whether a union has expertise representing workers in their unique industry. Current members can evaluate the strength of the union by identifying active members in a particular industrial classification. Members can more readily evaluate the effectiveness of investments in organizing efforts by looking at trends in membership gains (or declines) by classification. Unfortunately this information

is impossible to determine based on current reporting requirements. The Secretary should revise the instructions to Item 18 and include a schedule that breaks out members by category of membership and industrial classification.

Line Items 21, 39 & 40 Dues, Per Capita Tax

Item 21 of the LM-2 asks labor organizations to break out their dues structure. While this information is helpful and somewhat self-explanatory at the Local Union level, it is confusing when examining most International Union LM-2 forms. Most (but not all) international unions collect their money through a per capita tax instead of a monthly dues amount. Line Item 39 asks unions to disclose their receipts from dues and Item 40 asks unions to disclose their receipts from per capita taxes. Unfortunately the LM-2 does not ask unions to identify their per capita tax structure, if any. This can confuse members and make the huge dollar amounts impossible to audit without additional information not provided on the forms.

The only union examined for this Article to disclose its per capita tax amount in its fiscal year 2000 LM-2 was the Teamsters. This LM-2 disclosed a per capita tax amount of $3.90 per month per member as well as $2.50 for every initiation fee or re-initiation fee. The Teamsters reported no monies collected from dues (Item 39) and receipts of $62,750,593 in per capita tax. A Teamsters member could calculate, based on this disclosure and the reported number of members at the end of the reporting period (1,402,000 members) that the Teamster collected roughly $3.73 per month per member (certainly in range for the per capita tax amount listed in the LM-2, especially if union membership increased during the reporting year). Unfortunately, this is the only union among the ten studied where a member could make the same calculation.

The UAW, for example, discloses no fees whatsoever in Item 21 and shows no dues collected in line Item 39. However, the UAW shows receipts of $223,085,983 in per capita tax amounts on line 40. A UAW member has no way to identify whether the international union is collecting the correct amount of per capita tax from them or whether the union is collecting anywhere near the amounts it is supposed to collect based on the information available on the form. For members of the UAW there is essentially no way to determine whether their union is keeping up its fiduciary obligations based on the LM-2 form.

The SEIU lists regular dues or fees as well as initiation fees in line 21. However, it does not list any per capita tax amounts. The SEIU reports collecting no dues on line 39, but shows that it collected $100,914,913 in per capita tax on line 40. Dividing this by the number of members at the end of the reporting period (1,374,300 members) on can calculate that the union collected just over $6.00 per member. If one knew the per capita tax amount it would then be possible to compare the amount collected to the amount that should have been received. That is not possible with the data reported.

The Steelworkers union lists a variable dues schedule on Item 21 and reported

receipts of $174,058,741 in dues on Item 39 (with no money collected in per capita tax on Item 40). This amount works out to an average monthly dues payment of $23.69 per member at the end of the reporting period. Again it is impossible for a member to determine whether the union received as much (or too much) income as it should based on the information reported on the LM-2.

The Carpenters list a variable dues structure in Item 21. They show no dues collected at Item 39, but $46,234,320 collected in per capita tax at Item 40. This is roughly $7.21 per member at the end of the reporting period. While this amount is in line with the higher dues level listed, it is not possible to identify whether this is in line with the per capita tax amounts based on the information reported on the LM-2.

The AFL-CIO reports a set dues structure in Item 21. It shows no dues collected in Item 39 and $78,771,749 collected in line Item 40. This is roughly $.50 per month per member at the end of the reporting period (13,228,033 members). This is nothing close the $9.00 per month dues listed in Item 21, yet there is no way to determine if this amount is in line with the per capita tax amounts charged based on the information available from the form.

The Secretary should revise the current LM-2 form to include an additional category in Item 21 for per capita tax amount. This, along with the more accurate membership numbers discussed in Item 18, will give union members the opportunity to identify whether their union is collecting the correct amount of dues income. It will also help to ensure that union locals are not overtaxed.

Line Item 24 Contingent Liability

Item 24 asks about any pending contingent liabilities the reporting labor organization has at the end of the reporting period. The instructions list loans and lawsuits as potential contingent liabilities. The item and its instructions are confusing. The current reporting on this item is inconsistent, suggesting that many contingent liabilities go unreported, and often those that do report do not fully disclose as directed by the Secretary.

Five of the ten unions examined in this article answer Item 24 Yes. They report their contingent liabilities inconsistently. Only one union, the Teamsters, appears to report contingent liabilities consistently with the Secretary's instructions. The Teamsters reported a number of lawsuits in which they were named a party, listing the caption and case number for each one.

The Communication Workers, AFL-CIO, UAW and Laborers each list lawsuits under Item 24. The Communication Workers note one specific claim (a $2,445,738 settlement payment to a class of workers on an agency fee claim). However, they also state that the IUE sector has been named as defendant or codefendant in cases presently pending before the courts, without naming one claimant as required by the instructions. The AFL-CIO and the Laborers both state in general terms that they

are parties to lawsuits, but like the Communication Workers, do not name any individual claimant as required by the Secretary. The UAW answers Item 24 yes yet nowhere mentions these contingent liabilities (even in general terms) in Item 75.

The Steelworkers, AFSCME, IBEW, UFCW, Carpenters and the SEIU each answered no to Item 24. Nevertheless, based on other entries in their LM-2 documents, there is reason to believe that these organizations are underreporting their contingent liabilities. The Steelworkers list no contingent liabilities on their 2000 LM-2, but list $64,467 for legal settlements. The Carpenters list no contingent liabilities yet list $80,750 for legal settlements. The IBEW answered no to Item 24, yet lists $389,731 expended for legal settlement payments. Finally, the Laborers stated they had no contingent liabilities in Item 24 even though they list settlements at $1,671,543 with no corresponding cases.

It is unlikely that any organization the size and reach of these unions is not a defendant in at least one lawsuit each year. Due to the vagueness of the current reporting requirements it is possible that many unions decline to report any current or settled litigation. This skirts the core motive of the reporting requirement, which is to give union members notice of legal actions that may impact a union's ability to meet its fiduciary obligations.

Instead of the current vague and elusive reporting requirement, the Secretary should require listing of all lawsuits in which union was a party during the reporting period. This listing should include at a minimum: the name of the parties, the court in which it is being litigated, the case number, a brief description of the facts, requested remedies and predicted outcome. This should apply to both criminal and civil litigation. The Secretary should also require a listing of all fees and settlement payments associated with each action. This gives union members all the information they need to follow up on any legal action in which their union is a party. It also discourages the union from using lawsuits to transfer money (a common tactic used by organized crime to launder money).

Line Items 41-44 Fees, Fines, Assessments, Work Permits

There are a number of items that list revenue collected that do not require a detailed schedule outlining how the money was received or spent. These items raise several questions about the source of a labor organization's non-dues revenue. The instruction for these four items is vague, stating only that the organization must enter any receipts from fees, fines, assessments, and work permits in Items 41 through 44 respectively. There is no provision or schedule for breaking down any aggregate amounts listed.

Very large sums of money were collected under these items in the LM-2 documents examined for this article. For example, the Laborers collected $12,694 in fines during the 2000 fiscal year. The SEIU lists $96,771 received in fees. The Steelworkers collected $398,959. AFSCME collected $437,684 in fees while the Carpenters collected $1,093,731. The UFCW and IBEW each collected over $2.2

million in fees. Not one of these unions provided any explanation regarding the sources for these receipts.

A union member interested in the financial health of their union certainly may be concerned about the sources of these receipts. Furthermore, fines collected should be itemized by matter, otherwise there is no way a member can determine whether fines are accurately reported or ensure a union is applying its authority to fine members in a fair and neutral fashion.

Although the Secretary provides schedules for several of the other items listed, there is no schedule for any of these four items. The Secretary should adopt a schedule for the reporting revenue from any fees, fines, assessments or work permits collected during the fiscal year. Fees, work permits and assessments would not necessarily need to be individually reported and could be broken out and aggregated by category (i.e. by the type of fee, work permit or assessment).

Line Item 59 Fines Paid

Item 59 asks the labor organization to report the total amount of fees, fines, assessments and similar disbursements paid to a parent body or other labor organization. Only one union examined for this article entered any amount on this item. The SEIU lists $4,737 in fees, fines and assessments paid, during fiscal year 2000. There is no explanation as to whether this amount is a fine, fee or an assessment.

Union members certainly should have the opportunity to know whether their leaders have engaged in an activity that led to a fine from their parent organization. They also should be able to audit any other fees or assessments owed by their organization to another. The current form does not allow a union member to discern these facts. The Secretary should require a specific reporting under Item 75 or on a separate schedule of any fine, fee or assessment paid by the union during the reporting period.

Line Item 62 Professional Fees

Item 62 asks unions to disclose total disbursements for outside legal and other professional services, including auditing, economic research, computer consulting, arbitration and the like. The unions examined for this article spent widely varying amounts on professional fees, both in terms of total expenditures as well as expenditures as a percentage of total disbursements.

Disbursements for professional fees from the unions examined ranged from a high of $13,550,646 for the Steelworkers to a low of $2,192,642 for AFSCME. The Teamsters spent $12,762,914 or 11.4% of its total disbursements for the period, the largest percentage of total disbursements spent on professional fees among the unions examined. The SEIU spent $8,551,185 or 5.9% of its disbursements in 2000 on professional fees. The IBEW spent $3,691,790 or 6.6% of its total disbursements

on professional fees in fiscal year 2000.

AFSCME, the Food and Commercial Workers and the Auto Workers each spent less than 2% of their total disbursements on professional fees in fiscal year 2000, with the UAW spending slightly less than 1% on this item.

None of the unions examined provided any itemized explanation of professional fee expenses, presumably because the Secretary's instructions do not require a detailed disclosure. Since professional fees are not itemized in the LM-2 disclosure by any union examined, one cannot determine whether any fiduciary questions are raised by those unions that spent considerably more than their counterparts on this item. One certainly might question why the Teamsters spent almost 3 times more on professional fees in fiscal year 2000 (as a percentage of total disbursements) than the average union examined. Unfortunately the current disclosure rules shed no light on this issue.

The Secretary should require all unions to itemize expenditures for professional fees on a separate schedule. This schedule should list the firm or individual receiving the fee, the amount of the disbursement and the matter to which the disbursement is related. This provides important information to union members and allows them to evaluate the effectiveness of their union.

Line Item 72 Disbursements on Behalf of Individual Members

Item 72 asks unions to disclose any payments made on behalf of individual union members. The instructions to Item 72 relate this to Item 53. These two items cover situations where expenditures are made from funds specifically collected for disbursement on behalf of the members. Generally unions do not report any receipts or disbursements for these two items.

Reporting on this item has changed in recent years, possibly as a strategic response to campaign tactics by management. A common tactic by management in organizing campaigns is to point out that unions regularly report 0 to line item 72, the implication being that the union collected millions of dollars but did not spend any of it on behalf of individual members. However, three of the unions examined for this article report significant amounts disbursed on behalf of individual members. The IBEW reported disbursements of $324,395, the AFL-CIO reported disbursements of $179,344 and the Auto Workers reported disbursements of $18,324,259 on Item 72.

Additionally, in fiscal year 2000 the SEIU, AFL-CIO, Carpenters, IBEW, UFCW and Communication Workers all note on Item 75 (prominently displayed on page one of the LM-2 reporting form) the following disclaimer:

> This item reflects only disbursements on behalf of individual members for other than normal operating purposes. All of our expenses benefit the entire union

membership and individuals are not normally singled out for special purposes.

This change in reporting may help unions respond to the arguments raised by companies during organizing campaigns, but does not appear to meet the requirements for Item 75. In addition, the huge amount reported by the Auto Workers raises serious concerns about the fiduciary responsibility of that organization.

The Auto Workers state in Item 72 that they disbursed over $18 million on behalf of individual members in fiscal year 2000. However, in Item 53 they report that they did not collect any money in fiscal year 2000 from members for expenditure on their behalf. This should raise serious concerns by UAW members of exactly where this $18 million came from and on behalf of which members it was spent. The reported amount in Item 72 is not, the same as the amount reported in related Item 53, as the Secretary suggests it should be in the instructions to this item. Since there is no breakdown of this amount it remains a mystery.

The AFL-CIO, on the other hand, reports that it both collected and disbursed on behalf of individual members during the reporting period. However, the AFL-CIO reported in Item 53 that it collected $1,648,163 on behalf of individual members, but only disbursed $179,344 of that amount during the period. The instructions state that the remainder is a liability and should be reported on Schedule 4. The AFL-CIO reported on Schedule 4 that it closed its fiscal year with $1,716,344 in liabilities of amounts collected for disbursement but not disbursed ($68,181 more than collected during the reporting year). Again, since there is no itemized listing of either the receipts or the disbursements it is impossible to tell whether the union is keeping its fiduciary obligation to its members.

The IBEW also appears to fall short of the reporting requirements for Item 72. It reports collecting $326,735 from members for disbursement on their behalf, and disbursements of $324,395. According to the instructions to Item 72, the IBEW should have reported $2,340 in liabilities on Schedule 4. The IBEW Schedule 4 does not list any item for receipts on behalf of individual members nor does it list any item for $2,340.

This reporting requirement should be modified to instruct unions to itemize all expenditures made on behalf of individual members, including the name of the member and the amount of the disbursement. Further, the Department of Labor should make great efforts to audit any LM-2 that reports more disbursements on behalf of individual members than receipts for that specific reporting period.

Summary of Suggested Changes to LM-2 Reporting Requirements

Item Number	Suggested Change

15	☐ Audit disclosures to ensure compliance with current instructions ☐ Compare LM-2 disclosures to publicly available information on misappropriation cases ☐ Change statute to allow Secretary to investigate all filings for possible underreporting of misappropriation
16	☐ Require reporting by all employees receiving $10.000+ ☐ List aggregate payments from all sources received ☐ Include reimbursed travel expenses when determining whether $10,000 threshold is met
18	☐ Breakdown members by membership category ☐ Breakdown members by industry classification
21, 39 & 40	☐ Include per capita tax amounts in Item 21
24	☐ Require listing of all lawsuits naming the union or one of its officers as a defendant during the fiscal year (whether still pending at the close of the year or not) ☐ Require a brief description of the facts, requested remedies and predicted outcome ☐ Listing of any settlement or compromise reached
41-44	☐ Require detailed reporting of all fees, fines and assessments collected during reporting year ☐ Adopt a schedule for reporting of same
59	☐ Require detailed reporting of all fees, fines and assessments paid during reporting year ☐ Adopt a schedule for reporting of same
62	☐ Require detailed reporting of all professional fees, paid during reporting year

telling from the report whether these entries are unsecured loans or some other transaction (the UFCW, for example, uses similar entries to show conversion of a per capita tax receivable into a loan).

The UFCW appears to do a good job of reporting on Schedule 1. The UFCW shows $83,780 in loans repaid in a manner other than cash. They do report on their Schedule 1 that $46,964 of this amount is paid by strike reports applied to loans. Another $26,816 was repaid by applying per capita taxes to the loan. Finally $10,000 was paid by applying a subsidy to an advance. An additional $326,808 in loans was created by converting a per capita tax receivable into a loan. Since the reporting requirements are met, a member has adequate information to question the union about transactions that appear to have the effect of significantly reducing current and future income to the union by either forgiving indebtedness or converting already owed amounts into loans.

AFSCME reported no loans paid in a manner other than cash in fiscal year 2000, but did write off $506,691 in bad loans during the period. The union does not appear to meet the reporting requirements of Schedule 1 because it does not report which loans were written off or their individual amounts. This is required under the instructions to Schedule 1.

The AFL-CIO received payment in a manner other than cash for one loan outstanding for $500. There was no explanation as required in Item 75 regarding how this payment was received.

Laborers 2000 LM-2 lists 2 loans repaid by consideration other than cash in amounts of $104,491 and $43,355. Both of these are for the settlement and fees related to litigation that were written off by the union.

The Auto Workers list 4 loans repaid by consideration other than cash in an aggregate amount of $135,710. These are per capita tax loans that were forgiven during the reporting period.

The Teamsters reported 2 loans that were repaid in a manner other than cash in the amounts of $295,696 (loan written off due to Chapter 11 bankruptcy) and $50,000 (written off because loan in default since 1978).

The reporting under Schedule 1 is generally complete and effective. The Secretary should use this Schedule as a model for reporting on several of the other areas listed earlier. However, one improvement to this form is to require the reporting labor organization to provide an explanation for every loan paid off in a manner other than cash, particularly those loans written off during the reporting period. While several of the unions already do this, it should be required since the information is valuable for members to evaluate whether their union is meeting its fiduciary obligations.

Schedule 11 Benefits

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The reporting under Schedule 1 is generally complete and effective. The Secretary should use this Schedule as a model for reporting on several of the other areas listed earlier. However, one improvement to this form is to require the reporting labor organization to provide an explanation for every loan paid off in a manner other than cash, particularly those loans written off during the reporting period. While several of the unions already do this, it should be required since the information is valuable for members to evaluate whether their union is meeting its fiduciary obligations.

Schedule 11 Benefits

Unions report on Schedule 11 any disbursements made during the reporting period for benefits offered to officers, employees, members and their beneficiaries. The unions examined in this article all appear to do an effective job of reporting on this item according to the current instructions. Unfortunately, the Secretary only asks for unions to report the aggregate amounts spent on a particular type of benefit, without listing the actual plan (including the EIN number and plan number) to which the union contributed.

Contrast this with reporting on Item 11 in the LM-2, which asks unions to disclose whether they either created or participated in the administration of a trust or other fund or organization that provides benefits for members of their beneficiaries. Unions are required under this item to list any ERISA file number and plan number.

Unions should be required to report on Schedule 11 the amounts contributed to each employee benefit plan and include each plan's ERISA file (or EIN) and plan number. This will allow union members to determine how much money goes into each plan (instead of aggregated amounts spent on insurance that might go into several different plans).

Schedule 12 Donations, Political Education, Charitable Contributions, Gifts, Etc.

Organizations are required to list under Schedule 12 all contributions, gifts and grants made during the reporting year. Again, there is no requirement to break out gifts or contributions over a certain dollar amount and unions typically aggregate amounts in broad categories, often totaling hundreds of thousands, and sometimes millions, of dollars. It is impossible for a union member to evaluate whether the union is living up to its fiduciary responsibilities under the current reporting requirements.

Laborers 2000 LM-2 lists gifts & souvenirs given to visitors as $52,512. AFSCME states contributions-political for $13,421,771; contributions-civic for $885,8008; grants-national AIDS education and info for $991,781; grants-disbursements to affiliates for general purposes for $15,933,844.

UFCW lists political/educational in the amount of $4,769,695; and Leukemia society charitable in the amount of $1,128,563; labor related in the amount of $438,860; and charitable in the amount of $206,775. Communication Workers lists political in the amount of $2,994,076; charitable in the amount of $247,363; civic in the amount of $660,026; and labor in the amount of $119,036.

AFL-CIO lists state and local central bodies in the amount of $1,398,822; other affiliated labor organizations in the amount of $7,273,695; labor support organizations and constituency groups in the amount of $3,601,617; civic and allied organizations in the amount of $2,802,684; and international human rights organizations in the amount of $747,560.

IBEW lists charitable in the amount of $517,152; labor-related in the amount of $156,960 and political education in the amount of $300,000. Carpenters list only three items: charitable in the amount of $142,524; labor related in the amount of $133,400; and political and public policy in the amount of $2,838,500. SEIU lists $1,177,434 for charitable organizations, $2,761,096 for its committee on political education and an additional $7,863,527 on political education.

In order to tighten the reporting requirements under Schedule 12, the Secretary should require an itemized description of things like "donations," political education, charitable organization, or "charitable contributions." Any contribution over $250, or some other reasonable amount set by the Secretary, should be broken out like loans in Schedule 1. This way a union member can more easily evaluate the expenditures on gifts made by the union.

Schedule 13 Office & Administrative Expense

Office and Administrative expenses are listed in schedule 13. Since labor organizations are not required to breakout expenditures by dollar amount or vendor it is very difficult to discover potential violations of a labor organization's fiduciary obligations.

For example, the 2000 UAW LM-2 has line items for maintenance equipment of $3,430,207 (9.7% of total expenditures for office and administrative expense), meeting expense of $10,656,439 (over 30% of total disbursements for office and administrative expense) and services for $7,901,905 (over 22% of total disbursements for office and administrative expense). IBEW lists $2,794,459 as special organizing projects expenses totaling 28.6% of total disbursements for office and administrative expense. None of these items is explained at all.

The Communication Workers list $1,034,917 as member expenses. AFSCME reports $141,202 as reimbursed compensation and $1,550,257 on conferences and meetings. Again there is no explanation of what these line items mean or include.

Schedule 13 should also require an itemized description of expenditures over $250 or some other dollar amount the Secretary concludes is reasonable. These should be broken out the same way small loans are in Schedule 1. This way a union member can more easily evaluate the expenditures on office and administrative expense made by the union.

Schedule 15 Other Disbursements

This is the catchall schedule for disbursements. Schedule 15 suffers from the same problems as Schedules 12 and 13, although on a somewhat larger scale due to the broad nature of the Schedule.

For example, SEIU in 2000 LM-2 list special projects as disbursement of $3,375,538. and contractual per capita tax rebates to local unions of $10,240,00.

Laborers 2000 LM-2 lists settlements at $1,671,543 with no corresponding cases as well as grants in the amount of $147,095.

Carpenters report that they spent $9,450,190 on assistance to affiliates or 44% of its other disbursements. It lists $107,591 for local organizer expenses and $1,027,564 on affiliate training. It lists $80,750 for legal settlements (although it answered no to item 24 regarding legal settlements). It also listed $3,847,153 as loss from foreign currency exchange.

AFSCME reports disbursements of $3,175,301 for account of affiliates and $7,577,730 as disbursements of funds received from affiliates for transmittal. AFSCME also reports $387,048 expended on per capita tax and dues rebates and $314,178 on organizing. UFCW reported a number of items that raise questions. They disbursed $3,641,939 on staff expenses (non-allocable) and $2,276,158 on conferences and meetings (non-allocable). UFCW disbursed $4,558,518 on council and administrative expenses and spent $1,556,210 on seniority pension reimbursements local unions and spent $88,400 on retirement dinner expenses.

The Communication Workers spent $151,905 on organizing (non-allocable) and $2,492,865 on payments to vendors on behalf of affiliates. The CWA also reports disbursing $575,681 for advances to employees. In addition it paid $886,763 in payments to locals to support mobilization efforts and $2,194,180 in payments to locals as a result of merger.

The IBEW showed disbursements of $2,656,821 as building expenses with no reference to what property the money was spent on. IBEW lists $1,213,295 paid for meetings and conferences, non-allocable and $921,042 for IBEW convention expenses paid in advance. It lists $252,185 in federal grant expenses and $1,505,212 for disbursements on acquisitions of homes on relocation. Finally it lists $389,731 for legal settlement payments even though it marked no to Item 24 regarding contingent liabilities for the period.

The AFL-CIO listed payments of royalties and list use from its credit card and loan programs to unions in the amount of $24,419,225, with no reference to which unions the monies were paid. It listed payments of $549,040 for non-employee travel and meeting costs along with $2,655,377 for conferences and meetings. The AFL-CIO lists payments of $611,884 for payments rebilled and $2,450,191 for various COPE funds. The AFL-CIO also disbursed $1,198,020 in interest but there is no reference to what the interest was paid on or who it was paid to.

The reporting requirements under Schedule 15 would also be strengthened by requiring an itemized description of all disbursements over a certain dollar amount. Once again, this will provide a union member the information he or she needs to evaluate whether the expenditures made by the union are consistent with its fiduciary obligations.

Recommendations and suggested re-interpretations of the current LM-2

reporting requirements

The following are suggested changes to the current statute and recommended re-interpretations of current LM-2 under the Secretary's authority to prescribe categories for reporting in ß 201(b) to meet the requirements of 29 C.F.R. ß 403.2 (b). These modifications will significantly improve the quality of financial disclosures, increase the transparency and accountability of labor organizations and dramatically improve union democracy.

Amend Section 201(d) to require filing and distribution of LM-2 information to union members as prerequisite for NLRB jurisdiction

The unions studied for this article all submitted a fiscal year 2000 report and, for the most part, filed on time (one union, the Laborers, filed more than a month late). However, many unions fail to file on a timely basis and still others fail to file at all. Prior to the passage of the LMRDA in 1959, Section 9(f) of the National Labor Relations Act required a union to file copies of its constitution, bylaws and most recent financial statement as a prerequisite for access to the NLRB. Section 201(d) of the LMRDA as finally passed by Congress repealed the requirements of Section 9(f). There was significant disagreement between the Administration version of the bill and the Kennedy-Ervin version that passed the Senate. Supporters of the Kennedy-Ervin version believed that the provisions of Section 9(f) unfairly penalized union members for the misdeeds of their leaders, and frustrated the purposes of the NLRA.

The legislative history reveals four primary justifications for repealing the penalties outlined in Section 9(f):

- Belief that the penalties were ineffective against strong unions that were not dependent upon NLRB facilities;

- Feeling that it was unfair to the members who have done no wrong to suffer both the denial of information and the loss of NLRB protection;

- Argument that the rights and duties created by the NLRA are for the public good and should be enforced equally in all cases, and not held out as a source of punishment; and,

- Belief that experience with 9(f) demonstrated that conditioning the use of the NLRB processes on compliance resulted in a frustration of the principal purpose of the Labor Management Relations Act to settle labor disputes in an orderly, efficient, and expeditious manner.

This reasoning is unpersuasive. First, it is doubtful that any union then, and no

union today, enjoys the strength envisioned by the Kennedy-Ervin committee in 1959. Unions rarely avoid use of the NLRB today. In fact, even unions that call for the use of voluntary recognition and other tactics to avoid NLRB involvement rely heavily on the NLRB for enforcement these agreements. Even granting that a handful of unions might be able to avoid the use of the NLRB altogether in some years, the provision still would have a significant deterrent effect on the vast majority of remaining unions that do utilize the NLRB. Those few that avoided the NLRB penalty could still be reached under the criminal penalty LMRDA provisions.

The claim that 9(f) serves as a double penalty to union members is equally spurious for four reasons. First, the provisions of 9(f) do nothing to prevent a union member from exercising his or her individual rights under the NLRA, even if that individual is a member of a union disqualified under this provision. Any person filing a petition or charge as an individual is not effected by the 9(f) disqualification. Prospective members also have the right to bargain collectively and enter into agreements with their employer even if their group is not certified in an NLRB election. Second, the claim also ignores the fact that every union member has an independent right of action under the LMRDA, enforceable in State or Federal District Court. This non-Board remedy is available whether a union is disqualified under 9(f) or not.

Third, it is critical to note that the criminal penalties of the LMRDA, advocated by the Kennedy-Ervin committee, also punish union members for the sins of the few. The LMRDA provides for up to a $10,000 fine against a union found in violation of the statute. This fine would be paid out of the union's treasury, thereby hurting all members. Finally, to the extent that 9(f) may serve as a penalty to members, this furthers the purposes of the LMRDA. The LMRDA relies heavily on the self-policing of unions by their members. In the years since the passage of the Act, it is clear that union members rarely step up to this duty. Imposing some costs on union members for failure to police their own unions is desirable because it creates an incentive to either pursue a private right of action against the offending labor organization or to notify the Secretary of Labor about the violation. This is superior to the current framework.

While it is true the rights granted under the NLRA are for the public good, so too are the rights granted under the LMRDA. Today many unions fail to comply with their reporting duties because the likelihood of facing a legal challenge from either their members or the Secretary of Labor are so remote to be effectively non-existent. This severely impairs the ability of members to police their labor organizations, frustrating Act's purpose of arming union members with the information necessary for them to intelligently exercise their rights as union members.

Giving union members the right to file a claim for failure to represent with the NLRB is worthless if the union member is denied access to the information they need to identify whether their union has in fact failed to represent them. This is why

giving teeth to the LMRDA enforcement provisions is so critical. Giving companies the ability to utilize 9(f) against non-compliant labor organizations cheaply and effectively ensures enforcement of the provisions of the LMRDA. Additionally, it is important to remember that 9(f) in no way impairs the rights of individuals to utilize the NLRB process, only restricting the rights of labor organizations and not individual members.

The final argument, that the existence of 9(f) frustrates the NLRB's ability to quickly and efficiently settle labor disputes, proves how vital the provision is. First, notwithstanding the Kennedy-Ervin committee's reference to the experiences under Taft-Hartley, there is not one example given in the legislative history of 9(f) being used to unreasonably delay an NLRB proceeding. Second, the current NLRB process is not exactly a model of swift and efficient administration of justice. It is difficult to see how the addition of Section 9(f) could in any way increase the delay of cases that often take years to resolve as it is. The fact is that any union interested in availing itself of the NLRB process can quickly and easily cure its problems under 9(f) by simply filing the financial documents and distributing them to members.

This argument also ignores the vital purposes served by the LMRDA. Congress found that transparency and disclosure in labor organizations was critical to a strong and vital labor movement. Simply, timely access to accurate and descriptive information about the union is pivotal to a democratic and effective labor movement, free of the corruption, arrogance and trampling of member rights characteristic of many unions even today. It is the lack of democratically accountable unions that serves as the biggest threat to the labor movement and to peaceful labor relations, not the speed (or lack thereof) with which the NLRB resolves disputes.

There are a number of important reasons to re-institute the requirements of Section 9(f). First, enforcement opportunities increase dramatically with no additional funding requirement. The NLRB handles thousands of cases each year involving thousands of different international and local unions. Under 9(f) each one of these cases becomes a separate potential enforcement opportunity of each union's financial reporting. Since the issue is jurisdictional, companies will have an incentive to invest their own time and resources in checking on whether a union has met its filing requirements. This means that with no additional expenditure of resources at the Department of Labor the enforcement of the filing requirements will increase dramatically.

The Kennedy-Ervin committee suggested that 9(f) resulted in delays at the NLRB and was expensive to administer; there was no evidence given for this claim. Even if the legislative history did include examples of problems, it is hard to imagine today how this could be so given the way the NLRB processes cases and the technological developments that have occurred since 1959.

The 9(f) issue will typically come up in the context of a question concerning

representation inquiry after a union files a certification petition. The NLRB is already required to make a determination on this issue in each certification case; 9 (f) simply adds one additional concern. If a company investigates the union's financial filing and determines that its obligations were not met, it will simply ask the NLRB to dismiss the petition under 9(f). Many petitions are dismissed and re-filed each year due to some defect in the original filing. Assuming that financial reporting improves with the increased enforcement attention, the 9(f) issue is unlikely to result in a great increase in the number of petitions dismissed. One can imagine that the Board might administratively hold these petitions until the union satisfies the requirements of 9(f), much like is done today with petitions filed untimely.

The advent of the internet makes administration of 9(f) simple and virtually cost-free. One imagines that most unions will meet the publication requirement of Section 9(f) by posting their constitution, bylaws and LM-2 on their internet sites. This will reduce the transaction costs associated with getting a copy of these documents in the status quo. It also will give prospective and current union members a good reason to go to the union's website, where they undoubtedly will be able to learn much more about the union and its objectives and accomplishments. The Department of Labor could further reduce these transaction costs by making all of these documents available on its website, giving access to all union members, researchers and the general public.

More important, employees deciding whether or not they wish to be represented by a union should have access to as much information as possible. The requirements of 9(f) ensure that the Department of Labor has on file (and the union has made widely available) its most recent constitution, bylaws and financial statement. This critical information will then be available as employees determine whether they wish to be represented. Unions that have made questionable or unlawful financial transactions will be at a disadvantage in this environment, which will have the effect of forcing each union to take its fiduciary obligations very seriously.

Openness will encourage researchers to work in this area and may also get unions to look into the financial practices of their rivals. This would create a peer review aspect to union finances and governance. As increased attention is paid to various unions, and as it becomes easier to compare one union's practices to that of its peers, it is more likely that best practices will be adopted and shared among labor organizations. Furthermore, it is likely that unlawful or irresponsible activities will be discovered and remedied more quickly in this environment.

Re-instating Section 9(f) is a simple, low-cost and effective way to dramatically improve the financial reporting of unions. This takes the bulk of the enforcement burden off of the Department of Labor, that has limited enforcement resources for general auditing functions and understandably focuses most of its attention on prosecuting embezzlement and pension fraud.

Section 9(f) also takes the burden off individual union members, who are very

unlikely to be aware of their rights and normally do not have the financial resources to fund a lawsuit to enforce the LMRDA reporting requirements. Prospective union members, who at best have questionable rights under the LMRDA, are even less likely to have access to this critical information. Instead, Section 9(f) gives some enforcement responsibility to companies (through the jurisdictional arguments at the NLRB) who have both the resources and the motivation to see that the requirements are met. This is the ideal enforcement solution.

Clarification of in such detail requirement

One big problem with the current reporting requirements is that large expenditures are aggregated in broad categories such that the average union member is unable to determine how much has been spent on any incident or occurrence. This prevents a fair evaluation of whether the union is spending its revenues wisely. This problem is essentially eliminated with respect to loans made by the union because the statute requires a reporting for any loan or advance made in excess of $250. A similar standard should be adopted for all other expenditures made by the union.

The Secretary should consider changing ß 403.2(d) to read as follows:

> ß403.2(d) For the purposes of this section, the phrase *in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year* shall require the reporting of (a) total amounts expended in any category prescribed by the Assistant Secretary under the provisions of this part; and (b) a detailed schedule showing all transactions over $250 during the fiscal year in each category prescribed by the Assistant Secretary under the provisions of this part.

This change is consistent with the current reporting requirement for Schedule 1, where the reporting by unions is generally good. One may argue that the $250 cutoff is too low and that this would create an enormous reporting burden on unions. There are two reasons this objection is unpersuasive. First, unions are doing a fine job with reporting on all loans over $250. Most unions examined for this article had at most just a few pages itemizing loans for the period. A similar schedule is certainly achievable for other expenditures; in fact some schedule like this much already exist to generate the large, aggregate numbers reported on the current form. Second, the value of the information justifies some additional work on labor organizations. The current information is aggregated in such broad categories as to be useless for members.

Reporting on the smaller transactions lets members identify specific areas where dues money is being spent and not spent. This is superior to broad reporting. The current reporting would not identify, for example, if a union decided to abandon its traditional roles of contract negotiations, organizing and handling grievances instead to produce movies or plays. Even an extreme departure from its fiduciary

duty like this would not dramatically alter the current LM-2 report, since the same broad categories would remain. Reporting on smaller transactions, however, immediately shows a member or researcher what funds are spent on. A shift in funding away from organizing and collective bargaining will show up readily. Any report that is so vague as to be unable to capture evidence of significant changes in organizational philosophy is not detailed enough.

Abandon just cause requirement for inspection

Today union members only have the right to inspect books for just cause shown. Over the years there have been several cases interpreting this requirement. Courts have found the requirement to be rather minimal, balancing the member's need to know against the union's need to protect itself from needless harassment. Courts have found just cause in a variety of circumstances: a drop in an organization's legal defense account; possible double payments to union officials; questions about discrepancies in payments to officers and failure to state purpose of loans listed; questions about expenses paid to officials; to examine charges that union reform organization received payments from employer; to examine increased expenses for meetings, conventions, dinners, tickets, professional fees and other disbursements to officers; to satisfy concern about transfer of reserve fund to general fund; to show alleged double payments to officers or other discrepancies in payments to officers or employees; or where report showed payments to officer that were not received by that officer.

Courts have failed to find just case in cases where members sought financial information: to enable more intelligent voting on proposal to increase dues and membership fees; only in general request for unspecified records not related to reports filed with the Secretary; or not specifically identifying a report of any kind hoped to be verified by the inspection.

Generally the courts appear to interpret the just cause requirement very broadly and construe it in favor of disclosure. This is consistent with the purposes of the Act. Yet what about the cases that never get reported? The problem with the current statute is evidenced by the negligible amount of case law present on the subject.

The LMRDA requirements are not well-known by union members. Since 1959 only 14 reported decisions review the just cause requirements of Section 431(c), or about 3 decisions per decade. This may be because unions open their books wide with virtually every request. However, reviewing the admittedly small sampling of arguments available leads one to conclude that unions generally do not welcome review by members in fact they appear to use any legal maneuver possible to prevent disclosure. The only way for a member to force a union to open its books after such refusal is to sue, claiming just cause under Section 431(c). This is expensive and time-consuming and it is most likely the vast majority of requests for review are simply denied and never pursued.

Today union members are forced to defend their request to view the books of the

union before they even have an opportunity to fully identify their financial concerns. Coming up with just cause based on the current reports is difficult except in the most extreme cases. The bulk of financial reporting today occurs in such large categories that it is difficult, if not impossible, to clearly state a specific problem the member hopes to research. At least one court declined to find just cause when members were only able to articulate general concerns about how much was spent in a particular category. This puts the enforcement burden on those least capable of bearing it and discourages union members from seeking a review of financial records.

Instead, Congress should provide union members the right to inspect books, records and accounts at all reasonable times, eliminating the just cause provision for examination of vouchers, receipts, worksheets and other materials used to prepare the LM-2. A number of states use this approach today. This right should be enforceable by the Secretary of Labor, and unions that do not allow members to review financial records under should be subject to the Act's criminal penalties and the civil penalties recommended below.

To prevent harassment (given the history of requests under 431(c) in the last 40 years this appears to be the least of our worries) the statute can provide harassment as a defense to disclosure. This more fairly establishes the burden on unions to bring suit to stop harassing behavior, as opposed to forcing union members to bring suit to force disclosure in the first place. Unions still may continue to deny members the opportunity to review financial records, but they will do so only after making a cost-benefit analysis that weighs heavily in favor of transparency and disclosure.

Provide civil monetary penalties and expand enforcement authority of Secretary of Labor

Today the Secretary of Labor is authorized to enforce the requirements of Title II through either injunctive relief or referring the case for criminal prosecution under Section 209 of the Act. While the Secretary is authorized to investigate possible violations of the Act under Section 601(a), there is little incentive to do so except in cases where a union has simply failed or refused to file. The overwhelming majority of reported decisions brought by the government are criminal actions following discovery of embezzlement. Unlike union members, the Secretary is not authorized to bring actions for injunctive relief or damages against a union that fails to meet its fiduciary obligations to its members.

The present formulation of the statute prevents the Secretary from investigating or trying non-embezzlement fiduciary duty cases. This burden, again, lies solely with the union members, who are in the worst possible position to assert or defend their rights. Instead, the Secretary should be granted authority to investigate and prosecute cases against unions for failure to meet their fiduciary duty. The statute should be amended to provide civil penalties for these violations, adding additional incentive to bringing these suits on behalf of union members.

In order to accomplish these goals, the statute should be amended in two ways. First, Section 490(b) should be amended to read as follows:

> When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a)[fiduciary responsibilities] and the labor organization or its governing board or officers refuse or fail to sue to recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization *and/or by the Secretary of Labor*, such member *and/or the Secretary of Labor* may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. (Emphasis added to show new sections of Act, remainder of section remains unchanged).

Second, the Secretary should be given the authority to award civil money penalties against labor organizations found in violation of the reporting requirements of Title II. Such penalties should be awarded after an administrative hearing on the issue, and should take into account the nature of the violation and prior violations by either the labor organization or employer found in violation.

This will dramatically improve enforcement of the reporting requirements for all parties covered by Title II and create a much simpler and direct system to receive and resolve complaints regarding violations of Title II. Union members (and small unions in the case of employer or consulting reporting requirements) will not be forced to file a lawsuit, but will instead be able to make an administrative complaint to the Department of Labor at no charge. Costs of the program will be offset by the penalties collected from violations.

Reporting by Functional Areas

The LM-2 form should be redesigned in an effort to make the reported information more comprehensive and easier for members and researchers to understand. Financial reporting, in order to meet its stated purpose of helping union members make informed decisions about their labor organizations, must be understandable. The current reporting forms are almost impossible to understand and give union members very little direction regarding how their dues money is spent. This is not due to the amount of information disclosed, but more to the manner in which it is disclosed.

Instead of reporting financial information by spending category (i.e. salaries, travel expenses, office and administrative expenses, political contributions and the like), unions should allocate spending by function. Salaries, expenses and contributions

made to further organizing objectives should be listed separately from those expenses made to further bargaining objectives. In this way union members can see, at a glance, what percentage of their dues money goes toward representational and non-representational matters. It will make the enforcement of the Supreme Court's decision in *Communication Workers v. Beck* much simpler and less open to interpretation.

There are a number of ways that union financial information could be reported in functional categories and ultimately the Secretary will have to determine the exact nature of this reporting. Three professors with the University of Pittsburgh developed an excellent model for functional reporting under Title II in 1989. They suggest the following major categories and related subcategories for functional reporting:

Major Categories	Sub-Categories
☐ Bargaining Unit Representation (allocate travel fees, per diems, printing and communication costs in the following sub-categories): ☐ Clerical, administrative and professional staff salaries associated with these activities	☐ Negotiations ☐ Contract ratification ☐ Contract litigation ☐ Legislative approval of contract ☐ Internal elections ☐ Conventions ☐ Education ☐ Governing boards ☐ Public relations
☐ Organizing (allocate travel fees, per diems, printing and communication	☐ Pre-notification of election ☐ Election

costs in the following sub-categories): ☐ Clerical, administrative and professional staff salaries associated with these activities	campaign ☐ Post election
☐ External affairs (allocate travel fees, per diems, printing and communication costs in the following sub-categories): ☐ Clerical, administrative and professional staff salaries associated with these activities	☐ Social organizations ☐ Educational organizations ☐ Health organizations ☐ Civic organizations ☐ Lobbying ☐ Political action committee ☐ Fundraising ☐ Other political campaign assistance ☐ Political education ☐ Litigation involving officers and staff
☐ General administration (allocate travel fees, per diems, printing	N/A

and communication costs): □ Clerical, administrative and professional staff salaries associated with these activities	

The categories listed appear to cover the bulk of potential expenses, although before deciding exactly which categories should be reported on, the Secretary should get input from union members, labor organizations, companies, consultants and scholars. The key is to create functional categories that inform members where their dues money is spent.

Conclusion

The LMRDA of 1959 intended to expose to public scrutiny all vital information concerning the operations of trade unions. It was not passed just to stop the financial abuses uncovered by the McClellan committee, but also to provide information to union members so they could take control of their unions. Over 40 years later the Act has, in many ways, nobly served this purpose.

Nevertheless, today many unions arrogantly ignore or negligently fail to comply with the letter and spirit of the Landrum-Griffin Act, as they did to Taft-Hartley provisions that preceded it. Even when information is reported accurately it can be hard to get, it is not reported in a way that it useful to members, and it is generally very difficult to understand. The enforcement burden is placed too heavily on the shoulders of union members, who are rarely informed of their rights and often do not have the resources to compel their union to follow the Act. These failures cost unions much in terms of goodwill with their members as well as potential new members.

The labor movement's strength has always been in the firm bonds and the association members feel toward their fellow members and leaders. That strength has diminished over the last several decades. In the face of the Enron and ULLICO financial scandals, shareholders and union members alike want new assurances that they can rely on those they entrust with their money to use it wisely on their behalf. Adoption of the changes outlined in this article will go a long way toward giving union members the assurances they need to once again trust the stewards of their dues money. This increased transparency and improved distribution of financial information can only serve to strengthen connections between unions and their

members, critical if the labor movement expects to be anything other than a marginal economic force in the decades to come.

APPENDIX G – SUBMITTED FOR THE RECORD, LETTER FROM D. CAMERON FINDLAY, DEPUTY SECRETARY OF LABOR, U.S. DEPARTMENT OF LABOR, TO CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, AND (DUPLICATE) CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, MAY 17, 2002

U.S. DEPARTMENT OF LABOR

DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C.
20210

MAY 17 2002

The Honorable Sam Johnson
Chairman, Subcommittee on Employer-Employee Relations
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Johnson:

Thank you for the opportunity to testify before the Subcommittees. I appreciated the opportunity to discuss the Department of Labor's enforcement of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). I am writing to respond to questions posed by the subcommittees and to supplement the record from the hearing held on April 10, 2002 by the Subcommittee on Workforce Protections and the Subcommittee on Employer-Employee Relations of the House Committee on Education and the Workforce.

1. *At the hearing, we discussed the inadequacy of the current annual financial disclosure forms to provide union members the information they need to ensure union democracy and fiscal integrity. When will you complete plans and begin implementation of a new reporting system with improved information that will provide true disclosure?*

   As I stated in my testimony last month, knowledge and information are among the most powerful tools for democracy – including democracy within labor unions. The Department is currently reviewing its long-standing interpretations of the disclosure and reporting requirements imposed by the LMRDA. If a determination is made that specific changes are necessary to improve upon the current disclosure forms, the Department will publish a notice of proposed rulemaking when that review is completed.

2. *The fiscal year of most unions (approximately 20,000 of 30,000) ends on December 31, so their annual financial reports are due by the beginning of April. I understand that the mail may be behind by a week or two but you should soon be able to get a sense of the delinquency rates among the FY 2001 reports. What percentage of unions are delinquent?*

   As of April 30, 2002, there were 30,353 active labor organizations identified by OLMS that are required to file an annual financial disclosure report. Unions must file an LM-2 (unions with receipts of $200,000 or more), LM-3 (unions with receipts of less than $200,000, but more than $10,000), or LM-4 (unions with

receipts of less than $10,000). If a union has no assets, liabilities, receipts, or disbursements, its international/national union may file a simplified report on its behalf. Of those 30,353 unions, 20,025 have a December 31 fiscal year ending date. The two charts that follow show the delinquency rates for unions required to file in each reporting category. The first chart covers all 2001 reports from all unions. The second chart only covers 2001 reports from those unions that have a December 31 fiscal year ending date. Reports received within four calendar days after the date due were recorded as received on time.

TABLE 1 *

Reporting Rates For All Unions in 2001					
Form Type	Received on Time	Received Late	Not Received to Date	Total Filers	Percent Received Late or Not Received to Date
LM-2	2,351	2,585	616	5,552	57.65%
LM-3	5,448	4,505	2,960	12,913	57.81%
LM-4	4,058	2,946	2,533	9,537	57.45%
Simplified	397	1,627	327	2,351	83.11%
Total	12,254	11,663	6,436	30,353	59.63%

* All numbers are approximate and certain irregularities exist because our database is still under construction.

TABLE 2 *

Reporting Rates For Unions With Fiscal Years Ending December 31, 2001					
Form Type	Received on Time	Received Late	Not Received to Date	Total Filers	Percent Received Late or Not Received to Date
LM-2	1,748	1,589	539	3,876	54.90%
LM-3	4,180	2,923	2,563	9,666	56.76%
LM-4	2,508	1,372	1,890	5,770	56.53%
Simplified	397	205	111	713	44.32%
Total	8,833	6,089	5,103	20,025	55.89%

* All numbers are approximate and certain irregularities exist because our database is still under construction.

3. *The Department has not been aggressive in seeking criminal or civil prosecution for delinquent unions. When do you plan to file criminal or civil charges against those unions that are currently delinquent?*

   It is essential that union members have timely access to the annual financial disclosure reports filed by their unions. The Department of Labor is committed to addressing unions' delinquency in filing their required forms. We are therefore evaluating ways to improve compliance assistance and to use the enforcement tools provided by the LMRDA. As indicated above in the first chart, as of April 30, 2002, there were 6,436 unions that had not filed their most recent reports. This level of compliance is not acceptable. Not only has the President sought additional resources to address the delinquency problem, but also the Department is working hard with existing resources to increase compliance. The determination whether to take legal action against delinquent filers will be made on the basis of the circumstances of each case, after attempts to secure voluntary compliance have failed.

4. *I would like to know some basic facts about unions. Some people like to argue that unions are "mom-and-pop" operations and that union oversight has little impact on the economy. According to your records, what are the total receipts, disbursements and assets of the union movement as a whole?*

   First, just as it is the case that many businesses are small businesses, it is also true that many unions subject to the LMRDA are small unions. According to our records, 9,537 unions may file the simplified LM-4 forms applicable to unions with receipts of less than $10,000. However, the fact that some unions are small does not excuse them from complying with the LMRDA any more than the fact that some businesses are small excuses them from filing income tax forms.

   Second, in response to your questions about the impact on the economy of unions as a whole and about the total receipts, disbursements, and assets of unions, the first chart shows the total receipts and total assets reported by labor organizations for reporting years 2000 and 2001, recorded as of April 26, 2002. The second chart shows the total disbursements reported by labor organizations for reporting years 2000 and 2001, recorded as of April 26, 2002. Information is not yet available for all 23,917 unions that have filed reports for 2001 because the information has not yet been included in the OLMS database in a form that makes it retrievable.

TABLE 3 *

Report Year	Number of Unions	Total Receipts	Total Assets
2000	29,064	$15,798,420,252	$13,677,171,504
2001	22,618	$14,687,417,014	$13,163,280,409

* All numbers are approximate and certain irregularities exist because our database is still under construction.

TABLE 4 *

Report Year	Number of Unions	Total Disbursements
2000	23,115	$13,304,370,299
2001	3,711	$ 3,965,914,374

* All numbers are approximate and certain irregularities exist because our database is still under construction.

The above figures present the total receipts, disbursements and assets, as reported by those unions that have had their annual financial report, Form LM-2, LM-3, or LM-4, processed by this Office. These figures do not, however, present a completely accurate picture of the impact that labor union operations have on the economy. To begin with, as the figures above show, a sizeable number of labor organizations subject to the LMRDA's reporting requirements did not file reports. As a result, we do not have up-to-date information on those unions' receipts, assets, or disbursements. In addition, it should be noted that, among unions that did report, there is some duplicate reporting of the same money because some money is received or handled by two or more unions. For example, if members pay dues directly to a local union the local reports the entire amount as receipts but a portion of those dues will in turn be paid by the local to the national or international union as per capita tax and will also be reported as receipts by the national union.

Do those numbers include organizations controlled by unions, such as the UAW joint funds, or the George Meany Center of the AFL-CIO?

No, organizations such as the UAW joint funds or the George Meany Center are not included in the numbers stated above. The form that is currently in use requires that unions report only with respect to separate organizations that meet the definition of a subsidiary organization of a labor organization, as defined by OLMS in the Form LM-2 and LM-3 instructions. A subsidiary organization is

"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." Entities like the UAW joint funds and the George Meany Center do not meet that definition.

I would also note that there are three different methods for reporting the finances of subsidiary organizations, and only one of the methods would include the subsidiaries' funds with the unions' funds. The union may file a single combined LM report for the union and the subsidiary, a separate LM report for the subsidiary, or a standard financial statement of the subsidiary organization. The financial information of the subsidiary is only captured in the OLMS database if it is filed as a combined report with the union.

5. *It is my understanding that the Department of Labor currently refuses to disclose the results of its audits to union members who request such information under the Freedom of Information Act. What is the legal basis for such a policy? Is this policy currently under review?*

It has been the Department's policy not to release the closing letters that contain a summary of findings of audits conducted under the Compliance Audit Program (CAP) and International Compliance Audit Program (I-CAP). Exemption 4 of the Freedom of Information Act (FOIA), which protects commercial or financial information that is privileged and confidential, has been used as the primary basis for denying requests for the closing letters.

OLMS felt that protecting the confidentiality of information obtained in CAP and I-CAP audits was important to ensure voluntary cooperation by unions in such proceedings. This policy is currently under review.

6. *The Bush administration has pledged to work with unions while adhering to solid principles. There would be a temptation not to take on these reforms because of how unpopular protecting union member rights may be with some union leaders. Is protecting union members' democratic rights and hard-earned money a principle that the Bush administration is determined to pursue?*

Yes, the Department of Labor is committed to protecting the rights of all American workers and will enforce the provisions of the LMRDA. The LMRDA should be popular with all those who care about union members, because union members and their elected leaders suffer when there is corruption, embezzlement, mismanagement, and infringement of democratic rights. AFL-CIO President George Meany argued that vigorous enforcement of the law

would strengthen the union movement. The Department will continue to work with unions to protect the rights of union members.

7. *How many of the 4,025 delinquent filers for FY 2000 have now filed?*

   A total of 1,872 unions are still considered delinquent for FY 2000 reports. At the time of the Department's August 15, 2001 letter, a total of 4,025 filers were considered delinquent. Many of those unions have since filed reports, however, the figure has also been adjusted to correct processing errors. Further, the total number of filers was understated in the August 15 letter because information for unions that terminated subsequent to that year was not included.

8. *Of the 272 Form LM-2 filers that were delinquent on August 15, 2001, how many have been audited since that time? Can we identify those unions?*

   In reporting year 2000, there were 1,526 Form LM-2 filers that did not meet the filing deadline and of those, as of August 15, 2001, there were 272 Form LM-2 filers from which no 2000 report had been received. Compliance audits have been opened on 11 of the Form LM-2 filers that were delinquent on August 15, 2001. Although OLMS can, of course, identify those unions, that information is generally not disclosed while there is an open investigation.

9. *Of the 50,000 inquiries that you stated OLMS receives each year, please break down how many are complaints, how many are inquiries, and so on.*

   OLMS keeps records of the total number of inquiries received, but does not break them down by subject matter, so we are unable to provide this information.

Again, I appreciated the opportunity to testify before the Subcommittees. I hope the information set forth above is responsive to your request. Please contact my office if you have further questions.

Sincerely,

D. Cameron Findlay

APPENDIX H – SUBMITTED FOR THE RECORD, LETTER FROM JOHN BOEHNER, CHAIRMAN, COMMITTEE ON EDUCATION AND THE WORKFORCE, CHAIRMAN CHARLIE NORWOOD, SUBCOMMITTEE ON WORKFORCE PROTECTIONS AND CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, TO THE HONORABLE ELAINE CHAO, SECRETARY OF LABOR, JULY 10, 2001, AND RESPONSE FROM DON TODD, DEPUTY ASSISTANT SECRETARY OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, OFFICE OF LABOR-MANAGEMENT STANDARDS, U.S. DEPARTMENT OF LABOR, AUGUST 15, 2001

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July 10, 2001

The Honorable Elaine Chao
Secretary of Labor
United States Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Chao:

Over the past several sessions of Congress, the Committee on Education and the Workforce (Committee) has taken troubling testimony about the adequacy, timeliness, and understandability of certain information required under regulations promulgated by the United States Department of Labor (Department) under the authority vested in the Secretary of Labor by the Labor Management Reporting and Disclosure Act (Act) of 1959.

Pursuant to the oversight authority vested in this Committee under Rules X and XI of the Rules of the United States House of Representatives, we write today to request your assistance in helping us to better understand the merits of the concerns that have been voiced before our Committee. We also request that you provide answers for the following questions in a manner that will not reveal any law enforcement practices or other protected information.

Section 201 (b) of the LMRDA requires that each union file annual financial reports with the Secretary of Labor (Secretary) disclosing certain information about their finances. The LMRDA specifies that these reports must contain "information in such detail as may be necessary to accurately disclose (the union's) financial condition and operations for its preceding fiscal year." Among other information that must be filed are "receipts of any kind and the sources thereof;" and "disbursements made by (the union) including the purposes thereof," in such categories as the Secretary may prescribe.

1. Testimony taken before this Committee (referenced above) leads us to suspect that the required informational reports filed by unions are often filed late, or not at all. Since the disclosure requirements of the Act were "intended to provide union members with financial information necessary to make informed decisions about the handling of their union's affairs," if this tardiness and/or neglect is a common occurrence, we would have no recourse but to find the Department's administration of the Act seriously deficient in

its satisfaction of our statutory mandate, and would be forced to insist that immediate and acceptable steps be identified for the Department to follow so that this mandate can be fully and effectively satisfied. Accordingly, for the past three yearly reporting cycles, please answer the questions and/or provide the detailed information identified below:

(a) Please explain the current process used by the Department to identify the "universe" of those labor organizations required to file reports under the Act;
(b) Please explain the current process used by the Department to identify those required reports that are not filed on time;
(c) Please provide information on the number of unions that are required to file reports under the Act, breaking down the total number into the various categories of reports required under the Act;
(d) Please provide information on the number of unions that file reports required under the Act late and/or not at all, breaking down this total number into the various categories of reports required by regulation. From the lists of unions reporting late, please break down these numbers into degree of tardiness (e.g., 10 days late, 30 days late, 90 days late, not at all, etc.).
(e) Please detail the steps (procedures) now followed by the Department upon discovery that a report has not been filed on time;
(f) Please list the number of times during each of the three time periods relating to the data appearing above that the steps identified in the answer to the question appearing directly above has been used;
(g) Please explain all other actions that the Department has at its disposal to sanction tardiness or failures to file reports required under the Act.
(h) Please indicate the number of times that each of the actions described in the answer to the question appearing directly above has been used during the relevant time periods.
(i) Please explain any and all difficulties encountered by the Department in exercising each of the actions at its disposal to sanction late filings or failures to file reports required under the Act, addressing each of the actions indicated in the answers to questions appearing earlier.

2. Effective January 1, 2000, unions were to be required to file a redesigned LM-2 that could be "optically scanned and made available electronically," 64 Fed. Reg. 71,622. Please detail the progress that has been made toward meeting this timetable. In addition, please explain the cause(s) of any failure to fully meet this timetable and the plans of the Department to complete this project.

3. The Department has responsibility under the Act to conduct audits and/or investigations to determine if unions are complying with the law. To discharge this responsibility, it is the Committee's understanding that an audit approach called the Compliance Audit Program (CAP) is used to audit local unions, and an approach called the International Compliance Audit Program (I-CAP) is used to audit national and international unions. In addition, the department conducts a number of investigations that result from its review of the reports filed by unions. Please provide the following information and/or answers to questions concerning these audit programs:

(a) Please describe the steps followed by the Department in the conduct of a CAP and I-CAP with an indication of which of those steps are mandatory and optional.
(b) Please provide information on the procedures used by the Department to select the unions that will be audited under the CAP and/or I-CAP program.
(c) Please provide information on the number of CAPs initiated over the past three reporting cycles, the number of those CAPs completed, the number of I-CAPs initiated over the past three reporting cycles, and the number of those I-CAPs completed.
(d) Please provide information on the number of investigations that have been triggered by information developed as a result of the Department's review of the reports filed by unions. How many of those investigations were embezzlement investigations and of this number, how many were referred to the U.S. Attorney's office?
(e) Of the aforementioned investigations that were referred to the U.S. Attorney's office, how many were acted upon by that office?
(f) Please explain the procedures followed by the Department when problems are detected in reports filed by unions as a result of an audit.
(g) Please explain the procedures followed by the Department when problems are detected as a result of investigations.

4. Section 206 of the Act establishes recordkeeping requirements for unions. The proper discharge of this statutory obligation by labor unions is essential because adequate records must be available for inspection by union members. Please provide information and/or answers for the following questions concerning the compliance of labor unions with these recordkeeping requirements.

(a) Please provide copies of all documents that have been prepared by the Department that outline a specific criteria to guide labor union officials on what information must be retained to adequately satisfy the recordkeeping requirements under section 206 of the Act.
(b) A recent study conducted by the Department revealed that more than twenty-five percent of the labor unions audited were not in compliance with recordkeeping requirements. What elements of the Department's program(s) were changed following this finding?
(c) The aforementioned study found that "the majority of these violations were 'unintentional'." This statement suggests that what could arguably be considered "intentional" violations were found frequently. How many legal actions were initiated by the Department for violations referenced above (that could have been "intentional")?
(d) Please provide information on current enforcement techniques that are available to the Department to ensure compliance in this area.

(e) Please explain all the powers available to the Department to sanction a failure to properly follow the mandatory recordkeeping requirements and discuss any difficulties that the Department has encountered in using each these options.

5. This Committee has heard repeated criticism of the adequacy, reliability and usefulness of the types of information currently required by the Department's regulation to be reported by unions. Please respond to the following questions that capture some of the aforementioned areas of concern.

   (a) How do the reporting requirements of national and international unions compare with the legal reporting requirements of corporations; and
   (b) If a member of a union's rank and file wanted to secure certain information regarding disbursements made by his or her union for organizing purposes, for support of political candidates and causes (and specifically, "turn-out the vote" campaigns or disbursements to organizations affiliated with issue advocacy), for collective bargaining-related purposes, or for other defined activities and causes, could he or she access this type of information from the material currently required to be reported under the LMRDA's implementing regulations? If not, how could a rank and file member of a union detect financial corruption or mismanagement in his or her union based upon information required under federal regulation?

Please advise us if you will be unable to provide the aforementioned information and answers by close of business on July 30, 2001. In advance, thank you for your cooperation and do not hesitate to call Steve Settle or Ben Peltier at (202) 225-7101 if the matters addressed in this communication need to be discussed in greater detail.

Sincerely,

John Boehner
Chairman

Charlie Norwood
Chairman
Subcommittee on Workforce Protections

Sam Johnson
Chairman
Subcommittee on Employee-Employer Relations

U.S. Department of Labor

Employment Standards Administration
Office of Labor-Management Standards
Washington, D.C. 20210

AUG 15 2001

The Honorable John Boehner
Chairman, Committee on Education
and the Workforce
U. S. House of Representatives
Washington, D. C. 20515

Dear Chairman Boehner:

This is in response to your July 10 letter to Secretary of Labor Elaine L. Chao concerning the Department's administration of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The Office of Labor-Management Standards (OLMS) is the agency responsible for carrying out the Secretary of Labor's responsibilities under the LMRDA. The information set forth below is in response to the questions in your letter.

1. *Testimony taken before this Committee (referenced above) leads us to suspect that the required informational reports filed by unions are often filed late, or not at all. Since the disclosure requirements of the Act were "intended to provide union members with financial information necessary to make informed decisions about the handling of their union's affairs," if this tardiness and/or neglect is a common occurrence, we would have no recourse but to find the Department's administration of the Act seriously deficient in its satisfaction of our statutory mandate, and would be forced to insist that immediate and acceptable steps be identified for the Department to follow so that this mandate can be fully and effectively satisfied. Accordingly, for the past three yearly reporting cycles, please answer the questions and/or provide the detailed information identified below:*

   (a) Please explain the current process used by the Department to identify the "universe" of those labor organizations required to file reports under the Act.

The Labor-Management Reporting and Disclosure Act of 1959, as amended, (LMRDA) requires all private sector labor organizations to file reports with the Secretary of Labor. With the passage of the Postal Reorganization Act of 1970, labor organizations representing postal employees became subject to the LMRDA, including its reporting requirements. The Civil Service Reform Act of 1978 and the Foreign Service Act of 1980 set forth Standards of Conduct for federal sector labor organizations and labor organizations representing members

of the Foreign Service. The regulations implementing the Standards of Conduct incorporate the reporting requirements of the LMRDA.

A labor organization subject to the LMRDA must file a Labor Organization Information Report, Form LM-1, along with copies of its constitution and bylaws, within 90 days after the organization first becomes subject to the LMRDA. The Office of Labor-Management Standards (OLMS) then assigns a unique six-digit file number to the organization. The six-digit file number and other identification data are entered into the OLMS Electronic Labor Organization Reporting System database (e.LORS) that contains the "universe" of labor organizations required to file annual financial reports with the Secretary.

If, as a result of a complaint, disclosure request, or other information, OLMS becomes aware of a labor organization that may be covered by the LMRDA but has not filed Form LM-1, the appropriate OLMS District Office conducts an investigation and determines whether or not the organization must file reports under the LMRDA. Once OLMS officially determines that an organization is covered by the LMRDA, OLMS will attempt to get the organization to file. OLMS does not have the authority under the statute to levy fines on an organization that fails or refuses to file required reports.

(b) Please explain the current process used by the Department to identify those required reports that are not filed on time.

Section 201(b) of the LMRDA requires that every covered labor organization file an annual report to disclose its financial condition and operations for its preceding fiscal year. Annual financial reports must be filed on Form LM-2, Form LM-3, Form LM-4, or in a Simplified Annual Report format, depending on the union's total annual receipts, within 90 days after the union's fiscal year ends.

The fiscal year end date selected by the labor organization and a calculation of when the next annual financial report is due are contained in e.LORS. When an annual financial report is received, the date received is registered in e.LORS. At any time, a listing of delinquent annual reports can be generated.

Title III of the LMRDA details information that must be reported by every labor organization that imposes a trusteeship over a subordinate labor organization. Trusteeship information must be filed on the following forms:

Form LM-15, Initial and Semiannual Trusteeship Report
Form LM-15A, Report on Selection of Delegates and Officers
Form LM-16, Terminal Trusteeship Report

Form LM-2, Annual Financial Report (annually in accordance with section 201(b) and with Form LM-16)

OLMS maintains a separate database of trusteeships. This database tracks trusteeship reporting from the time an initial trusteeship report is received until the trusteeship is ended. As with e.LORS, a listing of delinquent trusteeship reports can be generated from the trusteeship database at any time.

(c) ***Please provide information on the number of unions that are required to file reports under the Act, breaking down the total number into the various categories of reports required under the Act.***

As of July 19, 2001, there were 30,365 active labor organizations identified in e.LORS that are required to file an annual report under the Act. As of the same date, there were 278 labor organizations under trusteeship.

Based on total receipts reported on the latest Labor Organization Annual Report the number of unions required to file each category of reports for the year 2000, is as follows:

5,417	Form LM-2 ($200,000 or more in total annual receipts)
12,744	Form LM-3 (less than $200,000 in total annual receipts)
9,902	Form LM-4 (less than $10,000 in total annual receipts)
2,373	Simplified Annual Report (no assets, liabilities, receipts or disbursements and not in trusteeship)

(d) ***Please provide information on the number of unions that file reports required under the Act late and/or not at all, breaking down this total number into the various categories of reports required by regulation. From the lists of unions reporting late, please break down these numbers into degree of tardiness (e.g., 10 days late, 30 days late, 90 days late, not at all, etc.).***

The charts below show the degree of tardiness for each category.

Report Year 2000							
Form Type	Rec'd on Time*	6-14 days late	15-59 days late	60 or more days late	Not received to date	Total Filers	Percent Received late or never
LM-2	3,891	378	544	332	272	5,417	28.17%
LM-3	8,278	534	1,363	956	1,613	12,744	35.04%
LM-4	5,803	423	845	869	1,962	9,902	41.40%
Simplified	2,105	74	0	16	178	2,373	11.29%
Total	20,077	1,409	2,752	2,173	4,025	30,436	34.04%

*Reports received within five calendar days after the due date were recorded as received on time.

OLMS was not able to provide the data for 1998 and 1999 in the same categories as for 2000. However, OLMS used delinquency notices and case openings to calculate the number of reports filed 15 to 59 days late and reports filed 60 or more days late for those years. In 1998 and 1999, reports received within 14 days of the due date were considered as received on time.

Report Year 1999						
Form Type	Received on Time	15-59 days late	60 or more days late	Not received to date	Total Filers	Percent Received late or never
LM-2	4,722	469	222	20	5,433	13.09%
LM-3	10,146	1,553	977	186	12,862	21.12%
LM-4	7,079	1,847	460	830	10,216	30.71%
Simplified	50	2,246	0	137	2,433	97.94%
Total	21,997	6,115	1,659	1,173	30,944	28.91%

Report Year 1998						
Form Type	Received on Time	15-59 days late	60 or more days late	Not received to date	Total Filers	Percent Received late or never
LM-2	4,320	856	239	22	5,437	20.54%
LM-3	9,863	1,921	1,241	130	13,155	25.02%
LM-4	7,368	2,171	739	544	10,822	31.92%
Simplified	633	1,716	3	95	2,447	74.13%
Total	22,184	6,664	2,222	791	31,861	30.37%

The tracking system for delinquent trusteeship reports does not include a mechanism for aging delinquent reports; therefore, we have not provided a breakdown of delinquent reports into the degree of tardiness. Records are kept based on the date when a report is due. As of July 19, 2001:

- 21 initial LM-15 reports were delinquent
- 59 LM-2 reports for terminated trusteeships were delinquent
- 136 trusteeships were delinquent in filing one or more semiannual LM-15 reports (from one to 19 reports)
- 18 LM-16 reports were delinquent (Form LM-2 received that shows termination of trusteeship)

(e) Please detail the steps (procedures) now followed by the Department upon discovery that a report has not been filed on time.

Affiliate Delinquencies

OLMS mails labor organizations blank reporting forms during the month that their fiscal year ends. The forms package includes a reminder to file on time. In addition to the forms package, OLMS District Directors send letters to certain labor organizations within their jurisdiction whose reports were received after the due date in the prior year. The criteria for these letters are: the labor organization reported annual receipts of $200,000 or more on their most recently filed Form LM-2, the labor organization was delinquent in filing Form LM-2 for the prior fiscal year, and the labor organization was mailed a delinquency notice in the prior year.

District Directors also send reminder letters to labor organizations that filed their Form LM-2 annual reports on time in the previous year but have not filed their current reports. The letter is sent 30 days before the report is due and encourages the labor organization to again file on time.

When a report has not been filed on time, the following procedures are adhered to for all labor organizations except International/National labor organizations and simplified filers:

1) Fifteen days after the report due date, a delinquency notice letter is sent to the labor organization notifying the union that it is delinquent in filing the required annual financial report. The letter also warns the union that failure to file can result in civil or criminal penalties.

2) Sixty days after the report due date (45 days after the delinquency notice letter was sent), the OLMS National Office provides District Offices with the information necessary to open delinquency cases. An Investigator processing a delinquency case uses a variety of techniques to obtain a delinquent report. The Investigator sends letters to union officers, contacts the officers by telephone or personally visits officers to obtain the delinquent report. The District Office may also convert a delinquency case to a compliance audit case and continue to pursue the delinquent report during the course of the audit. However, resource constraints make it impossible for the Agency to open many audits. Therefore, very few delinquent unions are audited.

3) Unions with less than $5,000 in receipts are not referred for a delinquency case opening. Instead, twice each year, the District Offices are forwarded information to open delinquency cases for unions with less than $5,000 in receipts which have failed to file reports for three consecutive years. The agency limits the attention it pays to delinquent unions with less than $5,000 in total annual receipts in order to concentrate its limited resources on larger unions, which account for most disclosure requests. If a disclosure request is received for a delinquent report from a union with less than $5,000 in annual receipts, OLMS will pursue that report through the steps outlined above for other delinquent filers.

As noted earlier, OLMS has no authority to impose fines on labor organizations that fail to file reports. Audits do not serve as a deterrent because the agency does not have the resources to conduct a sufficient number.

As part of its International Liaison Program, International/National labor organizations with a large number of delinquent affiliates have been asked to participate in a cooperative effort to obtain reporting compliance from their affiliates. The participating labor organizations are periodically sent lists of delinquent affiliates and requested by OLMS to assist it by obtaining delinquent reports, updating the mailing addresses, and providing notification of

terminations and mergers. Forty-five (45) International labor organizations currently participate in this program.

International Union Delinquencies

The annual blank forms package for each International/National labor organization is mailed by National Office Staff with a letter from the Chief of the Division of Reports, Disclosure and Audits. The letter reminds the union of its filing obligations under the Act and requests that the report be filed on time.

Thirty days after an International/National labor organization's report becomes delinquent, a delinquency letter from the Chief of the Division of Reports, Disclosure and Audits is mailed. If the annual financial report has not been filed within 30 days after the letter is sent (sixty days after the report was due), the matter is referred to the appropriate District Office for a delinquency case opening.

Trusteeship Delinquency Program

In order to ensure that all required semiannual Form LM-15, terminal Form LM-16, and annual and terminal trusteeship Form LM-2 reports are filed, the OLMS National Office maintains a separate database to track trusteeship reports received. Delinquent trusteeship reports are identified from this database.

Periodically, the Chief of the Division of Reports, Disclosure and Audits sends a list of active trusteeships and delinquent trusteeship reports to an International labor organization asking if the trusteeships are still active and requesting that the delinquent reports be filed.

*(f) **Please list the number of times during each of the three time periods relating to the data appearing above that the steps identified in the answer to the question appearing directly above has been used.***

The number of administrative steps described above taken by OLMS to attempt to obtain reports from delinquent labor organizations for the three most recent reporting cycles were as follows:

	Reporting Years		
	2000	1999	1998
Delinquency Notices to Unions	7,446	7,594	8,482
Delinquency Case Referrals to OLMS Field Offices	2,771	2,105	2,305
Delinquency Cases Processed by OLMS Field Offices*	2,222	2,165	2,192
Three-year Delinquency Case Referrals to OLMS Field Offices	179	87	355
International/National Delinquent Affiliate Listings Sent	205	189	**
International/National Delinquency Notices	28	35	63
International/National Delinquency Referrals to OLMS Field Offices	1	1	6
Delinquent Trusteeship Report Listings Sent	7	16	19

* Processed cases include cases referred in a previous reporting period.
** This step was not performed during this period.

(g) Please explain all other actions that the Department has at its disposal to sanction tardiness or failures to file reports required under the Act.

The Act provides criminal penalties for willful failure to file required reports. The Act also provides that the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate. The Act does not give the Secretary the authority to impose fines.

(h) Please indicate the number of times that each of the actions described in the answer to the question appearing directly above has been used during the relevant time periods.

No case was referred to the Department of Justice for a willful failure to file during the relevant time period. Two referrals for possible civil enforcement were made to Regional Solicitor of Labor offices during this time period.

(i) Please explain any and all difficulties encountered by the Department in exercising each of the actions at its disposal to sanction late filings or failures to file reports required under the Act, addressing each of the actions indicated in the answers to questions appearing earlier.

The actions available to the Department to sanction late filings involve legal proceedings, either civil or criminal. OLMS can find no record of any criminal action ever being taken based solely on a late filing or failure to file. It has been the opinion of OLMS that the Justice Department would not be willing to criminally prosecute an individual under section 209 of the LMRDA based solely on such a violation. The GAO June 2000 report on the Department's administration of the LMRDA states that "Justice officials confirmed that they are not likely to prosecute cases if reporting violations are the only basis for the case." OLMS does take cases to Justice for criminal prosecution in which other violations are present, such as embezzlement, as well as reporting violations. These cases sometimes result in convictions based solely on the reporting counts.

In a limited number of instances, OLMS has sought to take civil action against individuals who fail to file reports after repeated entreaties on the agency's part. Such cases are initially referred to the appropriate Regional Solicitor's Office. In the case of an LMRDA covered union, the Regional Solicitor prepares a legal analysis and, assuming the Solicitor's Office agrees that the case is appropriate for litigation, refers the case to the U.S. Attorney because the Department does not have independent litigation authority. In recent years relatively few delinquent report cases have been referred to the Regional Solicitors. OLMS efforts to achieve a higher priority within the Department of Labor for civil enforcement of the timely filing requirement were not implemented by Department leadership. In the last three years, only two cases involving delinquent filers subject to the Standards of Conduct regulations applicable to unions representing government employees have been filed with Administrative Law Judges and orders issued which required the subject unions to file.

2. *Effective January 1, 2000, unions were to be required to file a redesigned LM-2 that could "be optically scanned and made available electronically," 64 Fed. Reg. 71,622. Please detail the progress that has been made toward meeting this timetable. In addition, please explain the cause(s) of any failure to fully meet this timetable and the plans of the Department to complete this project.*

In FY 1998 Congress directed OLMS to establish an alternative system for the electronic submission of reports required to be filed under the LMRDA and for an indexed computer database on the information for each report that is searchable through the Internet.

Effective January 1, 2000, unions were required to file the redesigned LM-2, LM-3, and LM-4 forms that could be optically scanned. The goal of requiring unions to file the scannable forms is to make a copy of each union's report available on the Internet and to make a significant portion of the data available on a searchable database accessed through the Internet. According to

the OLMS Implementation Plan, Modernizing LMRDA Union Reporting and Disclosure (dated May 1998), "(f)ull Internet public disclosure availability is projected for FY 2001."

OLMS contracted with the Department of Commerce's National Technical Information Service (NTIS) to develop and host the Public Disclosure Internet site, the reporting database, and the information technology infrastructure. Also, the LM-2, LM-3, and LM-4 reports are being processed by an outside vendor to produce the images of the reports and the data required for the searchable database. The vendor has begun to provide OLMS with the images and the data from the reports. The development and testing of the disclosure site and underlying computer infrastructure are underway. OLMS and NTIS have begun to process this information through the computer applications designed to review the images and the data for accuracy prior to loading the information on the Internet. The current goal of OLMS is to have the Internet site available to the public before the end of CY 2001.

The major cause for the delay (i.e., implementing the Internet disclosure by the end of CY 2001 rather than FY 2001) is that the first two vendors selected by OLMS to produce the images and data ceased operations before actual work began. Because the LM reports, particularly the LM-2, are quite complicated and the volume of work (approximately 30,000 reports per year) is quite low, it has been difficult to interest a large, stable vendor in bidding on the project.

According to the OLMS Implementation Plan, full implementation of the electronic filing system was also projected for FY 2001. However, the development of an electronic version of the LM-2, LM-3, and LM-4 has proved to be much more difficult and problematic than expected.

OLMS also contracted with NTIS to develop the electronic versions of the reports. There are two major causes of delay in implementing electronic filing. First, significant software "bugs" were uncovered when OLMS began testing electronic versions of all three forms (LM-2, LM-3 and LM-4) approximately one year ago. These problems were most acute in the LM-2 electronic version. Efforts to correct these software "bugs" have taken many months. I have contacted my counterpart at the Department of Commerce to request that this project be given a high priority. Progress has improved, but, until final end-stage testing is completed, OLMS cannot be confident that the problems have been corrected.

OLMS is currently conducting internal testing on an electronic version of the LM-4 which is the least complex form (filed by unions with total annual receipts of less than $10,000) and will begin testing soon on the more complex LM-2 and LM-3.

Any system problems identified during this critical end-stage testing may cause the implementation date to slip.

Second, in order to submit the LM forms electronically, they must contain an electronic signature capability. As the LMRDA contains criminal penalties for falsifying information on the required reports, the electronic signature solution selected for the forms needs to ensure both security of the data transmitted as well as authentication of the reports' signatories. Initially, OLMS and NTIS were working with an outside vendor to provide a Public Key Infrastructure (PKI) for electronic signature capability. Ultimately, the individual vendor could not offer the service at a reasonable charge per signature. However, OLMS through NTIS has recently entered into an agreement through the General Services Administration (GSA) to use a vendor that has been approved by GSA to provide electronic signature technology at a much more reasonable cost to government agencies.

While OLMS is continuing to work toward implementation of electronic filing prior to December 31, 2001, OLMS is concerned because of these two problems that the forms will not be available for electronic filing by that date. OLMS is currently initiating action to review other types of software with the recognition that the software on the market today, in 2001, may be significantly more advanced than the software which was selected in 1999 for the forms program. If the end-stage testing discussed above reveals continuing problems and if the latest software technology appears better suited for adaptation to the LM forms, OLMS will reevaluate the software selected for electronic filing.

3. *The Department has responsibility under the Act to conduct audits and/or investigations to determine if unions are complying with the law. To discharge this responsibility, it is the Committee's understanding that an audit approach called the Compliance Audit Program (CAP) is used to audit local unions, and an approach called the International Compliance Audit Program (I-CAP) is used to audit national and international unions. In addition, the Department conducts a number of investigations that result from its review of the reports filed by unions. Please provide the following information and/or answers to questions concerning these audit programs:*

   (a) ***Please describe the steps followed by the Department in the conduct of a CAP and I-CAP with an indication of which of these steps are mandatory and optional.***

The Compliance Audit Program (CAP) is a streamlined audit/investigative approach designed to detect LMRDA criminal and civil violations in labor organizations in a minimum amount of time by using specialized auditing,

investigating, and report writing techniques. The principal objectives of this program are to:

- uncover section 501(c) violations (embezzlements) and other criminal and civil violations of the LMRDA or Civil Service Reform Act (CSRA);
- create a visible enforcement presence in the labor community; and
- provide effective grass roots compliance assistance directly to union officers.

Required procedures, instructions and standard forms for conducting all aspects of CAP audits are detailed in the CAP handbook. The CAP handbook is considered by OLMS to be a law enforcement tool and, in accordance with your stated request, is not provided in this response.

On-site audit procedures contained in the CAP audit/investigative plan consist of five mandatory core steps and forty-seven optional steps divided into four categories:

Assets:	Core Audit Step 1 Optional Steps 22-30
Receipts:	Core Audit Step 2 Optional Steps 6-21
Disbursements:	Core Audit Step 3 Optional Steps 31-48
Other:	Core Audit Steps 4-5 Optional Steps 49-52

All five core audit steps must be completed in every CAP. These core audit steps were selected to detect the most common types of embezzlements in labor organizations and to check the accuracy of the union's books and records.

OLMS' International Compliance Audit Program (I-CAP) is designed to:

- determine compliance with criminal and civil provisions of the LMRDA (or CSRA);
- review relationships between International Unions and affiliated subordinate bodies and determine, to the extent possible, compliance by affiliates with provisions of the LMRDA;
- provide compliance assistance; and

increase communication between OLMS and International Unions.

An I-CAP is conducted utilizing an audit/investigative plan that consists of twenty-five mandatory investigative steps, fifteen designed to detect and correct civil and criminal violations and ten designed to examine the International Union's financial records. The I-CAP team can select from thirty-five optional steps based on information developed during preparation for on-site work or in the course of mandatory investigative procedures. As with CAP, details regarding specific I-CAP steps are considered to be law enforcement protected and are, therefore, not discussed further herein.

(b) ***Please provide information on the procedures used by the Department to select the unions that will be audited under the CAP and/or I-CAP Program.***

OLMS field office managers select local unions for audit under CAP based on an analysis/review of LM reports; delinquent LM report listings; complaints; and other information.

Unlike CAP, unions are selected for I-CAP on a systematic method based on each International Union's reported annual receipts. Beginning in 1984, International Unions were categorized by receipt size as very large (over $100,000,000 in annual receipts), large ($10,000,000 to $100,000,000), medium ($100,000 to $9,999,999) or small (less than $100,000) and were selected for audit on an ascending order within each category. The Agency has generally followed this order for audits of International Unions. However, factors such as the locations of unions have affected the order of audit. For example, resource constraints in District Offices with a large number of Internationals have delayed completion of certain audits. The original intent of the Agency was to audit every International Union on a recurring cycle. I believe that a five-year cycle would be a reasonable standard because of the five-year statute of limitations. This was never achieved in the past due to resource constraints and will not be met in the future without significant additional resources. I-CAPs of some of the largest unions have required in excess of 600 staff days. Since the program's inception in 1982, OLMS has only completed 153 I-CAPs and ten of the largest unions have never been audited.

(c) ***Please provide information on the number of CAPs initiated over the past three year reporting cycles, the number of those CAPs completed, the number of I-CAPs initiated over the past three reporting cycles, and the number of those I-CAPs completed.***

For the last three completed fiscal years, the requested figures are:

	FY 1998	FY 1999	FY 2000
CAPs opened	360	242	200
CAPs completed	302	289	204
I-CAPs opened	0	2	0
I-CAPs completed	0	0	2

(d) Please provide information on the number of investigations that have been triggered by information developed as a result of the Department's review of the reports filed by unions. How many of those investigations were embezzlement investigations and of this number, how many were referred to the U.S. Attorney's office?

(e) Of the aforementioned investigations that were referred to the U.S. Attorney's office, how many were acted upon by that office?

The following table provides the information requested in questions (d) and (e) above.

	2000	1999	1998
All Investigations Opened from LM Reports*	52	54	105
Embezzlement Investigations	40	45	52
Referred to U. S. Attorney Offices	6	19	23
Legal Action by U. S. Attorney	0	6	10
Declined by U. S. Attorney	2	7	10
(Local Prosecution following declinations)	(2)	(5)	(6)
Pending at U.S. Attorney	4	6	3

*Audits and similar activities that may be based on a filed report and involve a case opening have been excluded from these numbers as they are not considered investigations.

(f) Please explain the procedures followed by the Department when problems are detected in reports filed by unions as a result of any audit.

Routine deficiencies uncovered in the course of CAP audits are discussed with union officials during the audit and amended reports are requested if appropriate. More serious deficiencies, which may be indicative of an attempt to

conceal financial malfeasance, are pursued in a fall-out criminal embezzlement case.

An I-CAP team seeks to obtain amended International Union reports to correct deficiencies identified during I-CAP procedures. As with CAPs, if more serious violations are uncovered, involving potentially criminal activity, fall-out criminal cases are opened. In addition, International Union officials are asked to assist in obtaining deficient and delinquent reports from affiliates. Leads to appropriate OLMS District Offices are forwarded for follow-up in affiliates where corrective efforts during the I-CAP have been unsuccessful.

In fiscal year 2000, OLMS implemented a "Reports Electronic Audit Program" (REAP) designed to identify reporting deficiencies in annual financial reports (LM-2/3/4) through the application of the following standard review criteria:

- acceptability standards that address basic, key information that is critical for adequate public disclosure; and
- reporting standards that address other types of reporting errors and deficiencies.

When deficiencies requiring correction are uncovered through REAP, a deficient reports case is opened to obtain an amended report if the deficiencies are considered critical or an advisory letter is sent to the union informing the union of less critical deficiencies.

(g) ***Please explain the procedures followed by the Department when problems are detected as a result of investigations.***

Criminal Cases

OLMS has developed significant expertise in the investigation of criminal violations of the LMRDA, such as embezzlement, and related laws. OLMS field offices work closely with their respective U.S. Attorney Offices in the investigation and prosecution of these cases. Upon obtaining evidence that a criminal violation, such as embezzlement, may have occurred, OLMS field offices contact the U.S. Attorney's Office and seek a delegation of investigative authority, on a case-by-case basis. As Labor's expertise in these cases has developed over time, this delegation has become largely pro forma, since Justice generally grants Labor's request. In most cases involving possible criminal violations, OLMS will consult with the U. S. Attorney's Office throughout the investigation and concerning the decision to close or refer the case for prosecution. The Department of Justice is responsible for litigating all criminal violations of the Act and determines whether it will accept cases referred by

OLMS for prosecution on a case-by-case basis. If Justice declines to prosecute a case, OLMS may refer the case to local prosecutors, but Labor cannot litigate on its own.

As noted in the GAO 2000 Report on Labor's administration of the LMRDA, both Labor and Justice view their relationship in the investigation and prosecution of criminal cases as positive. OLMS is able to get criminal cases involving embezzlement and similar crimes prosecuted. When cases are declined by the U.S. Attorney, many are referred to local prosecutors for action. However, in spite of success with embezzlement cases, the GAO Report also confirmed that Justice is not likely to prosecute cases if reporting violations are the only basis for the case. Given the unacceptably high rate of delinquencies, this is an area of concern to DOL and we will work with Justice to achieve a higher priority for these cases.

Civil Cases

In civil investigations, such as those involving election and trusteeship complaints, if Labor concludes that litigation is warranted, it will refer the case to Justice with a request that a civil suit be instituted on behalf of the Secretary of Labor. In civil enforcement, Justice and Labor attorneys collaborate to present the case. In some instances, when Justice resources are limited, Justice will delegate prosecution authority to Labor, which requires Labor's Solicitor to be the attorney of record.

4. *Section 206 of the Act establishes recordkeeping requirements for unions. The proper discharge of this statutory obligation by labor unions is essential because adequate records must be available for inspection by union members. Please provide information and/or answers for the following questions concerning the compliance of labor unions with these recordkeeping requirements.*

   (a) Please provide copies of all documents that have been prepared by the Department that outline a specific criteria to guide labor union officials on what information must be retained to adequately satisfy the recordkeeping requirements under section 206 of the Act.

The LMRDA does not set out in detail the kinds of records that must be maintained. Rather, LMRDA section 206 sets the standard that records be kept that will:

> . . . provide in sufficient detail the necessary basic information and data from which the documents filed with the Secretary may be

> verified, explained or clarified, and checked for accuracy and completeness . . .

Section 206 follows this "performance" standard with a list of the minimum categories of records that must be kept: " . . . vouchers, worksheets, receipts, and applicable resolutions . . . ."

In implementing LMRDA section 206, the Department has found that because of the wide variety of recordkeeping systems used by unions as well as the wide scope and variety of their financial transactions it is preferable not to limit the scope of the record-keeping requirements to a specific list of records. However, the Department has issued three publications which describe in more detail the recordkeeping standard: a one-page "tip" sheet on the retention of union records, a similar one-page section (page 37) of a pamphlet issued in 2000 entitled *Conducting Audits in Small Unions: A Guide for Trustees,* and a portion of a pamphlet issued earlier this year entitled *LMRDA Compliance: A Guide for New Officers.*

Except for these documents, the public statements made by the Department simply follow the principle of the statute itself in restating the performance standard for the recordkeeping requirement with a list of the basic categories of records that must be kept as examples.

Finally, in the LMRDA Interpretative Manual (which contains statements of the Department's positions on provisions of the LMRDA for the use of Department staff in implementing the LMRDA but which is also available to the public), entry number 285.400 provides some additional guidance.

For your information, copies of the following are enclosed:

- the compliance assistance "tip" sheet *Retention of Union Records*
- the compliance assistance pamphlet *Conducting Audits in Small Unions: A Guide for Trustees*
- the compliance assistance pamphlet *LMRDA Compliance: A Guide for New Officers*
- the recordkeeping regulation for annual financial reports (29 CFR 403.7)
- the recordkeeping instructions for Form LM-2
- the statement on recordkeeping requirements from the compliance assistance pamphlet *Reports Required*
- LMRDA Interpretative Manual entry number 285.400

(b) A recent study conducted by the Department revealed that more than twenty-five percent of the labor unions audited were not in

compliance with recordkeeping requirements. What elements of the Department's program(s) were changed following this finding?

The original study referred to in your question involved a review in 1985 of local union audits done under the Compliance Audit Program (CAP). A more recent study, referred to on page 37 of the compliance assistance pamphlet *Conducting Audits in Small Unions: A Guide for Trustees,* issued in 2000, found that 35% of unions were deficient in their recordkeeping practices. Since the 1985 study, the Department has prepared and issued the first three compliance assistance pamphlets listed above. The Department has also continued its emphasis on recordkeeping in its audit and compliance assistance programs. In particular, the pamphlet *LMRDA Compliance: A Guide for New Officers,* issued in 2001, is part of the Department's "Labor Organization Orientation Program" (LOOP). Under LOOP, copies of the pamphlet were sent to National and International Unions, who were encouraged to distribute them to their local unions, and copies are sent to all new reporting organizations. Despite these efforts, evidence suggests that recordkeeping violations continue to be a problem.

(c) ***The aforementioned study conducted by the Department revealed that "the majority of these violations were 'unintentional'." This statement suggests that what could arguably be considered "intentional" violations were found frequently. How many legal actions were initiated by the Department for violations referenced above (that could have been "intentional")?***

The studies referred to in the tip sheet and the pamphlet *Conducting Audits in Small Unions: A Guide for Trustees* found that the "overwhelming" majority of recordkeeping violations were unintentional. The Department has discovered relatively few intentional recordkeeping violations.

With regard to legal actions, our records indicate that during the last three completed fiscal years, 1998 - 2000, 104 indictments were brought for violations of LMRDA section 209(c), which covers falsifying, concealing, withholding, or destroying records. An additional 16 indictments were brought for violations of LMRDA section 209(a), which covers the failure to maintain records and the failure to file a report. Most of the criminal prosecutions for intentional recordkeeping violations have been pursued in conjunction with other charges such as embezzlement. To the best of our knowledge, no civil actions have been brought for recordkeeping violations.

(d) ***Please provide information on current enforcement techniques that are available to the Department to ensure compliance in this area.***

As indicated above, the LMRDA provides for civil litigation and criminal prosecution for violations of the recordkeeping requirements, but the Department does not have the authority to impose fines for violations of the recordkeeping requirements. Since few of the recordkeeping violations are considered intentional, however, the Department uses its audits and compliance assistance programs to educate union officers about their recordkeeping obligations and thereby enhance compliance. Civil litigation is also available for unintentional violations of the recordkeeping requirements, and willful violations are also subject to criminal prosecution, as discussed above.

(e) Please explain all the powers available to the Department to sanction a failure to properly follow the mandatory recordkeeping requirements and discuss any difficulties that the Department has encountered in using each of these options.

As indicated above, the Department can bring civil litigation or seek criminal prosecution through the Department of Justice to sanction failures to follow the LMRDA recordkeeping requirements, but the Department does not have the authority to impose fines. In attempting to initiate and successfully complete such options, the Department encounters the difficulties attendant to bringing legal actions under many laws: competing priorities; time and resource constraints; legal system hurdles; and the like. Given the absence of leadership support in the past years for prosecution of reporting and recordkeeping violations, and repeated cuts in OLMS resources, these difficulties have prevented any effective enforcement action.

5. *This Committee has heard repeated criticism of the adequacy, reliability and usefulness of the types of information currently required by the Department's regulation to be reported by unions. Please respond to the following questions that capture some of the aforementioned areas of concern.*

(a) How do the reporting requirements of national and international unions compare with the legal reporting requirements of corporations?

LMRDA REPORTING REQUIREMENTS

Reporting requirements are imposed on labor organizations by section 201 of the LMRDA.

Section 201(a) requires every labor organization to adopt a constitution and bylaws and to file a copy thereof with the Secretary of Labor. The Department of Labor has developed Form LM-1 for making this filing. Pursuant to section 201(a) the reports must contain:

(i) the signature of the labor organization's president and secretary
(ii) the labor organization name
(iii) the name and title of each officer
(iv) the initiation fees and work permit fees charged to members
(v) detailed statements explaining the following provisions and procedures:

(a) qualifications for and restrictions on membership
(b) levying of assessments
(c) participation in insurance or benefit plans
(d) authorization for fund disbursement
(e) audit of financial transactions
(f) calling of regular and special meetings
(g) officer and steward selection procedures
(h) discipline or removal of officers for breach of trust
(i) impositions of fines, suspensions and expulsions including grounds and hearing procedures
(j) authorization for bargaining terms
(k) ratification of contract terms
(l) authorization for strikes
(m) issuance of work permits

Section 201(b) requires every labor organization to file an annual report with the Secretary of Labor disclosing information about the union's finances. The report must be signed by the organization's President and Treasurer. The Department of Labor has adopted reporting forms for unions to use. A union with total annual receipts of $200,000 or more must file Form LM-2. A union with total receipts of less than $200,000 may file Form LM-3. A union with annual receipts of less than $10,000 may file Form LM-4. Section 201(b) specifies that the report must disclose the following details as specified by the form:

(i) assets and liabilities at the beginning and end of each year
(ii) receipts of any kind and the sources thereof
(iii) salary, allowances, and any direct and indirect payment to each officer and any employee who received more than $10,000 aggregate from a labor organization and any affiliated labor organization
(iv) direct and indirect loans made to any officer, employee, or member aggregating more than $250 in the fiscal year together with a statement of purpose, security and repayment terms
(v) direct and indirect loans to any business enterprise in the fiscal year together with a statement of purpose, security and repayment terms

(vi) other disbursements made by the labor organization with details regarding purposes of disbursement; all in such categories as the Secretary of Labor may prescribe. (Form LM-2 requires disbursements to be reported in 18 categories: to officers; to employees; per capita tax; fees, fines, assessments, etc.; office & administrative expense; educational & publicity expense; professional fees; benefits; contributions, gifts & grants; supplies for resale; direct taxes; withholding taxes; purchase of investments & fixed assets; loans made; repayment of loans obtained; to affiliates of funds collected on their behalf; on behalf of individual members; and other disbursements. The following nine disbursement categories have supporting schedules that must be completed with additional information on the disbursements reported in those categories: to officers; to employees; office & administrative expense; benefits; contributions, gifts & grants; purchase of investments & fixed assets; loans made; repayment of loans obtained; and other disbursements.)

Section 201(c) requires every labor organization to make the reports due under this title available to all of its members. For just cause a federal district court or state court may order a union to give a member access to the books, records, and accounts necessary to verify the reports.

SEC REPORTING REQUIREMENTS

The Department of Labor does not have the expertise to provide more than a very general overview of this complex area of law. It is recommended that the chairman contact the SEC for a more detailed analysis.

A company whose stock is publicly traded must file numerous public reports with the Securities and Exchange Commission ("SEC"). This is a predicate for capitalization through sale of stock in the publicly traded exchanges of the United States. Moreover, once a corporation becomes publicly traded there are ongoing reporting requirements.

The Securities Act of 1933, as amended, 15 USC §77a to 77bbbb, referred to as the "Truth In Securities" law, requires extensive disclosure of most publicly traded stocks so that all investors are able to ascertain facts about a stock prior to making a purchase.

The Securities Act of 1934, as amended, 15 USC §78a to 78lll, grants the SEC extensive authority to require periodic public reports by publicly traded companies with more than ten million dollars in assets.

Section 6(a) of the 1933 Truth in Securities law requires that domestic U.S. companies file security registrations with the SEC. Registration statements and the prospectus statements included become public documents and are accessible for review on the EDGAR database linked to the SEC website at www.sec.gov. In such "S" series filings, the registering corporation must:

(i) identify principal executive officers and financial officers
(ii) identify the Board of Directors or persons with management power
(iii) identify the underwriter and include the underwriters' certification
(iv) specify the securities offered
(v) describe the corporation's properties and business
(vi) provide detailed financial statements certified by independent accountants

These registration statements are subject to detailed examination by SEC personnel for compliance with disclosure requirements established by the SEC regulations at 29 CFR §200, et seq. The registration is generally not accepted until extensive review and completion of amendments. A public offering cannot be made until this process is complete.

After a corporate stock is publicly offered the Securities Act of 1934 requires ongoing filing of public reports for all companies with assets over $10,000,000. Section 12 of this Act requires the filing of many reports including:

(i) an annual "10-K" report that will provide a comprehensive overview of all of a corporation's business including audited financial statement with schedules, discussion of all litigation and significant events
(ii) a quarterly "10-Q" report for the first 3 quarters of each fiscal year to report on significant activities and to provide unaudited financial reports
(iii) an "8-K" report any time a material event or corporate change occurs which may be of interest to investors in the corporation
(iv) a "13D" report to disclose person(s) who hold more than a 5% block of publicly traded stock in a particular class
(v) a "14C" statement setting forth disclosure requirements for information statements which, under the 1934 Act, must be annually sent to every holder of the registered security

(b) If a member of a union's rank and file wanted to secure certain information regarding disbursements made by his or her union for organizing purposes, for support of political candidates and causes (and specifically, "turn-out the vote" campaigns or disbursements to

organizations affiliated with issue advocacy), for collective bargaining-related purposes, or for other defined activities and causes, could he or she access this type of information from the material currently required to be reported under the LMRDA's implementing regulations? If not, how could a rank and file member of a union detect financial corruption or mismanagement in his or her union based upon information required under federal regulation?

The reports do not require disclosure of disbursements in the categories of political activities, organizing, collective bargaining, or other defined activities. Form LM-2 requires disbursements to be reported in 18 categories: to officers; to employees; per capita tax; fees, fines, assessments, etc.; office & administrative expense; educational & publicity expense; professional fees; benefits; contributions, gifts & grants; supplies for resale; direct taxes; withholding taxes; purchase of investments & fixed assets; loans made; repayment of loans obtained; to affiliates of funds collected on their behalf; on behalf of individual members; and other disbursements. The following nine disbursement categories have supporting schedules that must be completed with additional information on the disbursements reported in those categories: to officers; to employees; office & administrative expense; benefits; contributions, gifts & grants; purchase of investments & fixed assets; loans made; repayment of loans obtained; and other disbursements.

In addition to the information in the reporting forms, members may have access to all the financial books and records of their labor organizations for just cause under LMRDA section 201(c). However, members must bring a private legal action to enforce this right since the Department of Labor has no authority to enforce Section 201(c).

With regard to the ability of a member to detect financial corruption or mismanagement, all the labor organization financial reporting forms have a question asking whether a loss or shortage of funds or property has been discovered. All the forms require the disclosure of information on disbursements that could provide leads for the detection of embezzlement or fiduciary improprieties; this is especially true of Form LM-2, which has 18 separate disbursement items supported by nine detailed schedules. Members can use leads from the reporting forms to seek access to the underlying records pursuant to LMRDA section 201(c), as mentioned in the preceding paragraph.

However, it is often difficult to detect financial corruption or mismanagement from a reporting form, no matter what disclosure is required, since the perpetrators will often attempt to conceal illegal and improper actions.

I hope the information set forth above and in the enclosures is responsive to your request. If you have any questions or desire additional information, please contact me at (202) 693-0200.

Sincerely,

Don Todd
Deputy Assistant Secretary

Enclosures

APPENDIX I – SUBMITTED FOR THE RECORD, UNITED STATES GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE, DEPARTMENT OF LABOR, ADMINISTERING THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT, JUNE 2000, GAO/HEHS-00-116

United States General Accounting Office

GAO

Report to the Chairman, Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce, House of Representatives

June 2000

DEPARTMENT OF LABOR

Administering the Labor-Management Reporting and Disclosure Act

GAO/HEHS-00-116

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Abbreviations

CAP	Compliance Audit Program
CSRA	Civil Service Reform Act of 1978
ESA	Employment Standards Administration
FTE	full-time-equivalent
I-CAP	International Compliance Audit Program
LMRDA	Labor-Management Reporting and Disclosure Act
MOU	memorandum of understanding
OLMS	Office of Labor-Management Standards

United States General Accounting Office
Washington, D.C. 20548

Health, Education, and
Human Services Division

B-282983

June 30, 2000

The Honorable John A. Boehner
Chairman, Subcommittee on
Employer-Employee Relations
Committee on Education and
the Workforce
House of Representatives

Dear Mr. Chairman:

The Labor-Management Reporting and Disclosure Act (LMRDA) of 1959 was enacted to prevent and eliminate improper practices by labor organizations after the Congress identified numerous instances of unethical conduct among labor unions.[1] The act focuses on union democracy—that is, the democratic rights of union members—and the financial integrity of unions' assets. The Secretary of Labor, the Attorney General, and union members each play roles in enforcing provisions of six of the act's seven titles. The enforcement responsibility of the Attorney General is carried out under a memorandum of understanding (MOU) with the Secretary of Labor.[2] The Secretary of Labor's responsibilities are carried out through the Employment Standards Administration's Office of Labor-Management Standards (OLMS) and its field offices. As of February 2000, more than 31,000 private and federal employee labor unions with

[1]Initially, LMRDA covered private sector employees only, but coverage under the act was extended to Postal Service employees under the Postal Reorganization Act of 1970. Subsequent legislation—the Civil Service Reform Act of 1978, the Foreign Service Act of 1980, and the Congressional Accountability Act of 1995—provided similar coverage to federal employees. However, neither LMRDA nor this related legislation covers employees of state, county, or municipal governments.

[2]The MOU describes the types of cases that Justice is to pursue and those that Labor is to pursue. Union members may enforce certain provisions of the act through private suits in federal district court. This report does not address the seventh title of the act, which amended the National Labor Relations Act and is the responsibility of the National Labor Relations Board.

about 13.5 million members nationwide and total receipts estimated at over $15.3 billion were subject to LMRDA or related legislation.[3]

Concerns about impediments to union democracy have been the subject of a series of congressional hearings since May 1998. Congressional interest has focused on the degree to which the rank-and-file members of unions have been able to secure their rights under LMRDA and whether additional legislation or changes to the act are needed. Accordingly, you requested that we review (1) Labor's organizational structure and use of fiscal year 1999 resources to implement LMRDA and (2) how Labor administers and enforces each title of the act for which it is responsible.

To respond to your request, we reviewed Labor's organizational documents, budget, and regulations for carrying out LMRDA. We also reviewed and analyzed computerized data on nearly 7,000 cases that Labor processed in fiscal years 1998 and 1999 to determine its efforts relative to the six titles of the act involving the Department. For trusteeship[4] and certain compliance audit program cases, we reviewed case file data from fiscal years 1995 through 1999 because few or no cases were processed in fiscal years 1998 and 1999. Labor processed 116 of these two types of cases over the 5-year period. Because Labor does not separate cases by the different laws, our analysis covers cases under both LMRDA and related legislation. Also, Labor does not maintain case data by title, but the program codes for its work activities clearly defined which cases belonged to various titles in most instances. However, for three titles we assigned cases for three provisions of the titles using additional information from OLMS.[5] Our review of certain cases in Labor's database identified errors such as missing data fields, miscoded cases, and erroneous case results, but these errors did not materially affect the statistical results in our analysis. When possible, we resolved these errors with Labor officials. We

[3]The 31,000 unions include national and international unions; intermediate bodies, which are various councils, conferences, or certain types of boards; and local unions. Receipts include dues, fees, investments, or any special-purpose funds that a labor organization receives, regardless of source.

[4]When a labor organization takes control of a subordinate body by suspending the autonomy granted to that body under its constitution and bylaws, the subordinate body is said to be in trusteeship.

[5]See app. II (title I, collective bargaining), app. III (title II, the determination of labor organizations subject to LMRDA), and app. VI (title V, prohibition against certain persons holding office) for more information.

conducted our review between April 1999 and June 2000 in accordance with generally accepted government auditing standards.

Summary of Findings

Labor's OLMS responsibilities under LMRDA range from ensuring that union members gain access to collective bargaining agreements to safeguarding unions' funds from embezzlement and other illegal actions. OLMS' national office and its 21 field offices had a fiscal year 1999 budget of just over $28 million and 300 full-time-equivalent (FTE) staff working primarily to administer LMRDA and provisions of related legislation. Our analysis of Labor's efforts to administer each title of the act found that OLMS performs investigations and compliance audits, monitors reporting and disclosure requirements, and provides compliance assistance, but investigations are the tool most frequently used. OLMS uses voluntary compliance and litigation to enforce the act's requirements, but the voluntary compliance approach is used most often. Finally, regarding Justice's enforcement efforts under the MOU with Labor, we found that Justice plays a significantly greater role in litigating cases involving embezzlement or other similar wrongdoing than cases involving reporting violations, which are considered to be less serious infractions of the law.

Overview of LMRDA Provisions

OLMS, Justice, unions and their members, employers, and others play various roles under six titles of LMRDA (see table 1).

Table 1: LMRDA Provisions

Title	Provisions
Title I–Bill of Rights of union members	This title provides various protections for union members, such as guaranteeing them the right to elect officers and gain access to copies of collective bargaining agreements. Labor may bring a civil action to enforce the protection related to collective bargaining agreements. For all parts of this title, it is up to those whose rights have been violated (such as union members) to bring a civil action to enforce those protections.
Title II–Reporting requirements	This title requires labor unions, their officers and employees, employers, and others to file certain reports on financial and administrative practices with Labor in a timely and complete manner. Labor is required to make these reports publicly available. Labor may also bring a civil action to enforce these reporting requirements. Any willful violation of reporting requirements is a crime, which is within the responsibility of the Department of Justice.
Title III–Trusteeships	This title allows an international union or its intermediate body[a] to take control of a subordinate body by suspending its autonomy under certain conditions. Union members or a subordinate body may file a complaint with Labor to protest a trusteeship. Labor, union members, or a subordinate body may bring a civil action to ensure that trusteeships are formed and operated in compliance with the law. Any willful violation of this title is a crime, which is within the responsibility of the Department of Justice.
Title IV–Union elections	This title provides for fair and democratic union elections. Union members have the right to protest elections' outcomes by filing a complaint with Labor after exhausting union remedies. Labor may bring a civil action to set aside invalid elections and hold new elections.
Title V–Safeguards of unions' assets	This title seeks to protect unions' funds and assets against improper activities, such as embezzlement and certain loans to union officers and employees. Union members may bring a civil action for relief against those who have committed certain improper acts. Embezzlement and other willful violations of this title are crimes, which are within the responsibility of the Department of Justice.
Title VI–Miscellaneous provisions	This title makes it illegal for unions to discipline, threaten, or use violence against union members for exercising their rights under LMRDA, and it prohibits union members from picketing to extort money from employers. This title also provides Labor authority to conduct investigations of violations of any provisions of the act (other than part of title I) and issue subpoenas to secure records and compel witnesses to testify. Certain violations of this title are crimes, which are within the responsibility of the Department of Justice, and others are enforceable by individuals by bringing a civil action.

[a]An intermediate body is a type of labor organization that is subordinate to a national or international union but is not a local union. Examples include district councils, joint councils, conferences, and certain types of boards.

OLMS Organization and Use of Fiscal Year 1999 Resources

Labor's efforts under LMRDA are carried out in Washington, D.C., in the OLMS national office and through OLMS' 21 field offices located around the nation.[6] The OLMS budget for fiscal year 1999 was just over $28 million, and about 300 FTE staff worked primarily to administer LMRDA and related legislation. Most of these staff were investigators located in field offices who investigate complaints and criminal activity in unions, initiate compliance audits, or provide compliance assistance to unions and others.

In fiscal year 1999, OLMS field investigators spent 62 percent of their time protecting the financial integrity of unions' assets from criminal wrongdoing—work that involved criminal investigations and compliance audits (covered under title V of the act). Most of this time was devoted to criminal investigations of embezzlement of unions' funds. Another 26 percent of OLMS' field investigators' time was spent on ensuring that union members obtained access to collective bargaining agreements, determining whether groups met certain criteria to be considered a union, and investigating complaints about trusteeships and union elections (referred to as union democracy issues, covered under titles I–IV of the act). OLMS field investigators spent another 5 percent of their time working to ensure that reports required from unions and others were filed (covered under title II of the act) and that the public had access to the information. Most of this time was spent on getting unions to report required information in a complete and timely manner. Finally, OLMS field investigators used 7 percent of their time to provide compliance assistance, address inquiries, or plan future criminal casework. Appendix I provides details on Labor's organizational structure and use of its fiscal year 1999 resources.

Labor Uses a Variety of Methods to Administer and Enforce the Act

Labor's efforts to administer the act vary depending on the title involved, but investigations are the primary method used. When OLMS investigations and other efforts identify violations, OLMS uses voluntary compliance most often to resolve cases involving violations. Justice's involvement in enforcing provisions of the act is significantly greater for criminal cases such as embezzlement than for other cases that are considered less serious infractions of the law. Appendixes II through XI detail Labor's administration of the act by title, its use of compliance audit programs,

[6]Labor's Office of Inspector General investigates racketeering in labor unions, which may include LMRDA-related violations. The Inspector General's focus is organized crime, which is outside the scope of our review.

Justice's involvement under the MOU, and Labor's compliance assistance efforts.

Labor Uses Investigations, Audits, and Other Methods to Administer LMRDA

Investigations. Under LMRDA, OLMS conducts civil and criminal investigations. Civil investigations are conducted in response to complaints, if they meet certain criteria, from union members about union elections or trusteeships. Because OLMS is statutorily required to resolve complaints about union elections in 60 days, according to OLMS officials, this activity generally supersedes activity in other areas and is OLMS' top priority. However, OLMS may request waivers of this time frame from the union, and, according to OLMS officials, unions are generally willing to grant these waivers. OLMS investigated over 300 cases in fiscal years 1998 and 1999 that involved complaints from union members about violations of their rights in union elections. OLMS obtained a waiver of the 60-day time frame in about half of these cases. Although OLMS does not have a statutory time frame to resolve trusteeship complaints, in fiscal year 1999, OLMS directed its field offices to complete these investigations within 45 days. Our review of the seven cases initiated after the 45-day time frame went into effect showed that five of these cases exceeded the 45-day time limit. In fiscal years 1995 through 1999, OLMS processed 107 cases that involved complaints about union trusteeships.

Unlike civil investigations, OLMS generally initiates criminal investigations to follow up on information derived from union reports, compliance audits, or leads from individuals or other government agencies. In fiscal years 1998 and 1999, OLMS processed over 700 cases that involved possible criminal activity.

Compliance Audits. At its own discretion, OLMS conducts compliance audits at unions' headquarters level—international or national—as well as at the intermediate or local level. Although compliance audits are important for detecting violations of the act, including embezzlement, OLMS may temporarily suspend them to allow staff to conduct investigations involving complaints about union elections. Moreover, the number of OLMS compliance audits has declined over the last 10 years as staff resources have diminished. In fiscal years 1995 through 1999, OLMS

conducted nine compliance audits of international unions.[7] In fiscal years 1998 and 1999, OLMS conducted nearly 600 compliance audits at the intermediate and local levels of the more than 31,000 unions. These compliance audits generated about 100 criminal investigation cases.

Monitoring Reporting and Disclosure Requirements. LMRDA requires that labor unions report annually on financial and administrative activities. Other entities—such as labor consultants, surety companies, and others—report only under certain circumstances. OLMS uses similar methods for both groups to ensure compliance. OLMS monitors unions' reporting dates, telephones and mails unions notices when reports are delinquent, reviews reports for completeness, and makes these reports available to the public. In fiscal years 1998 and 1999, OLMS identified nearly 4,500 cases in which the more than 31,000 unions that report annually were delinquent (and 125 cases in which the information provided on these reports was deficient) as well as about 190 delinquent or deficient reporting cases involving other entities. OLMS also responded to over 15,000 requests to make the reports publicly available.

Compliance Assistance. OLMS educates union members and officers about LMRDA's requirements by conducting seminars and providing pamphlets and other information to promote compliance. In fiscal year 1998, OLMS field offices completed over 600 compliance assistance activities for nearly 4,400 union officials and members and made 481 liaison contacts with U.S. Attorneys, law enforcement agencies, and others. In fiscal year 1999, OLMS implemented two assistance initiatives, one of which focused on preventing delinquent reporting among unions and the other on educating newly elected union officials about LMRDA requirements.

Labor Uses Voluntary Compliance and Litigation to Enforce the Act's Requirements

Voluntary Compliance. When OLMS finds a violation during a civil investigation, it generally attempts to secure voluntary compliance with the act's provisions before initiating any type of litigation. According to OLMS officials, voluntary compliance achieves the goal of the act but uses less time and fewer resources than litigation. In fiscal years 1998 and 1999, OLMS secured voluntary compliance in 47 percent of the 100 union election

[7]Generally, the union headquarters is at the international level when the union has intermediate or local bodies in more than one country.

cases that involved violations that affected election outcomes.[8] For example, when OLMS finds that violations in union elections warrant a rerun, OLMS may persuade unions to voluntarily rerun the election under OLMS supervision. OLMS also secured voluntary compliance in about 34 percent of the 35 trusteeship cases that involved violations in fiscal years 1995 through 1999 and in about 80 percent of the 469 compliance audit cases that involved violations in fiscal years 1998 through 1999. Finally, OLMS also seeks voluntary compliance to resolve cases involving reporting violations even though LMRDA provides for criminal penalties when reporting violations are intentional. According to OLMS and Justice officials, pursuing criminal prosecution of reporting violations is not practical because Justice is not likely to prosecute these cases unless they are associated with more significant violations. To address reporting violations, OLMS has developed several initiatives that include working with international unions to address cases of delinquent and deficient reporting.

Litigation. Labor and Justice work together to prosecute criminal cases, which can result in indictments, convictions, and monetary restitution to unions and their members. In fiscal years 1998 and 1999, 22 percent of the 754 criminal embezzlement cases Labor processed resulted in indictments, and more than 80 percent of these indictments resulted in convictions. Monetary restitution for these convictions amounted to over $3.7 million. About 70 percent of these indictments and convictions were achieved using LMRDA, while about 30 percent were achieved using other federal or local statutes.

Labor also works with Justice to litigate civil cases based on complaints about union elections, trusteeships, or other activities. For example, if the union does not voluntarily comply with the corrective action offered by OLMS regarding elections, Labor, through Justice, may sue in federal court to set aside a union election and require that the election be rerun. In about 75 cases in fiscal years 1998 and 1999, Labor determined that violations so affected the outcomes of union elections that reruns had to be held under OLMS' supervision. OLMS decided to take legal action in four of the 35 unlawful trusteeship cases identified in fiscal years 1995 through 1999, bringing court action against unions subject to LMRDA and initiating

[8]An additional 62 cases involved violations, but the violations either did not affect the outcome of the election or unions resolved the violations, which eliminated the need for OLMS action.

administrative action before an administrative law judge against federal unions subject to CSRA and other related legislation. As discussed earlier, voluntary compliance was obtained in other trusteeship cases.

Justice's Involvement in Enforcing the Act's Requirements

The MOU that the Departments of Justice and Labor signed in 1960 outlined their respective responsibilities under LMRDA for investigating and litigating criminal and civil violations of the act. Under the MOU, Justice is responsible for investigating certain criminal violations, such as embezzlement, although at Labor's request, Justice can delegate investigative authority on a case-by-case basis to Labor. Labor is responsible for investigating other types of criminal violations, such as intentional delinquent reporting, as well as civil violations, such as improper union election activities. Because Justice is responsible for litigating all criminal violations of the act, Labor refers criminal violation cases to Justice, which decides whether to litigate them. For civil violations, Labor decides which cases it will refer to Justice for possible litigation.

In practice, Labor generally investigates both criminal and civil cases under LMRDA and decides which cases to refer to Justice for litigation.[9] According to Labor and justice officials, Justice is less willing to litigate such criminal cases as intentional reporting violations than embezzlement violations because the former in and of themselves are often not considered serious enough to warrant a court's time.[10] As a result, Justice plays a significantly greater role in litigating embezzlement cases than reporting cases. Labor processed 754 criminal embezzlement cases in fiscal years 1998 and 1999, and Justice accepted 87 percent of the 279 cases Labor referred for prosecution. When Justice declined to accept cases, OLMS either closed the cases without additional action or worked with state and local officials to seek litigation under applicable state or local statutes.

[9]According to OLMS officials, the redelegation of investigative authority from Justice is a formality as Justice generally grants Labor's request for this authority.

[10]When such violations are alleged in conjunction with violations such as embezzlement, however, Justice is more likely to litigate.

Agency Comments and Our Evaluation

Labor and Justice provided comments on this report (see apps. XII and XIII, respectively). Justice generally agreed with our report findings. Labor said that, in some instances, we underestimated cases with violations. We used automated data that Labor provided, which were the best available at the time. We had recognized in the draft report that our numbers might somewhat understate the actual number of cases with violations. However, we did not believe that the possible understatement would materially affect the results of our analysis. The information Labor provided in its comments did not cause us to change our position because that information showed only relatively small differences in the number of cases with violations. We have incorporated Labor's comments regarding these differences where appropriate.

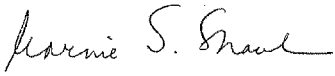
Justice and Labor questioned whether we had appropriately reflected the importance of Labor's Inspector General in enforcing LMRDA. While the Inspector General has an important role in helping to enforce LMRDA, OLMS is the primary Labor authority responsible for the implementation and enforcement of LMRDA and, as such, was the major focus of this review. The Inspector General's role is primarily related to addressing organized crime and racketeering. We have reflected the Inspector General's role where appropriate in the report.

Both agencies provided technical comments on the processes Labor uses to administer and enforce LMRDA and on Labor's relationship with Justice under the MOU. We have incorporated these comments as appropriate.

We are sending copies of this report to the Honorable Robert E. Andrews, Ranking Minority Member, House Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce; the Honorable Alexis M. Herman, Secretary of Labor; the Honorable Janet F. Reno, Attorney General; appropriate congressional committees; and other interested parties. We will also make copies available to others upon request.

If you have any questions about this report, please call me on (202) 512-7215. Other contacts and staff acknowledgments are listed in appendix XIV.

Sincerely yours,



Marnie S. Shaul
Associate Director, Education, Workforce,
and Income Security Issues

Appendix I

Labor's Organizational Structure and Use of Fiscal Year 1999 Resources to Administer the Act

The Secretary of Labor delegated the authority to administer the Labor-Management Reporting and Disclosure Act (LMRDA) to the Office of Labor-Management Standards (OLMS), located within the Employment Standards Administration. OLMS and its predecessors have administered LMRDA since its enactment. The office became known as OLMS in 1984, when it was a separate agency in Labor headed by an Assistant Secretary. In 1992, OLMS became a part of the Employment Standards Administration, and in 1993, OLMS was transferred to the then newly created Office of the American Workplace. In 1996, the Office of the American Workplace was abolished, and OLMS was transferred back to its current location. OLMS has about 300 full-time-equivalent (FTE) staff, and its budget was just over $28 million for fiscal year 1999. OLMS administers LMRDA and provisions of related legislation, along with employee protection programs established under the Federal Transit Act and the related provisions of that act.[1]

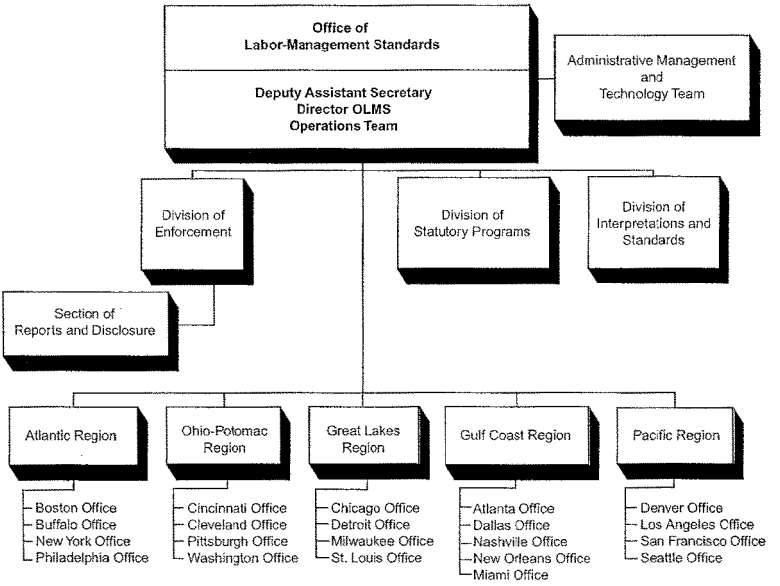
OLMS' Organizational Structure

A Deputy Assistant Secretary technically heads OLMS but the Director of OLMS has the actual programmatic responsibility for LMRDA and provisions of related legislation. OLMS has four headquarters units,[2] five regional offices, and 21 district offices (see fig. 1). In addition to these offices, OLMS has eight smaller "resident offices" that carry out OLMS' work and maintain a presence in locations that may be distantly removed from the closest district office.

[1]When federal funds are used to acquire, improve, or operate a transit system, federal law requires arrangements to protect the rights of affected mass transit employees. Arrangements must include such activities as preserving rights and benefits under collective bargaining agreements and ensuring reemployment priority in the event of a layoff. The Department of Labor must approve these arrangements.

[2]Labor recently implemented a new Division of Reports, Disclosure and Audits, which replaces the subordinate unit of the Division of Enforcement, formerly the Section of Reports and Disclosure. The new division will administer all reporting and public disclosure responsibilities and will oversee all compliance audit responsibilities formerly assigned to the Division of Enforcement.

Figure 1: OLMS Organization Chart



The four units at the OLMS headquarters level include an administrative management and technology team and three divisions: enforcement, statutory programs, and interpretations and standards.

- The Administrative Management and Technology Team provides support and services to OLMS for activities related to budget planning,

personnel management, labor relations, and computer systems and applications.

- The Division of Enforcement oversees OLMS' criminal and civil enforcement activities, including special investigations, compliance audit programs, supervised union officer elections, and headquarters' public disclosure operations under LMRDA and related legislation. This division also provides advice and assistance to field offices; oversees the International Compliance Audit Program; and coordinates criminal and civil enforcement matters regarding LMRDA and related legislation with the Solicitor of Labor, the Department of Justice, and representatives of other agencies.
- The Division of Statutory Programs administers transit employee protections established in federal transit law by certifying fair and equitable protections for affected transit employees as a condition of federal grant assistance.
- The Division of Interpretations and Standards develops policy guidance and administers OLMS regulatory activities for LMRDA and related legislation. It also develops and administers OLMS' compliance assistance programs for unions and others as well as training programs for OLMS staff.

The regional offices are staffed with two people who provide administrative support to four or five larger district offices that each cover one or more states or parts of states. Each region is headed by a regional director who is assigned full program and oversight responsibility over all district offices in the region. District offices are responsible for carrying out the provisions of LMRDA and related legislation through investigations, audits, and compliance assistance.

Use of Resources in Fiscal Year 1999

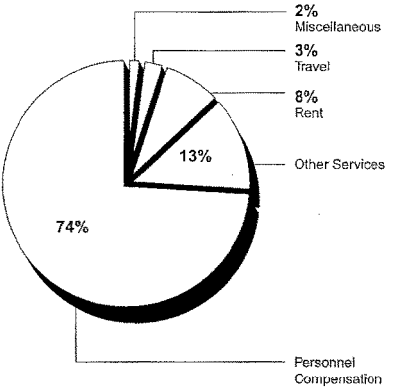
OLMS budgets by accounting categories, and in fiscal year 1999 it did not track expenditures by program activity for LMRDA and related legislation or for the Federal Transit Act. However, OLMS did track workload information for LMRDA and related legislation and provided data on the number and use of FTE staff and other personnel, as demonstrated through staff's time charges for fiscal year 1999.

Budget

OLMS' budget is part of the Employment Standards Administration's (ESA) budget process, and OLMS relies on ESA for its overall accounting needs. OLMS' budget for fiscal year 1999 was $28.1 million and was spent largely

on providing personnel compensation and benefits and other services, as shown in figure 2.

Figure 2: OLMS Budget Expenditures, Fiscal Year 1999



Note: Expenditures for "other services" included $2 million that the Congress appropriated for Labor to develop and implement a system that allows unions and others to report electronically and a corresponding database that is accessible to the public through the Internet. Miscellaneous expenditures were for printing, supplies, equipment, and insurance.

The OLMS Director and the directors of the regional offices determine how the annual budget will be spent. The OLMS Director allocates budget resources for overtime; awards; rent for facilities; travel; printing; and supplies for the regions, which in turn cover the districts' expenses. The five regions' budgets for these categories totaled nearly $0.7 million of OLMS' $28.1 million budget for fiscal year 1999. The regions' budgets did not include personnel costs, which are centrally administered through ESA.

Personnel

The OLMS staff level for fiscal year 1999 was 303 FTE staff. As of September 30, 1999, OLMS had 286 staff; 23 percent were located in the headquarters office, and 77 percent were located in field offices around the country. Managers, including two senior executive service employees and various supervisory level employees (ranging in grade from GS/GM-13 to GS/GM-15), accounted for 14 percent of staff; support staff accounted for 14 percent; and professional staff made up 72 percent. Investigators and supervisory investigators accounted for 67 percent of all staff, other staff occupations accounted for 31 percent of all staff, and auditors made up about 2 percent of the total staff. Table 2 shows OLMS staff dedicated to administering LMRDA and provisions of related legislation as well as employee protection programs under the Federal Transit Act.

Table 2: OLMS Staffing, Fiscal Year 1999

			Professional			
Location	**Managers**	**Support Staff**	**Auditors**	**Investigators**	**Other**	**Total**
Headquarters						
Office of the Deputy Assistant Secretary and the Director	1	1	0	0	3	5
Administrative Management and Technology Team	1	0	0	0	5	6
Division of Enforcement	1[a]	2	0	7	0	10
Section of Reports and Disclosure	1	5	2	0	11	19
Division of Statutory Programs	2	3	0	0	12	17[b]
Division of Interpretations and Standards	1	1	0	0	8	10
Subtotal	**7**	**12**	**2**	**7**	**39**	**67**
Regional, district, and resident offices						
Atlantic Region	1[a]	1	0	[a]	0	2
Boston District Office	2	0	0	6	1	9
New Haven Resident Office	0	0	0	4	0	4
Buffalo District Office	1	1	0	6	0	8
New York District Office	2	2	0	7	0	11
Newark Resident Office	0	0	0	4	0	4
Philadelphia District Office	1	1	0	7	0	9
Ohio-Potomac Region	1[a]	1	0	[a]	0	2
Cincinnati District Office	2	1	0	6	0	9
Cleveland District Office	2	1	0	8	1	12
Pittsburgh District Office	2	1	0	8	0	11

(Continued From Previous Page)

			Professional			
Location	Managers	Support Staff	Auditors	Investigators	Other	Total
Washington District Office	2	1	3	6	0	12
Great Lakes Region	1[a]	1	0	[a]	0	2
Chicago District Office	2	1	0	7	1	11
Detroit District Office	1	1	0	6	0	8
Grand Rapids Resident Office	0	0	0	1	0	1
Milwaukee District Office	1	1	0	3	0	5
Minneapolis Resident Office	0	1	0	4	0	5
St. Louis District Office	1	2	0	7	0	10
Kansas City Resident Office	0	1	0	3	0	4
Gulf Coast Region	1[a]	1	0	[a]	0	2
Atlanta District Office	1	1	0	8	0	10
Puerto Rico Resident Office	0	0	0	2	0	2
Dallas District Office	1	1	0	7	0	9
Nashville District Office	1	1	0	6	0	8
New Orleans District Office	1	1	0	5	0	7
New Orleans Resident Office	0	0	0	2	0	2
Miami District Office	1	1	0	3	0	5
Pacific Region	1[a]	1	0	[a]	0	2
Denver District Office	1	1	0	4	0	6
Los Angeles District Office	1	1	0	9	0	11
San Francisco District Office	1	1	0	6	0	8
Honolulu Resident Office	0	0	0	2	0	2
Seattle District Office	1	1	0	4	0	6
Subtotal	**33**	**29**	**3**	**151**	**3**	**219**
Total	**40**	**41**	**5**	**158**	**42**	**286**

[a]The manager is a supervisory investigator.

[b]These 17 staff are dedicated to the Federal Transit Act.

Fiscal Year 1999 Workload

OLMS tracked time spent by field investigators on LMRDA in four major categories: financial integrity, union democracy, reporting/disclosure, and other. Financial integrity consumed the largest percentage of the OLMS field investigators' time, followed by union democracy. Table 3 shows the program activities and the associated titles of the act, case workload, and percentage of time OLMS field investigators devoted to each activity in fiscal year 1999.

Table 3: OLMS Field Investigators' Workload and Use of Time by Title, Fiscal Year 1999

Program activity	Title	Number of cases processed	Percentage of time used
Financial integrity			
Criminal investigations	Title V	385	49.0
Auxiliaries[a]	Title V	(93)[a]	1.0
Bonding investigations	Title V	160	0.3
Special investigations[b]	Title V	0	0
International compliance audits	Discretionary work	0	3.5
Compliance audits–locals	Discretionary work	289	7.8
International compliance audit follow-up	Discretionary work	0	0
Auxiliaries[a]	Discretionary work	(15)[a]	0.5
Subtotal		**834**	**62.1**
Union democracy			
Elections–local	Title IV	145	13.7
Elections–intermediate	Title IV	10	1.1
Elections–international	Title IV	20	1.9
Basic investigations[c]	Titles I and II and Civil Service Reform Act	90	0.7
Trusteeship investigations	Title III	14	0.7
Election reruns–local	Title IV	29	4.1
Election reruns-intermediate	Title IV	3	0.6
Election Reruns–international	Title IV	3	0.2
Auxiliaries[a]	Title IV	(254)[a]	2.7
Subtotal		**314**	**25.7**
Reporting/disclosure			
Delinquent reports–unions	Title II	2,237	3.4
Deficient reports–unions	Title II	84	0.3
Special reports–others	Title II	114	1.0
Auxiliaries[a]	Title II	(10)[a]	0[d]
Subtotal		**2,435**	**4.7**
Other			
Compliance assistance	[e]	[e]	1.9
Inquiries	[e]	[e]	3.8
Case targeting (planning future criminal work)	[e]	[e]	1.4
Subtotal			**7.1**
Total		**3,583**	**99.6**
Total auxiliaries[a]		**(375)[a]**	

Note: Percentages do not total 100 because of rounding.

[a]"Auxiliaries" is the term used to describe investigative work performed on the basis of leads generated from original cases. Auxiliaries are not counted as additional investigations and are not included in the subtotals.

[b]These investigations may be performed jointly with other government agencies.

[c]Basic investigations cover such areas as access to collective bargaining agreements, determinations of existence of a union, and other Civil Service Reform Act requirements.

[d]Amount of time was less than 0.1 percent.

[e]Although staff time is spent on providing assistance to unions and others to help them comply with all titles of LMRDA, as well as on responding to inquiries, these efforts are not related to a particular title, nor are they tracked as "cases."

Title I: Bill of Rights of Union Members

Generally referred to as the "Bill of Rights" of union members, title I of LMRDA provides basic rights for union members, including the right to

- nominate candidates for union office, vote in union elections, and participate in union meetings;
- meet and assemble freely with other members and express their opinions;
- use democratic procedures if subjected to assessments and raises in member dues;
- be afforded a full and fair hearing of charges brought against them before disciplinary actions are taken; and
- receive and inspect collective bargaining agreements (which also applies to nonunion members).

Both union members and the Department of Labor play roles in ensuring that these rights are protected. The Secretary of Labor (through OLMS) is responsible only for ensuring that union members and others gain access to collective bargaining agreements and may institute civil action in federal district court to enforce this provision (often referred to by its section number: 104). Union members may bring a private suit against the union in a federal district court to enforce all title I rights, but the union may require members to first exhaust internal union remedies, which the union has 4 months to provide.

Unlike LMRDA, OLMS investigates and enforces those sections of the Civil Service Reform Act of 1978 (CSRA) and the other related legislation dealing with the Bill of Rights for federal employee unions. OLMS enforces these sections through its administrative process by referring cases for a hearing before an administrative law judge and a final decision by the Assistant Secretary of Employment Standards.

Scope and Methodology

OLMS maintains case data on LMRDA and provisions of related legislation in its Case Data System. We obtained the database and analyzed cases that OLMS processed in fiscal years 1998 and 1999. The database did not track cases according to titles of the act; however, for certain activities, including collective bargaining agreements, 194 cases were grouped under a category termed "basic investigations." We queried the database to identify those basic investigations that were initiated as a result of complaints about collective bargaining agreements and reviewed case summary sheets, which provided general data about the cases. Through this process, we identified 21 cases in which union members complained about not having

access to or problems obtaining copies of collective bargaining agreements. We also interviewed OLMS officials about the process for addressing complaints regarding collective bargaining agreements.

Labor's Efforts to Administer Title I's Section 104

In response to oral or written complaints from union members or others, OLMS contacts local unions and, if necessary, unions' headquarters, about giving access to collective bargaining agreements. If a union does not comply with a request for copies of or access to a collective bargaining agreement, OLMS' district office investigates and forwards a report to OLMS' headquarters, which sends a "demand letter" to the union requiring its compliance. If a union still does not comply, OLMS refers the case to Labor's Office of the Solicitor for litigation. OLMS officials said section 104 does not generate a significant workload for OLMS, and the Secretary of Labor has rarely initiated litigation to enforce its provisions.

Case Resolution

The 21 cases we identified as involving collective bargaining agreements during fiscal years 1998 and 1999 were based on complaints that a union member had not been able to obtain copies of collective bargaining agreements. The 21 cases represented 12 unions whose membership ranged from 35 to 34,177 members and whose total receipts ranged from $3,100 to $19,913,660.

As shown in table 4, OLMS found violations in 15 of the 21 cases. In 13 cases (over 80 percent), OLMS was able to secure voluntary compliance by contacting the unions and asking them to provide the collective bargaining agreements. In one case, OLMS referred the case to Labor's Solicitor for legal action and closed the case. The final case was resolved before OLMS took action.

Table 4: Resolution of Collective Bargaining Agreement Cases, Fiscal Years 1998 and 1999

Case status	Number	Percentage of all cases	Percentage of cases with violations
Cases investigated			
No violation found	6	29	
Violation found	15	71	
Total	**21**	**100**	
Resolution of cases with violations			
Voluntary compliance	13		87
Referred to Solicitor for legal action	1		7
Resolved before OLMS took action	1		7
Total	**15**		**101***

*Percentage exceeds 100 because of rounding.

Title II: Reporting Requirements and Public Disclosure

Title II of LMRDA requires labor unions; their officers and employees; employers; labor relations consultants, under certain circumstances; and surety companies to file certain reports with OLMS' headquarters in Washington, D.C., and to retain the records necessary to verify the reports for at least 5 years. Similar requirements under provisions of CSRA apply to federal employees' unions. These requirements are important because they ensure that union members have all the necessary information to take effective action to protect their rights.

Important requirements of title II include the following:

- Unions must file information reports that include the name and address of the labor organization, address of the location where records required by title II are maintained, and name and title of each officer, as well as annual financial reports and copies of the constitution and bylaws.
- Officers and employees of labor unions must report financial interest in, business dealings with, and loans and benefits received from employers whose employees their unions represent and from businesses that deal with their unions.
- Employers must report certain dealings with unions, such as payments or loans to the union. Employers and others, such as labor relations consultants, who engage in activities to persuade employees how to exercise their union rights, must report certain information, such as their expenditures.
- Surety companies that issue bonds required by LMRDA or the Employee Retirement Income Security Act of 1974 must report data such as premiums received, total claims paid, and amounts recovered.

Title II requires that these reports and documents be made available to the public, which OLMS does at its offices around the nation. Unions must also make these reports available to members and permit members to examine records. These or similar provisions apply to federal unions under CSRA. The Secretary of Labor can bring civil action to enforce the reporting requirements under LMRDA. Labor relies on Justice to litigate civil actions brought under title II of LMRDA. Under CSRA, the Secretary uses administrative action that involves a hearing before an administrative law judge and a final decision by the Assistant Secretary for Employment Standards. Title II also provides for criminal penalties when unions intentionally[1] violate reporting requirements; criminal matters are within

[1]The statute uses the terms "willfully" and "knowingly."

the responsibility of the Department of Justice. Tables 5, 6, and 7 show the various reports required from unions, for unions under trusteeship, and from other entities that do business with unions, respectively.

Table 5: Reports Required From Unions

Form number and name	Required filer	Reporting time frame
Form LM-1 (initial) Labor organization information report	Each union subject to LMRDA or CSRA	The LM-1 is due to Labor within 90 days after the union becomes subject to LMRDA or CSRA requirements.
Form LM-1 (amended) Labor organization report	Each reporting union (except federal employee unions) that makes changes in its practices and procedures that are not contained in the union's constitution and bylaws	The amended LM-1 form is due to Labor within 90 days after the end of the union's fiscal year during which the changes were made, along with the appropriate annual form (that is, the LM-2, LM-3, or LM-4).
Form LM-2 Labor organization annual report	Each reporting union with total annual receipts of $200,000 or more and the parent union for subordinate unions under trusteeship	The LM-2 is due to Labor within 90 days after the end of the union's fiscal year under normal conditions. If the union loses its reporting identity through dissolution, merger, consolidation, or other means, the LM-2 is due to Labor within 30 days after the date of the union's loss of identity.
Form LM-3 Labor organization annual report	Each reporting union with total annual receipts of less than $200,000 may use the less detailed form LM-3 if not under trusteeship.	The LM-3 is due to Labor within 90 days after the end of the union's fiscal year under normal conditions. If the union loses its reporting identity through dissolution, merger, consolidation, or other means, the LM-3 is due to Labor within 30 days after the date of the union's loss of identity.
Form LM-4 Labor organization annual report	Each reporting union with total annual receipts of less than $10,000 may use the abbreviated form LM-4 if not under trusteeship.	The LM-4 is due to Labor within 90 days after the end of the union's fiscal year under normal conditions. If the union loses its reporting identity through dissolution, merger, consolidation, or other means, the LM-4 is due to Labor within 30 days after the date of the union's loss of identity.
Simplified annual report	Parent body of a local union that has no assets, liabilities, receipts, or disbursements and is not under trusteeship may file simplified annual reports on the local's behalf.	Simplified annual reports are due to Labor within 90 days after the end of the union's fiscal year. The parent body must report annually certain basic information about the local, including the names of all officers, together with a certification signed by the president and treasurer of the parent union.

Table 6: Reports Required for Unions Under Trusteeship

Form number and name	Required filer	Reporting time frame
Form LM-15 (initial) Trusteeship report (including statement of assets and liabilities)	Each parent union that imposes a trusteeship over a subordinate union	The LM-15 is due to Labor within 30 days after imposing the trusteeship.
Form LM-15 (semiannual) Trusteeship report (excluding statement of assets and liabilities)	Each parent union that continues a trusteeship over a subordinate union for 6 months or more	The semiannual LM-15 is due to Labor within 30 days after the end of each 6-month period during the trusteeship.
Form LM-15A Report on selection of delegates and officers	Each parent union that imposes a trusteeship over a subordinate union if during the trusteeship the parent union held any convention or other policy-determining body to which the subordinate union sent delegates or would have sent delegates if not in trusteeship, or if the parent union conducted an election of officers	The LM-15A is due to Labor as required based on the union's requirements for holding elections for its officers. The LM-15A is due along with the LM-15 within 30 days after the imposition of the trusteeship or the end of each 6-month period, or with the Form LM-16 within 90 days after the end of the trusteeship or the subordinate union's loss of reporting identity through dissolution, merger, consolidation, or other means.
Form LM-16 Terminal trusteeship report	Each parent union that ends a trusteeship over a subordinate union or if the union in trusteeship loses its reporting identity	The LM-16 is due to Labor within 90 days after the end of the trusteeship or the subordinate union's loss of reporting identity through dissolution, merger, consolidation, or other means.

Table 7: Reports Required From Other Entities

Form number and name	Required filer	Reporting time frame
Form LM-10 Employer report	Each employer that engages in certain specified financial dealings with its employees, unions, union officers, or labor relations consultants or that makes expenditures for certain purposes relating to employees' or unions' activities	The LM-10 is due to Labor within 90 days after the end of the employer's fiscal year.
Form LM-20 Agreement and activities report	Each person who enters into an agreement or arrangement with an employer to inform employees about exercising their rights to organize and bargain collectively, or to obtain information about employee or union activity in connection with a labor dispute involving the employer	The LM-20 is due to Labor within 30 days after a person enters into such agreement or arrangement.
Form LM-21 Receipts and disbursements report	Each person who enters into an agreement or arrangement with an employer to inform employees about exercising their rights to organize and bargain collectively, or to obtain information about employee or union activity in connection with a labor dispute involving the employer	The LM-21 is due to Labor within 90 days after the end of the consultant's fiscal year.

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Form number and name	Required filer	Reporting time frame
Form LM-30 Labor organization officer and employee report	Each union officer (including trustees of subordinate unions under trusteeship) and employee (other than employees performing exclusively clerical or custodial services) who (or whose spouse or minor child) had certain direct or indirect economic interests during the past fiscal year	The LM-30 is due to Labor within 90 days after the end of the union officer's or employee's fiscal year.
Form S-1 Surety company annual report	Each surety company with a bond in force insuring a welfare or pension plan covered by the Employee Retirement Income Security Act, or insuring any union or trust in which a union is covered by LMRDA	The S-1 is due to Labor within 150 days after the end of the surety company's fiscal year.

Scope and Methodology

We obtained data that Labor generated from two different electronic systems to determine how it administers title II. OLMS maintains data on the daily case workload in its Case Data System, which includes OLMS cases of delinquent and deficient reports as well as cases to determine whether labor organizations are subject to LMRDA's requirements. During fiscal years 1998 and 1999, the Case Data System included

- 4,462 cases of delinquent union reports,
- 189 cases of delinquent or deficient reports from other entities that deal with unions,
- 125 cases of deficient union reports, and
- 113 basic investigation cases that dealt with whether labor organizations met the criteria that would make them subject to LMRDA requirements or provisions of related legislation. (Of the total of 194 basic investigation cases, we identified and excluded 21 that were related to title I. This left 173 cases, from which we identified 113 that dealt with whether groups had reported in compliance with the act.)

We obtained the OLMS computerized database for these cases, analyzed the data, and reviewed summary sheets for some cases, which generally were one- or two-page documents containing the name of the union, estimated membership and receipts, rationale for the case, violation found, and disposition of the violation.

We also reviewed hard copies of data from a second database that Labor maintains that contains certain statistical data on labor organizations—the Labor Organization Reporting System. This system contains data such as

the number of unions that file reports, the type of reports filed, the overall memberships and receipts of all unions that file reports, and the number of requests the public made for disclosure of reports filed. OLMS officials describe the Labor Organization Reporting System as a dynamic system that provides data at a particular point in time.

Labor's Efforts to Administer Title II

To administer title II's requirements, OLMS focuses on three factors: (1) whether unions and other entities required to report information do so in a timely manner, (2) whether the information submitted is complete and accurate, and (3) whether all organizations subject to the requirements of LMRDA and provisions of related legislation acknowledge that they exist by reporting required information to OLMS.

To carry out its responsibilities under this title, OLMS headquarters monitors unions' fiscal year-end dates, which determine the reports' due dates; generates a list of unions that are delinquent; and sends this list to the district offices for action. OLMS uses the list to contact unions by telephone about the reports and encourage them to send in the required reports. OLMS uses administrative staff as well as investigators to perform this work. OLMS also uses mailings to remind unions to file on time.

Justice officials confirmed that they are not likely to prosecute cases if reporting violations are the only basis for the case. As a result, OLMS focuses primarily on using voluntary compliance to address delinquent reporting. In fiscal year 1996, OLMS implemented an initiative that focused on reducing the delinquency rate of unions with receipts of $200,000 or more by mailing them reminder letters and notices of delinquency. At the same time, OLMS decided to wait up to 3 years before opening delinquent report cases on smaller unions with receipts of less than $5,000 that were late in filing. In 1999, OLMS substantially revised its program to address delinquent reporting by developing, among other things, a comprehensive manual with step-by-step instructions for obtaining delinquent reports. In February 1999, OLMS focused on unions that filed on time in the prior year to encourage continued timely filing. OLMS implemented another initiative in 1999 through its compliance assistance program that focused on meeting with national or international unions in an effort to get their delinquent affiliates to file timely reports.

OLMS monitors other entities, such as labor consultants and surety companies, on the basis of information the unions report, media and other sources, and the entities' fiscal year-end dates. OLMS officials said that

reporting problems with other entities do not require similar levels of effort as for unions because there are fewer other entities, and reporting is required less frequently.

Regarding deficient reports, OLMS officials said that they perform a cursory review applying minimal filing standards to assess completeness and accuracy and follow up on any inadequate reports through telephone calls and mailings. At the time of our review, OLMS had developed a draft "Reports Electronic Audit Program" designed to identify reporting deficiencies in annual financial reports (forms LM-2/3/4) through the application of the following standard review criteria:

- filing standards that address the minimum information a report must contain to be acceptable by OLMS;
- acceptability standards that address basic, key information that is critical for adequate public disclosure; and
- reporting standards that address other types of reporting errors and deficiencies.

According to OLMS officials, in fiscal year 2000, OLMS created a structured program that involved developing a detailed deficient reports manual to help staff obtain amended reports.

Finally, OLMS monitors several sources to determine whether organizations are subject to LMRDA and provisions of related legislation and have filed the appropriate reports. The sources include newspaper articles; requests for public disclosure; individuals; and others, including the National Labor Relations Board, which can report whether the labor organization has been certified.

OLMS makes reports available to the public at its offices around the country. It is working on a new system that would permit unions to file LMRDA reports electronically, which would allow OLMS to create an electronic database that would make report data accessible to the public through the Internet. OLMS expects full implementation of this system by the end of fiscal year 2001.[2]

[2]See *Labor-Management Reporting and Disclosure: Status of Labor's Efforts to Develop Electronic Reporting and a Publicly Accessible Database* (GAO/HEHS-99-63R, Mar. 16, 1999).

Case Resolution

As of February 2000, OLMS reported that 31,411 unions with 13,577,606 members and total receipts of $15,304,997,046 were required to report financial information annually on forms LM 2/3/4 or simplified forms. Table 8 shows the reports required of these unions, as of February 2000.

Table 8: Number of Unions and Type of Report Filed

Number of unions required to file	Unions' total receipts	Type of form
5,946	$200,000 plus	LM-2
13,916	Less than $200,000	LM-3
9,112	Less than $10,000	LM-4
2,437	$0	Simplified annual report

Delinquent Reports Cases

During fiscal years 1998 and 1999, OLMS opened delinquent report cases on about 12 percent of all unions[3] that were delinquent in filing the required reports with OLMS. OLMS' database identified 4,462 delinquent reports cases (2,225 in fiscal year 1998 and 2,237 in fiscal year 1999) representing 3,974 discrete unions with memberships ranging from 0 to 195,383 and receipts ranging from $0 to $225,470,553.[4] OLMS reported a measure of success in reducing delinquent reporting among unions with $200,000 or more in receipts. According to OLMS officials, in fiscal year 1999, about 10 percent of these unions were delinquent filers compared with over 20 percent in fiscal year 1997. OLMS officials attributed this to its initiative of contacting unions before the reports are due, which has been in place for about 2 years. The initiative to not open delinquent report cases for unions

[3]Labor's system for capturing statistical data, such as the number of labor organizations or unions, their membership, and their total receipts, is dynamic, which means the data vary depending on when information is requested. For example, as of May 11, 1999, the system reported 32,065 unions compared with 31,411 as of February 25, 2000. According to OLMS officials, OLMS does not immediately open a delinquent report case on every union that is late in filing the required reports. As a result, OLMS reported that the actual delinquency rate for all unions is approximately 25 percent.

[4]Membership in labor unions can be zero if the union's members are not dues-paying members, or if the union is an intermediate body established for specific reasons under a national or international union's constitution or bylaws. Receipts in labor unions can be zero if dues, fees, and other disbursements are made on a per capita basis through a national or international union. Labor defines an intermediate body as a type of labor organization that is subordinate to a national or international union but is not a local union. Examples include district councils, joint councils, conferences, and certain types of boards.

with receipts under $5,000 until they have been delinquent filers for 3 consecutive years, and the efforts to work with national and international unions to get affiliates to report on time, had not been in place long enough at the time of our review to develop or determine results.

Other entities, such as labor consultants, surety or bonding companies, employers, union officers, and employees of unions, were also delinquent in submitting required reports to OLMS. During fiscal years 1998 and 1999, OLMS processed 189 cases of delinquent or deficient reports for 186 discrete entities. OLMS telephone and mail efforts in these cases resulted in 98.5-percent voluntary compliance.

Deficient Reports Cases

OLMS processed 125 deficient reports cases in fiscal years 1998 and 1999 representing 125 discrete unions with memberships ranging from 0 to 790,000 and receipts ranging from $0 to $140,000,000. OLMS found that 86 percent of these cases violated title II provisions for completeness and accuracy.[5] OLMS secured voluntary compliance in about 91 percent of the cases in which violations were found, with unions submitting complete reports in response to OLMS telephone and mail efforts. In the remaining cases, events beyond OLMS' control made action unnecessary, or OLMS opened a follow-up case. According to OLMS officials, OLMS instituted procedures in 2000 to more effectively address deficient reports and will have improved data systems in 2001 for identifying deficient reports.

Existence of Unions Cases

OLMS efforts to monitor union activity identified 113 cases in fiscal years 1998 and 1999 in which unions had not reported that they were subject to LMRDA requirements or provisions of related legislation. These cases represented 110 discrete unions with memberships ranging from 0 to 5,500 and receipts ranging from $0 to $1,419,596. OLMS secured voluntary compliance in 96 percent of these cases, with unions submitting the required reports in response to OLMS telephone and mail contacts. For the remaining 4 percent, OLMS took no action, and the database did not contain explanations for OLMS' decisions.

[5]According to OLMS officials, some unions may have corrected deficient reports and mailed them in after OLMS opened a case, which is why not all cases identified as deficient resulted in a violation.

Public Disclosure

OLMS makes the reports unions and others submit available to the public at its headquarters office and in field offices. Currently, the public can order reports through the Internet and in fiscal 2001 should be able to access reports directly through the Internet. During fiscal years 1998 and 1999, OLMS processed 15,685 disclosure requests and reproduced copies of 53,799 reports.

Title III: Trusteeships

Title III governs trusteeships: when a labor organization takes control of a subordinate body by suspending the autonomy it otherwise has under its constitution or bylaws, the subordinate body is said to be under a trusteeship.[1] Trusteeships can be imposed only for (1) ending corruption or financial malpractice, (2) ensuring the appropriate implementation of collective bargaining agreements or performance of other duties of a bargaining representative, (3) restoring democratic procedures, or (4) otherwise carrying out the legitimate objectives of a labor organization.

Under the act, a trusteeship that is established in conformity with the constitution and bylaws of the union, which must include a fair hearing process, is presumed valid for 18 months and may continue to exist during that time, unless there is clear and convincing proof that it was not established or maintained for a valid purpose. After 18 months, the trusteeship is presumed invalid and must be discontinued unless the union provides clear and convincing proof that it is still needed. Unions establishing trusteeships over subordinate bodies must submit special reports regarding trusteeships (see table 6).

When a union is under a trusteeship, the votes of that union's delegates cannot be counted in any convention or election of officers unless the delegates have been elected by secret ballot. The act also prohibits the transfer of funds from the subordinate body except for normal per capita taxes and assessments charged to all other locals. The intentional violation of either of these provisions is a crime. All members have the right to file a civil lawsuit against the national or international union in federal district court to remedy violations of this title (for example, to terminate invalid trusteeships).

Labor is required to investigate written complaints from union members or subordinate (local) unions that title III has been violated. If Labor finds probable cause to believe that the trusteeship is illegal, Labor must file a civil action in federal district court for appropriate relief, such as terminating the trusteeship. OLMS takes the position that it cannot take enforcement action to remove a trusteeship—even if it has exceeded the 18-month time frame of presumed validity—unless it receives a written

[1]Congressional hearings in the 1950s that led up to the passage of LMRDA disclosed that national or international unions or intermediate bodies sometimes established trusteeships to drain local union treasuries or perpetuate power by undemocratically controlling a local union's votes.

complaint. Without receiving a written complaint, Labor can initiate investigations (under title VI of LMRDA) of potential violations of any provisions of the act, other than part of title I. However, Labor has no enforcement authority under title VI, which means that it would have to use enforcement authority granted under another title of the act. According to OLMS officials, this authority is not applicable to title III because the enforcement authority granted here is available only if a written complaint has been filed.

Scope and Methodology

We obtained general information on the number of trusteeships established, the number of trusteeships that OLMS considered active trusteeships, the dates these trusteeships were first imposed, and the length of time these trusteeships existed during the period fiscal years 1995 through 1999. OLMS' automated records from its Case Data System were limited to a 2-year period and included only 34 trusteeship complaints; therefore, we obtained listings of trusteeship investigations processed between fiscal years 1995 and 1997 to provide broader coverage of trusteeship cases and Labor's efforts to administer title III. We examined the case files for 107 trusteeship complaints, and we discussed the process for addressing trusteeships with OLMS officials.

Labor's Efforts to Administer Title III

When OLMS receives a written complaint from a union member or subordinate body alleging that the organization imposing the trusteeship has violated title III, OLMS field office staff investigate.[2] In order to conclude that a trusteeship was imposed unlawfully, the field investigator must find proof that the union under trusteeship is a labor organization as defined in the act and that the trusteeship was in violation of the act. Specifically, there must be proof that the trusteeship

- involves withdrawing some or all of the autonomy over internal affairs otherwise available to the union under trusteeship,
- was not established for a purpose listed in the act,
- was not established in accordance with the parent body's constitution and bylaws, or

[2]An investigation may be deemed criminal if it involves improper voting or transferring funds while the union or subordinate body is under trusteeship. Criminal trusteeship investigations may be opened on the basis of a complaint, information from a compliance audit, or other information.

- was not established or ratified after a fair hearing.

The statute does not provide a time frame for investigating trusteeship cases, but in the 1999 planning guidelines to field offices, the OLMS Director instructed that field offices give priority to trusteeship cases and complete field investigations in 45 days. After the field office submits the report of investigation, OLMS' Division of Enforcement and Labor's Office of the Solicitor review it. A telephone conference among the field investigator, the Division of Enforcement, and the Solicitor is held to discuss whether to initiate legal action or to close the case. According to Labor officials, they attempt to obtain consensus on what should be done to resolve the case during this discussion.

Case Resolution

Over the 5-year period that we reviewed, national or international unions imposed 353 trusteeships on local unions or intermediate bodies, averaging about 70 new trusteeships a year. National or international unions terminated 259 trusteeships over the 5-year period, averaging about 50 a year (see table 9).

Table 9: Trusteeships Imposed and Ended, Fiscal Years 1995–99

	Fiscal year 1995	Fiscal year 1996	Fiscal year 1997	Fiscal year 1998	Fiscal year 1999	Total
New trusteeships imposed	55	72	93	85	48	**353**
Trusteeships terminated	13	10	66	90	80	**259**
Net difference	+42	+62	+27	-5	-32	**+94**

As of September 30, 1999, Labor reported 313 active trusteeships, which had been established by 47 national or international unions. A single international union had established 74 of the active trusteeships. Over 90 percent of the organizations under trusteeship were local unions, and about 6 percent were intermediate bodies. The active trusteeships included 228 that had been in effect for more than 18 months (the time frame under the act that trusteeships are presumed valid), ranging from 18.4 months to 214.3 months. According to OLMS officials, some national and international unions place local affiliates under trusteeship as an administrative act when the locals' employers have gone out of business or other actions reduce locals to very few or no members.

Over the 5-year period reviewed, OLMS received and processed 107 trusteeship complaint cases and found that 33 percent of the cases violated title III requirements. Labor's efforts to resolve these cases ranged from seeking voluntary compliance to taking legal action, as shown in table 10.

Table 10: Results in Trusteeship Complaint Cases, Fiscal Years 1995-99

	Fiscal year 1995	Fiscal year 1996	Fiscal year 1997	Fiscal year 1998	Fiscal year 1999	Total	Percentage of total[a]
Trusteeship complaint cases investigated	26	22	25	20	14	107	100
Cases with no violations	18	15	16	12	11	72	67
Cases with violations (unlawful trusteeships)	8	7	9	8	3	35	33
Resolution of violations							
Voluntary compliance	1	2	4	5	0	12	34[b]
Other union actions	7	5	2	1	0	15	43[b]
Legal action	0	0	1	2	0	3	9[b]
Federal court action[c]	0	0	2	0	0	2	6[b]
Enforcement review not completed as of 10/21/99	0	0	0	0	3	3	9[b]

[a]Percentages may not total 100 because of rounding.

[b]Percentages of total cases with violations.

[c]In these cases, although complaints had been filed with OLMS, federal district courts were also involved, so they had the authority to resolve potential trusteeship violations.

OLMS field offices initiated seven cases after the 45-day time frame was established, five of which (71 percent) exceeded the 45-day time frame established by the OLMS Director.

Field Recommendations and Headquarters Decisions

Of the 107 cases for which the OLMS field offices conducted investigations, 35 trusteeships were determined to be unlawful. For seven of these cases, the field offices recommended that action other than legal action be taken, and OLMS headquarters concurred. In four of the seven cases, voluntary compliance was achieved when the unions held elections and restored autonomy to the subordinate bodies, and in the other three, the national or international unions abolished the subordinate bodies.

For the remaining 28 of 35 cases, the OLMS field offices recommended that OLMS headquarters take legal action to resolve the violations, but other OLMS headquarters' actions or other events made the use of legal action

unnecessary in most cases. As shown in table 11, OLMS headquarters did not have to take any action in 46 percent of the cases because the locals merged and the trusteeship no longer applied, the international union terminated the local union, the local union changed its affiliation to another parent union, and in one case a federal court was responsible for taking action. In 29 percent of the cases, OLMS headquarters persuaded the national or international unions to voluntarily comply by lifting the trusteeship. In 14 percent of the cases, OLMS headquarters decided to initiate legal action. For the final 11 percent, OLMS headquarters review work and decisions were not completed within the period reviewed.

Table 11: Field Recommendations and Headquarters Decisions in Trusteeship Cases, Fiscal Years 1995-99

	Fiscal year 1995	Fiscal year 1996	Fiscal year 1997	Fiscal year 1998	Fiscal year 1999	Total	Percentage of total[a]
Unlawful trusteeships	8	7	9	8	3	35	100
Field office recommended no legal action and headquarters decided to take no legal action	1	0	3	3	0	7	20
Field office recommended legal action	7	7	6	5	3	28	80
Headquarters decisions and other events							
Other actions (reorganizations, mergers, other)	6	5	2	0	0	13	46[b]
Voluntary compliance	1	2	3	2	0	8	29[b]
Legal action	0	0	1	3	0	4	14[b]
Decision pending or review work incomplete 9/30/99	0	0	0	0	3	3	11[b]

[a]Percentages may not total 100 because of rounding.

[b]Percentages of total cases in which field office recommended legal action.

A summary of the four cases in which OLMS decided to initiate legal action follows.

- In one case, Labor filed a suit in federal court that was ongoing at the time of our review.
- Two cases involved federal unions covered by CSRA rather than LMRDA. These cases were referred by OLMS to Labor's chief administrative law judge. In both cases, settlement was reached before the hearings.
- In the last case, at the time of our review, a civil suit had yet to be filed because the union had agreed to elections at the regularly scheduled election date. According to OLMS officials, the elections were held, so litigation was not necessary.

The trusteeship complaint cases involved subordinate bodies affiliated with 28 national/international unions. The subordinate bodies under trusteeship ranged in size from 0 to 21,163 members, and the amounts of receipts ranged from $0 to $9,291,571.

Title IV: Union Elections

Title IV provides guarantees for fair and democratic union elections to be held periodically. It also provides other election-related rights to union members and prescribes various procedures for conducting elections. Specific requirements regarding elections under title IV include the following.

- National or international unions must hold elections at least every 5 years, intermediate bodies every 4 years, and local unions every 3 years.[1]
- Local unions must elect their officers by secret ballot; international unions and intermediate bodies must elect their officers by secret ballot vote of the members or by delegates chosen by secret ballot. Unions must mail a notice of election to every member at the member's last known home address at least 15 days prior to any election required to be held by secret ballot. Election records must be maintained for 1 year.
- A member in good standing has the right to nominate candidates; to be a candidate, subject to reasonable qualifications uniformly imposed; to hold office; and to support and vote for the candidates of the member's choice.
- Unions must comply with a candidate's request to distribute campaign material to members at the candidate's own expense and must also refrain from discriminating against any candidate with respect to the use of membership lists.
- Union and employer funds may not be used to promote the candidacy of any candidate. Union funds may be utilized for expenses necessary for the conduct of an election.

Union members may protest elections' outcomes by seeking internal union remedies. Once they have exhausted union remedies or the union has failed to reach a final decision within 3 months, they can file a complaint with Labor, which is required to investigate these complaints within 60 days. If Labor finds probable cause that a violation affecting the outcome of an election has occurred and it has not been remedied, Labor must bring a civil action in federal district court, with Justice's approval, to set aside the invalid election and hold a new election.

LMRDA title IV election standards also apply to most federal unions, which are subject to CSRA. Consequently, the administrative and investigative

[1]An intermediate body is a type of labor organization that is subordinate to a national or international union but is not a local union. Examples include district councils, joint councils, conferences, and certain types of boards.

processes discussed below also apply to federal unions. However, the remedies for resolving complaints involving federal unions are pursued administratively, rather than through a federal district court. Also, the 60-day time frame is not legislatively mandated for federal union cases, but OLMS officials said their policy is to treat the cases the same for investigative purposes.

Scope and Methodology

Automated data that we obtained from OLMS' Case Data System showed that OLMS processed 321 election complaint cases in fiscal years 1998 and 1999. We identified limitations in OLMS' database for union elections that in some cases underestimate the number of cases with violations. However, we do not believe this underestimation materially affects the results of our analysis. We used cases for which the automated database indicated a violation had occurred. The number of cases with violations was based solely on the status reflected in the database as of September 30, 1999. We examined the case files for all cases in which the database indicated differences between field office recommendations and headquarters decisions. We analyzed automated data for all supervised election cases that OLMS processed in fiscal years 1998 and 1999. We also discussed the process for addressing election complaints with OLMS officials in two district offices and the headquarters office.

Labor's Efforts to Administer Title IV

Complaints form the basis for cases that OLMS investigates under this title. Complaints must meet the following specific criteria in order for OLMS to accept them:

- the complainant must be a member of the union;
- the election must be a regular, periodic election of officers or delegates who will elect officers;
- the union must be covered by LMRDA or CSRA;
- the allegations, if true, must constitute violations of title IV; and
- the written complaint must have been filed within 1 calendar month after the complainant either properly exhausted internal union remedies or properly invoked internal union remedies for 3 calendar months without obtaining a final decision.

LMRDA requires that union election investigations be completed and that Labor decide whether filing a lawsuit in federal district court is necessary within 60 days from the time a complaint is filed. OLMS allocates 30 days to the field offices for investigating the complaint and the other 30 days to headquarters for deciding on the appropriate enforcement action. OLMS limits election investigations to those matters deemed to be within the scope of the complainant's internal union protest and those matters not known to the complainant that are uncovered during the OLMS investigation. The Supreme Court has held that the Secretary of Labor may not challenge an election on the basis of a violation that was known to the protesting member but was not raised in the member's internal union protest.[2]

Field Office Investigations

Subsequent to opening an election case, OLMS field office investigators visit the union's national or international office and verify that the complainant has properly exhausted union remedies and filed the complaint with OLMS in a timely manner. Because the complainant and the union's national or international office may be in different locations, the field office where the complainant is located is responsible for the investigation, but it may use an OLMS investigator from the pertinent OLMS field office (referred to as the auxiliary field office) to do this verification. During this visit the investigator may also obtain the union's position on issues involved in the complaint, obtain copies of relevant documentation, and clarify the union's interpretation of constitutional provisions.

The field investigator prepares a written investigative plan that lists all allegations within the scope of the complaint and outlines all the steps necessary to resolve each allegation. The investigator must resolve each allegation independently and cannot rely on the results of any internal union investigation. The investigator must gather background information about the union and the nomination and election process, including the number of union members; the union composition (active members, retirees, and apprentices); geographic jurisdiction; principal employers; dues structure and payment method; and frequency and location of membership meetings. The investigator also obtains information on the selection of the election committee; date, method, and content of the nomination notice and election notice; date, time, and place of

[2]*Hodgson v. Local Union 6799, United Steelworkers of America*, 403 U.S. 333 (1971).

nominations; date, time, location, and method of polling; election results; and publication of results.

Investigators gather information by interviewing appropriate union members and officials and reviewing relevant election records. If the union refuses to produce records essential to the completion of an election investigation or unreasonably delays doing so, OLMS can issue a subpoena ordering the union to produce the designated records and to testify as to their authenticity. If the subpoena is not honored, it can be enforced by federal district court action. If during the course of the investigation the investigator establishes that a violation has occurred that may have affected the election outcome, the respective district director may try to settle the case with union officials; but no settlement agreement can be accepted without the concurrence of OLMS headquarters.

If field investigations or OLMS headquarters activities exceed the 60-day time limit, district directors have the authority to request waivers from the unions to extend the time. However, time waivers are only to be used when absolutely necessary, such as when

- OLMS or the union needs additional time to consider settlement proposals,
- OLMS requires additional investigative time because of unusual circumstances, or
- in the judgment of the district director, a time waiver is in the best interest of OLMS.

According to OLMS officials, unions generally grant these waivers.

Once the field investigator completes the investigation, he or she prepares a Report of Investigation summarizing the findings. The district director prepares a detailed Analysis and Recommendation Memorandum that discusses all pertinent allegations and provides a recommendation for resolving the case that is based on the investigative findings. The district director also notifies the union of the preliminary investigative findings through a Summary of Violations letter. This letter is intended to provide the union an opportunity to present additional evidence, which may prevent OLMS from initiating unwarranted litigation. This letter may also encourage the union to reach a voluntary settlement agreement with OLMS. A similar letter, the "15-day demand letter," is sent in CSRA cases by the chief of OLMS' Division of Enforcement.

Headquarters Enforcement

Within 10 days of receiving the Report of Investigation, the Analysis and Recommendation Memorandum, and the Summary of Violations letter from the district director, OLMS' Division of Enforcement at headquarters reviews the case and makes a recommendation to the chief of the Division of Enforcement. OLMS officials said the investigator, Division of Enforcement staff, and staff from Labor's Solicitor's Office hold a telephone conference to attempt to reach consensus on how to resolve the case. If the chief of the Division of Enforcement decides the case should be litigated, the Solicitor's Office prepares the documents necessary to file suit in federal court. Depending on the location, once the U.S. Attorney has filed suit, Labor's Regional Solicitor may handle the litigation under the supervision of an Assistant U.S. Attorney. For cases in which a suit is not filed, the Solicitor's Office drafts a Statement of Reasons memorandum for the chief of the Division of Enforcement that lists the specific reasons why Labor did not file suit. A letter is sent to the complainant and the presidents of both the local union and the parent union with the Statement of Reasons memorandum attached.

OLMS may conduct a supervised election as a result of either a successful court suit or the voluntary settlement of an election complaint. OLMS must then arrange, supervise, and control all phases of the election, including the nominations, if appropriate. If the election is in response to a successful suit, the chief of the Division of Enforcement certifies the results, and either the U.S. Attorney or the Regional Solicitor of Labor provides the certification to the court. Both court-ordered and voluntarily supervised elections ideally should be completed within 90 days of the court's order or the voluntary compliance agreement.

Case Resolution

Over 80 percent of election cases investigated involved local unions. The remainder of the cases were about evenly divided between international unions' elections and elections for intermediate bodies. The size and receipts of unions investigated vary considerably, as shown in table 12.

Table 12: Unions Represented in Election Cases Investigated, Fiscal Years 1998-99

		Unions		
	Cases	Number	Membership range	Receipt amount range
Local unions	266	237	0–100,000	$0–36,039,077
Intermediate bodies	28	25	0–191,484	2,295–78,503,617
International unions	27	11	956–664,883	148,608–860,988,260
Total	**321**	**273**		

Violations Found

As shown in table 13, OLMS found violations in 162 of the 321 election cases investigated in fiscal years 1998 and 1999. In 62 of the 162 cases, the violation did not affect the outcome of the election or the union took corrective action before Labor had to act, so no action was taken. Under title IV of LMRDA, a court cannot remedy violations unless they may have affected the outcome of an election. Accordingly, OLMS does not take action in such cases through voluntary compliance or otherwise unless it has probable cause to believe that a violation affected an election's outcome. In 47 cases, OLMS was able to secure voluntary compliance from the union, which negated the need for legal action. In another 24 cases, OLMS decided to take legal action: 18 were referred to the chief administrative law judge for review and subsequent civil enforcement action or to the U.S. Attorney for civil enforcement, and for the remaining 6, a decision to take legal action had been made but the action had not been initiated as of September 30, 1999. The final 29 cases include those that were pending or those that were not referred to Justice or the Solicitor.

Table 13: Resolution of Election Cases, Fiscal Years 1998-99

	Local union	Intermediate body	National or international union	Total
Total election cases investigated	**266**	**28**	**27**	**321**
No violation found	129	14	16	**159**
Violations found	137	14	11	**162**[a]

(Continued From Previous Page)

	Local union	Intermediate body	National or international union	Total
Resolution of cases with violations				
No action taken	54	5	3	62
Voluntary compliance	40	5	2	47
Case referred to chief administrative law judge or Justice	16[b]	2	0	18
Legal action pending	2	2	2	6
Case pending or other actions	25	0	4	29

[a]According to OLMS officials, this may be an underestimate of the number of cases in which violations were found because of procedures for coding violations, changes made to cases subsequent to our analysis, and database errors that OLMS staff found through case file reviews.

[b]Includes one CSRA case.

Waivers Obtained

OLMS obtained waivers to extend the time allowed in 151 cases, or about half of all election cases, but OLMS obtained waivers in 85 percent of international union elections cases. In about two-thirds of the international union cases, OLMS obtained multiple waivers. The OLMS database did not capture the length of time sought in the waivers. Table 14 shows the number of waivers OLMS sought in fiscal years 1998 and 1999 for election investigations.

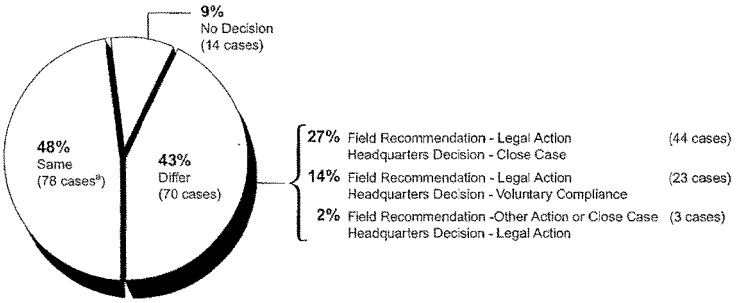
Table 14: Waivers in Election Cases, Fiscal Years 1998-99

	Cases with no waivers	Cases with one waiver	Cases with more than one waiver	Total cases
Local unions	146	59	61	266
Intermediate bodies	20	5	3	28
International unions	4	6	17	27
Total	**170**	**70**	**81**	**321**

Field Recommendations and Headquarters Decisions

Of the 162 election cases in which OLMS found violations in fiscal years 1998 and 1999, we determined that the field office recommendation and the headquarters decision were the same in 78 of these cases and differed in 70; in 14 cases, OLMS headquarters had not yet made a decision as of September 30, 1999. Figure 3 compares field office recommendations and headquarters decisions.

Figure 3: Field Recommendations and Headquarters Decisions in 162 Cases, Fiscal Years 1998-99



*In the database, seven cases were recorded in error. The database showed headquarters decisions to be different from field recommendations, but further analysis showed that the decisions were the same.

As shown in figure 3, in 44 cases the field offices recommended that legal action be taken but headquarters decided to close the cases. In 27 of the 44 cases, headquarters officials, working with the Solicitor's Office, decided that there was insufficient evidence that the act had been violated to litigate the cases. In another eight, although the act was violated, OLMS officials did not think that there was evidence that the violation affected the outcome of the election. For the remaining nine, OLMS did not pursue litigation for various reasons, such as that the complainant did not properly file the complaint or the union took action subsequent to the investigation, which made the complaint moot. OLMS officials told us that there are a number of reasons why field office recommendations and headquarters

decisions differ. For example, headquarters must bring consistency and evenhanded treatment to cases handled by field offices that may not always consistently apply program policies.

In the 23 cases in which the field recommended legal action, headquarters secured voluntary compliance. OLMS officials said that voluntary compliance is an alternative method of ensuring that a fair rerun election is held, and voluntary compliance is often faster and less resource-intensive than taking legal action. These officials said they do not consider this situation to constitute a difference between the field office recommendations and headquarters decisions.

In the final three cases, the field office recommended other action but headquarters decided to take legal action. In the first case, the field office had negotiated a voluntary compliance agreement with the union, but, at the last minute, the union changed its mind and refused to sign the agreement. As a result, OLMS headquarters filed a complaint with an administrative law judge.[3] In the second case, headquarters decided to take legal action but after doing so, the union agreed to rerun the election, making the complaint moot. In the last case, OLMS headquarters disagreed with the recommendation to close the case and decided to file a lawsuit in federal district court.

[3]This case involved a federal union covered by CSRA.

Supervised Elections

OLMS refers to supervised union elections as election reruns because supervised elections represent a corrective measure to resolve violations that affected the outcome of initial union elections. OLMS may conduct a supervised election after first finding a violation and then filing a successful suit in federal district court that demands the election be rerun or after securing a voluntary compliance agreement from the union to rerun an election. During fiscal years 1998 and 1999, OLMS conducted 75 rerun elections, of which 61 were reruns of local union elections.[4] Table 15 shows these rerun elections and characteristics of the unions involved.

Table 15: Election Rerun Cases and Corresponding Union Characteristics, Fiscal Years 1998-99

	Election rerun cases	Unions involved	Membership range	Receipt amount range
Local unions	61	61	63–17,176	$2,606–14,893,915
Intermediate bodies	8	8	0–26,182	19,200–9,606,318
International unions	6	6	1,000–666,704	0–674,236,422
Total	**75**	**75**		

[4]OLMS' database does not identify the initial union election case that generated the supervised election case, and we could not reasonably determine whether any of the rerun cases resulted from the 162 election cases with violations.

Title V: Safeguards for Labor Organizations

Title V provides safeguards to protect unions' funds and assets against embezzlement and other criminal violations. The major provisions of title V include the following:

- officers have a duty to manage the funds and property of the union solely for the benefit of the union in accordance with its constitution and bylaws;
- a union officer or employee who embezzles or otherwise misappropriates union funds or other assets commits a federal crime;
- officials who handle union funds or property must be bonded to protect against losses;
- a union may not have outstanding loans to any one officer or employee that in total exceed $2,000;
- a union or employer may not pay the fine of any officer or employee convicted of any willful violation of LMRDA; and
- persons convicted of certain crimes, such as embezzlement or murder, may not hold union office or employment for up to 13 years after conviction or after the end of imprisonment, whichever is later.

Union members may bring a civil action for appropriate relief against union officers who violate any fiduciary duties under this title. The Department of Labor has no authority to enforce fiduciary standards under this title.

Scope and Methodology

We discussed the process for addressing violations of title V and the implementation of a 1960 memorandum of understanding (MOU) between Labor and Justice with officials in Labor's OLMS and Solicitor's Office and with Justice Department attorneys in both headquarters and field or district offices. We obtained and analyzed automated data from the OLMS Case Data System for criminal cases OLMS processed in fiscal years 1998 and 1999, including 754 embezzlement cases; 217 bonding cases; and 3 cases regarding prohibitions against certain persons holding office, which we identified from 194 basic investigations cases. OLMS maintains the files for its work on criminal cases in the respective field offices responsible for the cases; therefore, our work addressing the results of OLMS' enforcement efforts was limited to our analysis of computerized data and discussions with OLMS officials. We tracked the 754 criminal embezzlement cases through key points associated with investigations conducted in accordance with the MOU. These cases included those (1) for which Justice delegated Labor investigation authority; (2) that Labor referred to Justice for prosecution; (3) that Justice accepted from Labor; and (4) for which Justice and Labor obtained indictments, convictions, or monetary restitution. We

also identified cases that involved state and local prosecution and the case results. We identified limitations in OLMS' database for embezzlement cases that in some cases underestimate the number of cases with violations. However, we do not believe this underestimation materially affects the results of our analysis.

We discussed work done on criminal cases with Labor's Office of Inspector General and obtained its March 1999 audit report concerning Labor's enforcement of the title V provision prohibiting individuals with prior criminal convictions from holding union office. We also discussed LMRDA with the Inspector General's Division of Labor Racketeering. While the Division's investigations may result in cases in which union leaders are charged with violations of LMRDA, the focus of the Division's work is organized crime in labor unions, which is outside the scope of our work.

Labor's Efforts to Administer Title V

Under the 1960 MOU, Justice is to investigate and prosecute cases involving criminal provisions of title V, such as embezzlement of union funds, willful violations of the prohibitions against paying certain fines, and violations of prohibitions against allowing certain persons to hold union office. Labor also has the authority under the MOU to investigate certain other criminal violations of the act, such as intentional reporting violations, bonding, and certain loans by labor organizations to officers and employees. However, to conduct embezzlement investigations, OLMS usually seeks a redelegation of investigative authority from Justice. According to OLMS officials, this redelegation is a formality, since Justice generally grants Labor's request. In either case, OLMS confirms the delegation in writing to the appropriate individual in the Office of the U.S. Attorney involved. When Labor investigates criminal cases, it must refer these cases to Justice for litigation, which then decides whether to prosecute. If Justice declines, then Labor decides whether it is appropriate to contact state or local officials regarding the possibility of referral for action under state criminal statutes or to close the case.

According to OLMS officials, criminal investigations and subsequent referrals for prosecution are significant programs for protecting union democracy and financial integrity for two reasons. First, officers and employees convicted of embezzlement and certain other related crimes are barred from union office and employment for a period beginning with conviction or the end of imprisonment, whichever is later, and extending up to 13 years. Second, restitution is frequently made to the union as a result of the investigation.

OLMS may open criminal investigations on the basis of complaints or on its own initiative in response to information obtained from individuals, union reports, OLMS audits of unions, or other government agencies. Investigators do preliminary work based on a detailed investigative plan to determine whether OLMS should seek delegation authority from Justice to investigate.

Embezzlement

For criminal cases, such as embezzlement, in which Justice delegates authority to investigate, the OLMS investigator determines the methods to be used to obtain the necessary information.[1] The OLMS investigator also meets with the U.S. Attorney to discuss the findings and determine whether the case will be prosecuted. The OLMS investigator then prepares a Report of Investigation for the case that includes those requirements from the U.S. Attorney who is likely to prosecute the case. If prosecution is likely, the investigator prepares an Action Report of Investigation accompanied by exhibits and a letter containing OLMS' prosecution recommendation and analysis. However, if the U.S. Attorney declines to prosecute, the OLMS investigator prepares a Closed Report of Investigation, which includes exhibits and documentation of investigative activities and findings and correspondence from the U.S. Attorney. OLMS also sends a case declination confirmation letter to the U.S. Attorney confirming the reason the U.S. Attorney declined to prosecute the case. As noted above, OLMS may refer cases that the U.S. Attorney declines to a state prosecutor.

CSRA does not contain criminal provisions for the embezzlement of funds from unions representing federal employees. As a result, OLMS investigates embezzlement cases by federal union officials under other federal statutes or relies on state and local prosecutors to accept these cases, since embezzlement or its equivalent is a felony in every state.

Bonding, Payment of Fines, and Loans Prohibition

OLMS may investigate violations of bonding requirements under the provisions of the act and the MOU with Justice. OLMS' investigations of whether officers and employees of unions are appropriately bonded are

[1]OLMS policy requires that particular care be given to the way in which delinquent or deficient union reporting and other LMRDA civil violations are addressed while a criminal investigation is in progress. Generally, investigation and resolution of civil violations are to be deferred until all criminal matters are resolved. In cases involving grand juries, investigators must take certain steps to safeguard the information obtained.

triggered by complaints, audits, or information developed from union reports. Violations include the failure to be bonded, inadequate bonding, knowingly permitting unbonded people or groups to handle funds, failure to address conflict-of-interest issues, and using an unacceptable surety company. Bonding investigations focus on unions that are subject to LMRDA requirements; those that have property and annual receipts of more than $5,000 in the most recently completed fiscal year; and those that have officers, agents, or employees handling union funds or property against whom allegations have been made.

OLMS investigates certain violations under the payment of fines prohibition that pertain to unions, while Justice investigates those violations that pertain to employers under the MOU. Neither OLMS nor Justice provided data on these cases. Under the MOU, Labor may also investigate certain loans by labor organizations to officers and employees of the labor organization, but we did not identify any such cases in fiscal years 1998 and 1999, the period of our review.

Prohibition Against Certain Persons Holding Office

Under its policy, OLMS generally does not initiate cases involving the prohibition against certain persons holding office in unions except at the request of a U.S. Attorney or other Justice official. However, OLMS told us it sometimes contacts the U.S. Attorney or other Justice officials if OLMS independently receives information regarding potential violations. If asked to investigate, OLMS interviews the complainant, probation officers, prosecutors, and other officials and obtains documentation of court judgments, proof of employment, consultant status, and other information. The investigator summarizes the findings in a Report of Investigation for the U.S. Attorney. If no violations are established or the U.S. Attorney decides to take no further action, the investigator prepares a Closed Report of Investigation.

Case Resolution

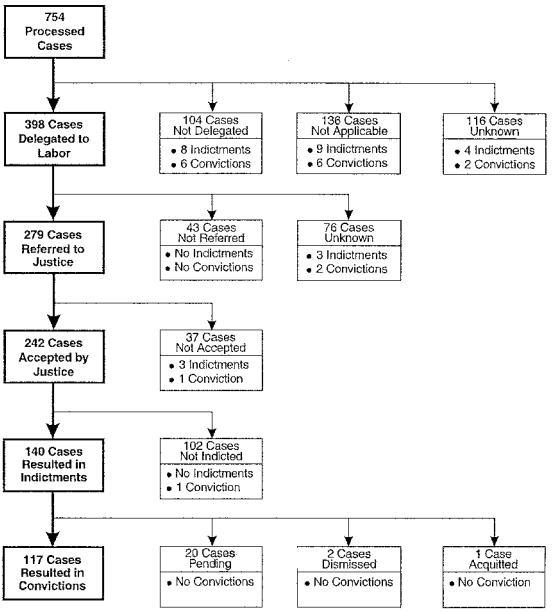
In fiscal years 1998 and 1999, OLMS processed 754 embezzlement cases under the auspices of the MOU, and the results showed indictments in 167 cases (22 percent), convictions in 135 cases (18 percent), and monetary restitution totaling over $3.7 million in 106 cases (14 percent). These cases involved 624 discrete unions identified in the OLMS database with memberships ranging from 0 to 1,414,000 and total receipts ranging from $0 to $208,260,892. OLMS found violations in 64 percent of the cases (484); however, because the number of indictments, convictions, and restitution cases was dispersed at various stages in the MOU process, as shown in

figure 4, we used the overall number of 754 cases to compute percentages for these categories.

Embezzlement Cases

According to the MOU, for criminal embezzlement cases, Labor must first request that Justice redelegate it investigative authority. OLMS then investigates and determines whether it will refer those cases to Justice for prosecution, and Justice determines if it will accept cases for prosecution. Figure 4 illustrates this process for the 754 embezzlement cases OLMS processed for fiscal years 1998 and 1999.

Figure 4: Embezzlement Cases, Fiscal Years 1998–99



Justice delegated to Labor the authority to investigate 398 of the 754 embezzlement cases and did not delegate the remaining 356. OLMS' database showed a range of reasons why 104 cases were not delegated (see table 16).

Table 16: Reasons Cases Were Not Delegated, Fiscal Years 1998–99

Reason for not delegating	Number of cases	Percentage of cases
Amount of money involved too small	43	12
Lacked prosecutorial merit	17	5
No violation	13	4
Lack of intent	9	3
Evidence problem	6	2
Restitution/recovery	6	2
Other	5	1
Out of office	1	0
Delegated to other agency	1	0
Frequency (data) missing	3	0
Subtotal	**104**	**29**
Information not available	116	33
Data not applicable (Labor did not seek delegation)	136	38
Total	**356**	**100**

For 136 cases, the database showed that delegation data were not applicable, but OLMS officials told us that they did not seek delegation authority in these cases. According to OLMS officials, OLMS does not seek delegation when preliminary investigations indicate that violations are not likely and there is no need for further investigation. The OLMS database did not have available information to determine why the remaining 116 cases were not delegated.

Indictments, Convictions, and Restitution for 398 Delegated Cases

As shown in figure 4, Justice delegated to Labor the authority to investigate 398 cases. Of these 398 cases, Labor subsequently referred 279 to Justice for prosecution under LMRDA, and Justice accepted 242 cases (87 percent). Justice obtained indictments in 140 cases (58 percent) and convictions in 117 cases (48 percent). Justice won monetary restitution in 92 cases (38 percent) totaling $3,690,733. The amount of restitution ranged from $300 to $761,609.

Justice did not accept 37 of the 279 cases (13 percent) for prosecution. The most frequently cited reasons for declining cases for prosecution were evidence problems, the small amount of money likely to be obtained, lack

of prosecutorial merit, and unlikely restitution or recovery of funds. When Justice declines to prosecute cases, Labor officials' efforts to resolve cases vary. One official told us that his office closes the cases without further action if Justice declines prosecution. However, another official told us that his office seeks local prosecution or some other disposition rather than simply closing the case.

For the 356 cases that Justice did not delegate to Labor, Justice and local prosecutors won indictments, convictions, and restitution using other federal statutes or local statutes to prosecute the cases. Of the 356 cases, 27 (8 percent) resulted in indictments, 18 (5 percent) resulted in convictions, and 14 (4 percent) resulted in monetary restitution, as shown in table 17.

Table 17: Prosecution Results of Embezzlement Cases, Fiscal Years 1998-99

Number	Delegated to Labor initially	Not delegated to Labor	Total
Total cases	398	356	**754**
Indictments	140	27	**167**
Convictions	117	18	**135**
Restitution	92	14	**106**
Amount of restitution	$3,690,733	$79,707	**$3,770,440**

Note: OLMS officials told us that they track indictments and convictions at the time they are obtained, rather than in the year the cases are referred to Justice; thus, OLMS reported 259 indictments as well as 259 convictions in fiscal years 1998 and 1999, which included some cases referred to Justice in prior years.

We also found that, even though these investigations were begun under LMRDA or related legislation such as CSRA, about 30 percent of the indictments, convictions, and monetary restitution were actually achieved under other federal or local statutes, as shown in table 18.

Table 18: Bases for Indictments, Convictions, and Monetary Restitution for Embezzlement Cases, Fiscal Years 1998–99

Outcome	LMRDA	Other federal or local statutes	Unknown
Indictments (167)	69%	30%	1%
Convictions (135)	71%	27%	2%
Restitution (106)	70%	28%	2%

Bonding Cases

OLMS processed 217 bonding cases and found violations in 198 cases (91 percent)—195 cases involved violations of various aspects of the statutory provisions pertaining to bonding. Virtually all of these cases (196) were resolved through voluntary compliance; the other two cases led to criminal investigations. These cases represented 214 discrete unions identified in the OLMS database, with memberships ranging from 0 to 270,430 members and receipt amounts ranging from $0 to $15,914,220.

Prohibition Against Certain Persons Holding Office

OLMS investigated three cases under the provision prohibiting union members with prior criminal convictions, such as embezzlement, from holding office for a period beginning with conviction or the end of imprisonment, whichever is later, and extending up to 13 years.[2] In two cases OLMS found no violations; in the other, OLMS obtained voluntary compliance.

[2]In March 1999, Labor's Inspector General found 1.4 percent of indicted union officers, employees, and agents that OLMS investigated had prior criminal histories and should have been barred under title V provisions. The Inspector General suggested that OLMS consider a more proactive approach to detecting such violations and ensuring compliance.

Title VI: Miscellaneous Provisions

Title VI of the act contains miscellaneous provisions that, among other things,

- grant Labor the authority to investigate possible violations of any title of LMRDA (except for part of title I) and to enter premises, examine records, and question persons in the course of investigations;
- prohibit a union or any of its officials from fining, suspending, expelling, or otherwise disciplining members for exercising their rights under LMRDA;
- prohibit unions from threatening or using violence that interferes with a union member in the exercise of LMRDA rights; and
- prohibit union members from extortionate picketing—that is, picketing for the purpose of getting the picketed employers to pay individuals to stop picketing.

Union members may bring a civil action for an appropriate remedy if the union has improperly disciplined them. Violations of the use of violence provision or the extortionate picketing provision are crimes that are within the responsibility of Justice.

Scope and Methodology

We discussed title VI requirements with OLMS and Solicitor's Office officials as well as with officials from the Department of Justice. Labor's automated database did not include any cases specifically generated under title VI, and Justice did not separately maintain statistical data for title VI cases under LMRDA.

Labor's Efforts to Administer Title VI

Under title VI, Labor has authority to conduct investigations on its own initiative—that is, without receiving a complaint from a third party. Labor is authorized to conduct investigations, as it deems necessary, to determine whether any part of the act, other than title I, has been or is about to be violated. However, Labor interprets the act as not authorizing it to take enforcement action under title III or IV without a written complaint.[1]

[1]Labor's interpretation is based on Supreme Court decisions indicating that the Secretary of Labor may not bring an enforcement action without a written complaint. See *Hodgson v. Local 6799, United Steelworkers of America*, 403 U.S. 333 (1971) and *Wirtz v. Local 125, Laborers*, 389 U.S. 477, 483n.5 (1968).

Labor delegated to Justice, under a 1960 MOU, the authority to investigate and prosecute violations under several of the provisions outlined above—namely, those that prohibit threatening or using force against union members who exercise LMRDA rights and picketing with the goal of extorting money from employers. Justice officials confirmed that Justice and, occasionally, Labor's Inspector General investigate these provisions of the act.

Case Resolution

Labor officials told us that they do not generate separate workload statistics under title VI for any of its provisions. Justice officials told us that it is difficult to prosecute certain violations, such as picketing to extort money from employers, under LMRDA, so they prosecute violations found in these cases under other statutes.

Appendix VIII

International Compliance Audit Program

OLMS completed its first compliance audit of an international union in 1982. Previously, OLMS had established its Compliance Audit Program in 1979 under its discretionary authority to ensure that unions at intermediate and local levels comply with LMRDA's provisions.[1] Audits of union operations at union headquarters (which can be at the international or national level) are referred to as International Compliance Audit Program (I-CAP) audits. Under this program, OLMS staff use specially designed techniques and procedures to

- determine compliance by international unions with the criminal and civil provisions of LMRDA and CSRA;
- to the extent possible, review compliance by affiliated unions with these acts;
- provide assistance to international unions and their affiliates to help them comply with the acts; and
- increase communication and cooperation between OLMS and international unions.

Scope and Methodology

We examined case files for the I-CAP audits OLMS conducted in fiscal years 1995 through 1999. We used this 5-year period because the automated database did not include any cases processed during fiscal years 1998 and 1999. We identified nine I-CAP cases for this 5-year period. OLMS had three other I-CAP cases under way and had begun preparatory work on another at the time of our review. Table 19 shows the distribution of I-CAP cases reviewed.

Table 19: I-CAP Cases Processed, Fiscal Years 1995–99

Fiscal year	Number of cases
1995	4
1996	1
1997	4
1998	0
1999	0

[1]See app. IX for a discussion of the audit program for unions at the intermediate and local levels.

(Continued From Previous Page)

Fiscal year	Number of cases
Total	9

The nine unions that received an I-CAP audit varied in membership from 7,500 to 800,000, with annual receipts ranging from $2,110,675 to $307,261,268.

Labor's Efforts to Audit International or National Unions

As part of OLMS' annual planning process, it selects international unions to audit primarily on the basis of geographic location and amount of receipts. OLMS' policy is to audit all international unions at least once before any union is revisited. Between February 1982 and September 1999, OLMS completed I-CAP audits at 152 international unions.[2] At the time of our review, OLMS had identified about 150 national or international unions, and although the number of these unions had declined from past years, OLMS had not completed its goal of at least one I-CAP audit per union.[3]

Before OLMS begins the audit work for I-CAPs, its Division of Enforcement sends standard letters to the Department of Justice, the Federal Bureau of Investigation, Labor's Office of Inspector General, and Labor's Pension and Welfare Benefits Administration notifying them of OLMS plans to conduct the audit and requesting any information in their files pertinent to the scheduled audit. These letters not only gather valuable information for the I-CAP but also provide these agencies an opportunity to raise any potential conflicts with their own investigations or enforcement activities. OLMS requires that the audit team contact the pertinent U.S. Attorney in the locations where international unions are headquartered. The Division of Enforcement also sends standard memorandums to OLMS field offices and headquarters components to obtain information about the international union being audited.

The OLMS headquarters office oversees the I-CAPs, which are carried out by a team led by OLMS field office staff located where the international union is headquartered and, as necessary, OLMS staff from locations where the international union has affiliates. The team reviews a standardized

[2]Fourteen international unions underwent second I-CAP audits between 1991 and 1994.

[3]The number of national or international unions subject to OLMS compliance audits varies over the years because of mergers and other changes that affect the total number of unions.

briefing book that includes items such as a list of current affiliated unions, a list of any reports the union is delinquent in filing, and information concerning embezzlement cases involving the international union and its affiliates. The team completes a case-planning checklist designed to help it prepare for the on-site audit and sends a standard notification letter to the international union. The team then schedules and conducts an opening interview with international union officials.

OLMS has designed an audit/investigative plan that consists of 25 mandatory investigative steps: 15 designed to detect and correct civil and criminal violations and 10 designed to examine the international union's financial records. The team can select from an additional 35 optional audit steps those that are most likely to uncover embezzlement violations. At the conclusion of on-site activities, the team holds an exit meeting to discuss results and to try to obtain voluntary compliance. Within 15 days after the exit interview, the team prepares a Report of Investigation and closing letter for review by the district director and submission to the chief of the Division of Enforcement, except in cases involving criminal violations requiring further enforcement action. Any investigative leads or case referrals that have been accumulated are forwarded to the appropriate OLMS district offices. Approximately 6 months after an I-CAP is completed, the OLMS district director contacts the international union president by mail and conducts a follow-up site visit to promote cooperation and determine whether promises of future compliance made during the audit have been kept and whether violations have been remedied.

Case Resolution

The nine I-CAP cases that OLMS processed in fiscal years 1995 through 1999 identified violations ranging from delinquent and deficient reporting to inadequate bonding (see table 20).

Table 20: Types of Violations Found in I-CAP Cases, Fiscal Years 1995–99

	Number of cases with particular violation		
Type of violation	International unions	Affiliates	Total
Delinquent reports	1	6	7
Deficient reports	7	0	7
Inadequate records	5	1	6
Bonding deficiencies	3	1	4
Other	2	1	3

OLMS resolved most of these violations using voluntary compliance. However, the disposition of violations in three cases required follow-up investigations, which led to four criminal investigations: three addressed potential embezzlement violations, and the fourth concerned the use of union funds to pay for the defense of an officer convicted of crimes.

Compliance Audit Program

OLMS' Compliance Audit Program (CAP) is an investigative program established in 1979 under OLMS' discretionary authority to detect criminal and civil violations of LMRDA and provisions of related legislation. CAP audits are conducted at the intermediate and local levels of unions. Over 31,000 of these unions are subject to compliance audits. The compliance audits' principal objectives are to

- uncover embezzlement and other criminal and civil violations,
- create a visible enforcement presence in the labor community, and
- provide effective grass-roots compliance assistance directly to union officials.

Scope and Methodology

We obtained and analyzed automated data from the OLMS Case Data System for 591 CAP cases processed in fiscal years 1998 and 1999. OLMS maintains case files in the field; therefore, our work on CAP cases was limited to data obtained from the automated database and to discussions with OLMS officials about the compliance audit process.

Labor's Efforts to Audit Intermediate and Local Unions

Each OLMS district office sets an annual goal for the number of CAP cases it will conduct after considering its workload in other areas. Because CAPs are discretionary activities, OLMS may temporarily suspend CAPs to allow staff to conduct other higher priority investigations, such as those responding to an election complaint. In its fiscal year 1999 planning guidelines, OLMS directed that field offices give higher priority to eliminating criminal case backlogs than to compliance audit work. According to OLMS officials, OLMS has been forced to do a declining number of compliance audits as staff resources have diminished. The officials noted that OLMS did 1,074 compliance audits in fiscal year 1990 but only 289 in fiscal year 1999. Also, when selecting unions to audit, field offices were instructed to strongly consider unions that are chronically delinquent report filers and in particular those with receipts of more than $200,000 that were delinquent in the prior year.

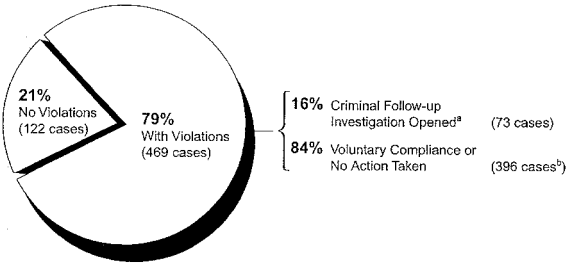
The district office sends a notification letter to every union selected for a compliance audit that provides an overview of the program and enables the union to gather the required information. OLMS uses a streamlined audit approach that employs a checklist addressing the union's administrative and financial operations and allows OLMS to complete its work in a minimum amount of time. When OLMS completes a compliance audit, the

district office sends a closing letter to the union (unless the compliance audit results in a follow-up criminal investigation case) that identifies all violations found and those that have been remedied. The letter confirms actions unions have agreed to take in the future to comply with requirements. Each closing letter must indicate that the audit was limited in scope and that all records and documents the union provided will be handled in a confidential manner to the extent permissible by law. When OLMS initiates a follow-up criminal investigation case, OLMS uses the same process described for title V in appendix VI.

Case Resolution

OLMS found violations in 469 (or 79 percent) of the 591 CAP cases processed in fiscal years 1998 and 1999. In 84 percent of the cases with violations, OLMS either secured voluntary compliance or it did not have to take action, according to the database. In the remaining 16 percent of the cases, OLMS initiated follow-up criminal investigation cases (see fig. 5).

Figure 5: Resolution of 591 Compliance Audit Cases, Fiscal Years 1998–99



[a]These efforts resulted in 97 cases, 3 of which were referred to Justice for prosecution.

[b]Twenty-five of these cases had both minor violations that were resolved by voluntary compliance or did not require action as well as more serious violations that led to follow-up investigations.

An analysis of the particular violations in these cases found that the most common violations OLMS detected were failure to maintain records, deficient reporting, failure to file, and inadequate bonding for union

officials. These also were violations that OLMS was most likely to resolve by securing voluntary compliance from the union. Conversely, for embezzlement violations, OLMS was most likely to open a follow-up criminal case. Some cases involved technical violations, minor reporting deficiencies, or nonactionable violations that, according to OLMS, did not need to be resolved or corrected. Table 21 shows a summary of the violations detected in the 469 compliance audit cases and the resolution of particular violations.

Table 21: Resolution of Particular Violations Found in CAP Cases, Fiscal Years 1998–99

		Resolution of particular violation		
Violation	Number of cases with each violation	Voluntary compliance	No action taken	Follow-up case opened
Failure to maintain records[a]	272	218	18	35
Deficient reporting[a]	261	225	17	18
Failure to file	130	109	8	13
Inadequate bonding	109	92	3	14
Embezzlement	71	0	1	70
Destroying or concealing records[a]	29	18	1	9
False records	21	3	1	17
False report	11	1	0	10
Improper loans	7	4	2	1
Improper election procedure	3	1	2	0
Failure to adopt a constitution	2	2	0	0
Other criminal violations	1	0	0	1
Other civil violations	1	0	0	1

[a]The three cases that were referred to Justice involved these violations.

CAP cases involved 590 discrete unions with memberships ranging from 0 to 30,564 and total receipts ranging from $0 to $36,288,658.

Appendix X

Justice's Role in Enforcement

Section 607 of LMRDA authorizes the Secretary of Labor to make agreements with any agency for cooperation or mutual assistance in performing functions under the act. In 1960, the Departments of Labor and Justice signed an MOU that outlined their respective responsibilities under LMRDA—that is, investigating and litigating potential criminal and civil violations of the act.

Criminal Enforcement

Under the terms of the MOU, Labor delegated to Justice the responsibility for investigating certain criminal violations under the act, such as those involving embezzlement, cases in which employers paid fines for union officials or employees, and the prohibition against certain persons holding offices or positions related to unions under title V as well as deprivation of union members' rights, use or the threat of use of violence, and picketing to extort money from employers under title VI. Labor is responsible for investigating other criminal violations involving reporting; trusteeships; and certain safeguards under title V, including bonding, loans to union officers, and fines paid by unions on behalf of a union official or employee. Also, Labor may request from Justice a "redelegation" of investigative authority for particular criminal cases, such as embezzlement cases, on a case-by-case basis. According to OLMS officials, the redelegation of investigative authority is a formality, since Justice generally grants Labor's request.

Once Labor has obtained investigative authority from Justice, Labor confers with Justice during the investigation before any decision is made to close or refer a case for prosecution. Once Labor has completed a criminal investigation, it decides whether to refer the case to Justice for prosecution, since Justice is responsible for litigating all criminal violations of the act. Justice determines whether it will accept cases that Labor refers for criminal prosecution on a case-by-case basis. If Justice declines to prosecute a case, Labor decides whether it will close the case or pursue litigation through other means, such as using local prosecutors. Both Labor and Justice officials said that criminal cases involving reporting violations or inadequate bonding are not treated with the same priority as embezzlements. Although the act provides penalties for reporting violations, such as delinquent reporting that is intentional, Justice officials do not consider these violations serious enough to warrant a court's time. Consequently, Labor is less likely to refer such cases to Justice unless they also involve violations such as embezzlement.

Civil Enforcement

Under the MOU, Labor is responsible for investigating potential civil violations of the act relating to union elections, trusteeships, or reporting. If Labor concludes that litigation is warranted, it will refer the case to Justice with a request that a civil suit be instituted on behalf of the Secretary of Labor. In turn, Justice will, for example, file suit in federal court to require unions to rerun an election or to terminate an unlawful trusteeship. Unlike criminal enforcement, Justice will not institute civil enforcement action except at Labor's request, nor will Justice voluntarily dismiss any action under way except with Labor's concurrence. In civil enforcement, Justice and Labor attorneys collaborate to prepare and present the case. According to Labor officials, in some instances when Justice's resources are limited, Justice will delegate prosecution authority to Labor—such as for elections—which requires Labor's Solicitor to be the attorney of record.

Working Relationship Between Labor and Justice

Justice officials told us that when the MOU was signed in 1960, Labor did not have experience investigating criminal acts such as embezzlement; therefore, the Federal Bureau of Investigation conducted these investigations. However, over the years, as Labor gained experience, Labor began to conduct more of the embezzlement cases and Justice began to direct its investigative resources to other priorities. According to statistics that Justice provided, work on Labor cases accounted for less than 1 percent of Justice's work in fiscal years 1998 and 1999. Labor officials described a good working relationship with Justice on the basis of a customer satisfaction survey OLMS conducted of U.S. Attorneys. Justice officials confirmed that a positive working relationship exists between the two Departments.

Appendix XI

Compliance Assistance

OLMS' compliance assistance program is designed to

- promote voluntary compliance with LMRDA by informing union officers and others affected by the act of their responsibilities and
- encourage union members to exercise their rights under the act.

OLMS' compliance assistance efforts also extend to the education and law enforcement communities to foster a better understanding of the act and of OLMS' responsibilities to achieve greater cooperation among agencies, and to improve enforcement efforts.

Scope and Methodology

We discussed OLMS' compliance assistance efforts with OLMS officials and obtained documents describing these efforts for fiscal years 1998 and 1999.

Labor's Efforts to Provide Compliance Assistance

OLMS headquarters and field offices conduct compliance assistance. The headquarters office monitors and evaluates field office compliance assistance activities and recommends successful programs to other OLMS field offices for potential use. OLMS headquarters also identifies and develops new and revised compliance assistance materials and conducts liaison activities with union headquarters at the national and international levels as well as with federal agencies. District directors determine what compliance assistance activities the field offices will conduct on the basis of perceived need. For example, unions identified as enforcement problems, such as chronically delinquent report filers, are targeted for compliance assistance.

Compliance Assistance Activities

OLMS district offices carried out 614 compliance assistance activities and liaison contacts reaching 4,395 union officers and members in fiscal year 1998. In particular, OLMS made 481 liaison contacts with U.S. Attorneys and Assistant U.S. Attorneys, law enforcement and other agencies, union representatives, and educational institutions. In April 1998, OLMS initiated its member outreach program, which was designed to target union members and inform them about their rights under the act. In April 1999, OLMS drafted a new proposal for a "Labor Organization Orientation Program," which was designed to educate officers of newly formed labor organizations and new officers in existing unions about their duties and responsibilities under LMRDA. In fiscal year 1999, OLMS continued several

previously implemented initiatives and developed new ones that focused on reducing the number of unions delinquent in filing the reports required under LMRDA (see app. III). OLMS officials told us they are working on a major multiyear compliance assistance initiative designed to help trustees in small unions conduct more effective audits of their organizations' financial books and records. Officials expect to publish a detailed guide for union officials in July 2000 and to conduct nationwide workshops on using the guide in fiscal year 2001.

Appendix XII

Comments From the Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employment Standards
Washington, D.C. 20210

JUN 14 2000

Ms. Marnie S. Shaul
Associate Director
Education, Workforce and
Income Security Issues
Health, Education and
Human Services Division
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Shaul:

This is in response to your letter of May 31 forwarding for review and comment your proposed report, Department of Labor: Administering the Labor-Management Reporting and Disclosure Act (GAO/HEHS-00-116).

Our comments, which are enclosed with this letter, identify certain noteworthy errors that should be corrected, provide additional information in some areas, and point out the principal differences or concerns we have with your analysis. We have directed serious attention to this review and hope that the comments provided will assist you in reporting on your audit.

We appreciate the opportunity to comment on your report. Please do not hesitate to raise any questions you may have with us.

Sincerely,

Bernard E. Anderson

Enclosure

Comments From the Department of Justice

U.S. Department of Justice

Criminal Division

Office of the Deputy Assistant Attorney General *Washington, DC 20530-0001*

June 14, 2000

Marnie S. Shaul
Associate Director
Education, Workforce, and Income Security Issues
Health, Education, and Human Services Division
U.S. General Accounting Office
441 G Street, NW
Washington, D.C. 20530

Dear Ms. Shaul:

On May 31, 2000, you provided the Department of Justice copies of a General Accounting Office (GAO) draft report entitled "Department of Labor: Administering the Labor-Management Reporting and Disclosure Act." Although we have no quarrel with the draft report's primary conclusions, we think that the draft report has overlooked a significant part of the Department of Labor's enforcement of the LMRDA by omitting consideration of the Inspector General's Division of Labor Racketeering. The draft report noted that while "the Division's investigations may result in cases in which union leaders are charged with violations of LMRDA, the focus of the division's work is organized crime in labor unions, which is outside the scope of our work." Draft report p. 44.

Now on p. 51.

However, as I testified in 1996 before the House Subcommittee on Human Resources and Intergovernmental Relations, the labor union member who suspects union officials of stealing funds has a choice of three federal investigative agencies which can receive his or her complaint: the FBI, and, within the Department of Labor, the Office of Labor Management Standards (OLMS) and the Inspector General's Division of Labor Racketeering. We are pleased with the efforts of OLMS in combating criminal violations of the LMRDA, which has sometimes also included working with federal organized crime and

-2-

racketeering strike forces in various cities. But, since 1978 the Inspector General's office has carried out the primary enforcement of the LMRDA on behalf of the Department of Labor in those unions where members' rights of democratic participation have been trampled by organized crime and/or labor racketeers. As you are aware, prosecutions of the extortionate deprivation of union members' rights as guaranteed by the LMRDA are a central part of the Department of Justice's enforcement program against organized crime and labor racketeering. See United States v. Teamsters Local 560, 780 F.2d 267 (3d Cir. 1985) (deprivation of intangible LMRDA rights of voting, assembly and free speech upheld as extortion of union members' property).

The omission of the Division of Labor Racketeering's data also affects the GAO's report of how the Department of Labor enforces individual titles of the LMRDA. For example, during fiscal year 1999, an investigation by the Division of Labor Racketeering and the FBI resulted in a successful prosecution of violence directed at interfering with Chicago union members' LMRDA rights in violation of title VI, 29 U.S.C. § 530. United States v. Michael J. Gochis, 98 CR 0047 (N.D. Ill.). The draft report states that the Labor Department's automated database did not include cases generated under title VI for fiscal year 1999 because GAO apparently used only the database of OLMS. See draft report pp. 43 and 51.

Now on pp. 50 and 59.

We understand that the Department has forwarded technical comments under separate cover for your consideration. Thank you for the opportunity to comment on the draft report.

Sincerely,

John C. Keeney

John C. Keeney
Deputy Assistant Attorney General

Appendix XIV

GAO Contacts and Staff Acknowledgments

GAO Contacts

Lori Rectanus, (202) 512-9847
Jacqueline Harpp, (202) 512-8380

Staff Acknowledgments

In addition to those named above, Robert Crystal, Lepora Flournory, Dennis Gehley, Larry Horinko, Grant Mallie, Robert Sampson, John Smale, Joan Vogel, and James Wright made key contributions to this report.

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APPENDIX J – SUBMITTED FOR THE RECORD, U.S. DEPARTMENT OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, OFFICE OF LABOR-MANAGEMENT STANDARDS, PUBLIC DISCLOSURE UNDER THE LMRDA, www.dol.gov/esa, 4/4/2002

U.S. DOL **Employment Standards Administration**
Office of Labor-Management Standards

Public Disclosure Under the LMRDA

This pamphlet is designed to assist anyone who wishes to examine or obtain copies of reports filed under the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). These reports, described below, must be filed with the U.S. Department of Labor's Office of Labor-Management Standards (OLMS) by private sector labor unions, union officers and employees, employers, labor relations consultants, and surety companies. The Civil Service Reform Act (CSRA) requires most Federal sector labor organizations to file the labor organization reports described in this pamphlet. (Unions composed solely of state and local government employees are not required to file these reports.)

Examining or Obtaining Reports

Disclosure Requests - Any person may examine reports and related documents, including union constitutions and bylaws, free of charge at the OLMS public disclosure room in Washington, DC, or at OLMS field offices for reporting organizations and individuals within each office's geographic jurisdiction. Copies of reports and constitutions and bylaws may also be purchased. Requests may be submitted in person, by mail, by telephone, or by fax.

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OLMS is committed to quality customer service and pledges to:

- Treat every customer courteously
- Provide timely access to public disclosure documents
- Assist customers in understanding the reporting requirements
- Redirect customers if OLMS cannot address their concerns

Information Needed - Requestors should identify the type of report wanted and the complete name of the reporting organization or individual. For union reports, requestors should provide as much identifying information about the union as possible including the union's affiliation (such as the International Factory Workers); its designation name and number (such as Local 100); the time period

covered by the report (such as fiscal year ending June 30, 20__); the city and state where located; and, if known, the 6-digit file number assigned to the union by OLMS.

Cost of Copies - Reports cost 15 cents a page; requests for 30 or fewer pages are provided free of charge. Copies of reports may be picked up in person from any OLMS office and may be paid for by check or money order made payable to the "U.S. Department of Labor/OLMS." Reports not picked up in person will be mailed to the requestor along with a bill listing the charges. Arrangements can be made for OLMS to respond to small requests by fax.

Union Reports

Unions are required to file a report containing, among other things, basic identifying information within 90 days after the date on which the union first became subject to the LMRDA or CSRA.

Form LM-1 information reports disclose the union's name, affiliation, mailing address, fiscal year, membership fees and dues, and constitution and bylaws provisions governing specific aspects of its activities. The initial information report also includes copies of a reporting union's constitution and bylaws.

The initial Form LM-1 must be filed within 90 days after the date on which the labor organization first became subject to the LMRDA or CSRA. Thereafter, a union updates its initial Form LM-1 report by filing an amended Form LM-1 as necessary with its annual financial report to disclose changes in the practices or procedures which are not contained in the union's constitution and bylaws. A union must also file copies of any amended constitution and bylaws. Copies of collective bargaining agreements are not required to be filed with OLMS.

Note: When requesting a union's Form LM-1, the requestor should indicate whether the union's initial Form LM-1 (which may have been filed as early as 1959) or the union's most recent amended Form LM-1 is desired.

Annual Financial Reports - Unions must file one of three types of annual financial reports based on the total annual receipts of the union. The annual financial reports vary in the level of detail which must be reported and must be filed within 90 days after the end of the labor organization's fiscal year.

- **Form LM-2** is the most detailed report. Unions with total annual receipts of $200,000 or more and subordinate labor organizations held in trusteeship file this twelve-page report, which discloses certain information items and financial activities in separate line items under assets, liabilities, receipts, and disbursements. Supporting schedules detail loans, investments, payments to officers and employees, and other items. Form LM-2 reports submitted by large labor organizations often contain numerous attachments and may be very lengthy.

- **Form LM-3**, a less-detailed four-page report, may be filed by unions with total annual receipts of less than $200,000 (if not in trusteeship). It requires the reporting of certain information items, has fewer financial items than the Form LM-2, and has no supporting schedules.

- **Form LM-4**, an abbreviated two-page report, may be filed by unions with annual financial

receipts of less than $10,000 (if not in trusteeship). It requires the reporting of a limited number of information items and only five financial details.

Simplified annual financial reports may be filed by parent body unions on behalf of subordinate labor organizations with no assets, liabilities, receipts, or disbursements and which meet certain other conditions.

Union Trusteeship Reports

Trusteeship reports are filed by parent body unions on behalf of subordinate labor organizations held in trusteeship.

Form LM-15 initial trusteeship reports, filed after trusteeships are imposed, disclose the reason(s) the trusteeship was imposed, the date it was established, and the trusteed union's financial condition at the time it was placed in trusteeship. Form LM-15 semiannual trusteeship reports, filed after each 6-month period following imposition of a trusteeship, disclose the reason(s) for its continuance.

Form LM-16 terminal trusteeship reports, filed after trusteeships are lifted or terminated, disclose the termination date and the names, titles, and method of selection of the officers of the formerly trusteed union. A terminal trusteeship financial report, which details the financial condition of the formerly trusteed union at the time of the termination of the trusteeship, must also be filed on Form LM-2.

Form LM-15A reports must be filed with Form LM-15 or LM-16 whenever, during the period covered by the report, the parent body union held either a convention to which the trusteed union sent delegates (or would have if not in trusteeship) or an election of its officers.

Other Reports

Other reports and documents available from OLMS are filed by organizations and individuals, usually on a "one-time" or "as necessary" basis, to disclose specific activities made reportable by LMRDA requirements.

Form LM-10 employer reports must be filed by employers who engage in certain specified financial dealings with their employees, unions, union agents, and labor relations consultants, or who make expenditures for certain purposes relating to employee or union activity.

Form LM-20 and Form LM-21 consultant reports must be filed by persons who make agreements or arrangements with employers to persuade employees about exercising their rights to organize and bargain collectively or to obtain information about employee or union activity in connection with a labor dispute involving an employer. Form LM-20 agreement and activities reports must be filed to disclose each such agreement or arrangement. Form LM-21 receipts and disbursements reports are filed by each person who received payments for any arrangement requiring the filing of a Form LM-20.

Form LM-30 labor organization officer and employee reports must be filed by union officers or employees (except clerical or custodial) if they, their spouses, or minor children had any interest, transaction, income, or benefit under specific conditions to disclose possible conflicts of interest.

Form S-1 surety company reports must be filed by such companies for each year in which they had a bond in force insuring any union or trust in which a union is interested under the LMRDA, or a welfare or pension plan covered by the Employee Retirement Income Security Act of 1974 (ERISA).

The OLMS public disclosure room, which maintains disclosure files for all reporting organizations and individuals, is open Monday through Friday from 8:00 a.m. to 4:00 p.m.

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards, Room N-5608
200 Constitution Avenue, NW
Washington, DC 20210

(202) 693-0125 (voice) (202) 693-1344 (fax)

OLMS field offices provide public disclosure services for reporting organizations and individuals within their geographic jurisdictions.

OLMS Assistance

Additional information about the Labor-Management Reporting and Disclosure Act or the Civil Service Reform Act may be obtained from OLMS field offices.

Another OLMS publication, ***Reports Required,*** contains more detailed information concerning required reports and the circumstances when each one must be filed, when it is due, required signers, and other basic information. A copy of ***Reports Required*** is available online. Copies of ***Reports Required,*** other OLMS publications, and blank reporting forms and instructions are available at any OLMS office.

APPENDIX K – SUBMITTED FOR THE RECORD, U.S. DEPARTMENT OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, OFFICE OF LABOR-MANAGEMENT STANDARDS, COMPLIANCE TIP, DISCLAIMER, RETENTION OF UNION RECORDS, www.dol.gov/esa, 4/4/2002

U.S. DOL **Employment Standards Administration**
Office of Labor-Management Standards
Compliance Tip

---DISCLAIMER---

Retention of Union Records

Section 206 of the Labor-Management Reporting and Disclosure Act (LMRDA) outlines general recordkeeping requirements for unions. A study by the Office of Labor-Management Standards (OLMS) found that about twenty-five percent of the labor unions audited by OLMS failed to maintain adequate records. The overwhelming majority of these violations were unintentional; the responsible union officials often did not understand what specific records had to be kept for the required five-year period. However, because of the wide diversity of recordkeeping systems used by international and national unions and their affiliates, it is not possible for OLMS to precisely define what records must be maintained by every union.

As a general rule, all types of records used in the normal course of doing union business must be maintained by unions for five years. This includes such financial records as receipt and disbursement journals, cancelled checks and stubs, bank statements, dues collection receipts, per capita reports, vendor invoices, and payroll records. OLMS has found that, for the most part, unions do maintain these types of basic financial records but often fail to keep other records which help explain or clarify financial transactions. Such records include:

- payment receipts for all union expenditures,
- credit card slips and itemized receipts for each credit card charge,
- membership ledger cards for former members,
- the union's copy of bank deposit slips,
- bank debit and credit memos,
- internal union financial reports and statements,
- accountant's work papers and other internal worksheets used to prepare financial statements, and
- minutes of all membership and Executive Board meetings.

As you can see, all types of financial records and other related records that clarify or verify financial transactions msut be maintained for five years. If union officers have any questions about their recordkeeping responsibilities, we suggest that the union records in question be retained or that officers seek advice from the nearest OLMS field office.

APPENDIX L – SUBMITTED FOR THE RECORD, U.S. DEPARTMENT OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, OFFICE OF LABOR-MANAGEMENT STANDARDS, LMRDA COMPLIANCE, A GUIDE FOR NEW UNION OFFICERS, www.dol.gov/esa, 4/4/2002

U.S. DOL **Employment Standards Administration**
Office of Labor-Management Standards

LMRDA Compliance
A Guide for New Union Officers

Congratulations on becoming a union officer! You have been entrusted with many important duties and responsibilities. The Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor has prepared this guide to help you properly carry out some of these duties. OLMS enforces certain provisions of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), which guarantees rights to union members and imposes responsibilities on union officers. The LMRDA establishes a bill of rights for union members; reporting requirements for unions, union officers, and union employees; standards for the election of union officers; and safeguards for protecting union funds and assets.

This guide includes general information regarding LMRDA requirements that apply to unions and union officers and offers suggestions on how to comply with these requirements. Although this guide is designed primarily for newly elected presidents and financial officers, it should be helpful to all new officers.

Unions Must File Annual Financial Reports

- The LMRDA requires unions to file financial reports annually with OLMS. Unions with annual receipts of $200,000 or more (and those under trusteeship) must file Form LM-2. Unions with annual receipts less than $200,000 may file the shorter Form LM-3, and unions with annual receipts less than $10,000 may file Form LM-4. Annual financial reports must be signed by the president and treasurer or corresponding principal officers and are due within 90 days after the end of your union's fiscal year.

- Unions must make annual financial reports available to their members and permit members to examine supporting records for just cause.

- The reports and documents filed with OLMS are public information and any person may examine them or obtain copies from OLMS offices.

Suggestions

- When you take office, ensure that your union is up-to-date in filing Form LM-2, LM-3, or LM-4 annual financial reports, and that a copy of the last report is in your union's files.

- If your union is not up-to-date in filing its annual financial report, you are responsible for filing the required report immediately. If you need a copy of your union's most recently filed financial report or blank reporting forms and instructions, contact the nearest OLMS field office.

- In the last month of your union's fiscal year, OLMS will mail blank reporting forms and instructions to the address on your union's most recently filed form. Notify OLMS if your union changes its address so that your union will receive the forms in a timely manner.

- When completing your annual financial report, gather records well before the due date and review the instructions thoroughly to make sure that you complete the report properly. If you have any questions, call OLMS.

- Check your union's constitution and bylaws to review any other requirements regarding financial reporting. Also contact any former officers or your union's parent body to determine if your union is required to file reports with the IRS.

Unions Must Maintain Certain Records

- The LMRDA requires unions to maintain the records necessary to verify the reports filed with OLMS for at least five years after the reports are filed.

- As a general rule, all types of records used in the normal course of doing business must be maintained such as receipts and disbursements journals, cancelled checks, bank records, dues collection receipts, vendor receipts, credit card slips, meeting minutes, etc.

Suggestions

- If your union has an established recordkeeping system, review it thoroughly and, if necessary, check with prior officers on how records are maintained. Become familiar with the types of records your union maintains, including those needed to complete your annual financial report.

- Find out if your national or international union has any specific recordkeeping forms or requirements, including any handbooks or other guidance material.

Unions Must Safeguard Funds and Assets

- The LMRDA imposes a duty on union officers to manage the funds and property of the union solely for the benefit of the union in accordance with its constitution and bylaws.

- A union may not have loans to any officer or employee that in total exceed $2,000 at any time.

- A union officer or employee who embezzles union funds or other assets commits a federal crime

punishable by a fine and/or imprisonment.

- Individuals who have been convicted of certain crimes listed in the LMRDA may not hold union office or employment for up to 13 years after their conviction.

Suggestions

- Use a system of checks and balances to insure that one person is not solely responsible for all financial transactions. For example, require that two officers sign all checks and do not sign checks before the date, payee, and amount are entered.
- Review current practices for collecting dues and other receipts to insure that all receipts are recorded in union books and records, member dues are deposited in the bank on a timely basis, and deposits are properly recorded.
- Confirm that all expenditures are authorized in accordance with your union's constitution and bylaws and are properly recorded in membership/executive board minutes and union disbursement books and records.
- Remove any former officers' names from union bank accounts.
- Conduct an inventory of union assets to determine if they match prior inventory and union records of purchases and sales.
- Have trustees or an audit committee conduct periodic audits and report to the membership. The OLMS publication *Conducting Audits in Small Unions: A Guide for Trustees* is available from the nearest OLMS field office.
- If you discover a possible misuse of union funds, contact your national or international union or OLMS.

Unions Must Be Bonded

The LMRDA requires officers and employees of unions with property and annual receipts of more than $5,000 to be bonded if they handle union funds or property. Handling funds is not limited to physical contact with money. For example, a person who has the authority to sign checks or redeem certificates of deposit is considered to be handling funds.

- The minimum bonding amount for each covered officer or employee is 10 percent of the funds handled by the official and his or her predecessor, if any, during the preceding fiscal year. For a new local union, the bond must be at least $1,000.
- Bonding coverage required by the LMRDA is limited to protection against financial loss arising from fraudulent or dishonest acts, including larceny, theft, and embezzlement.

- The required bond must be obtained from a company on the U.S. Treasury Department list of approved bonding companies. The bond may not have a deductible since that is a form of prohibited self-insurance.

Suggestions

- If you are an officer of a newly formed union, contact your national or international union to see if it obtains bonding coverage for its locals. If not, obtain adequate bonding coverage.
- If you are a newly elected officer of an established union, determine if the amount of your union's bond is adequate. If not, increase coverage immediately.
- Confirm that your union's bond covers losses caused by fraud or dishonesty by each bonded person.

Unions Must Conduct Fair Elections of Officers

- Local unions must elect their officers by secret ballot at least every three years.
- Officer elections must be conducted in accordance with the provisions of your union's constitution and bylaws as long as they comply with the LMRDA.
- Every member in good standing has the right to nominate candidates, to be a candidate subject to reasonable qualifications uniformly imposed, and to support and vote for the candidates of the member's choice.
- Unions must mail a notice of election to every member at the member's last known home address at least 15 days prior to the election.
- Union and employer assets, including funds, equipment, and property, may not be used to promote the candidacy of any candidate. However, union funds may be used for reasonable expenses necessary to run an election.

Suggestions

- Review your union's constitution and bylaws well ahead of the scheduled election and determine your responsibilities and the time frames for conducting all aspects of nominations and the election.
- Update your union's membership mailing list regularly.
- Inform officers and employees of your union of the LMRDA prohibition against using union funds for campaign purposes, including campaigning on union time.
- Request a copy of *Conducting Local Union Officer Elections: A Guide for Election Officials* from the nearest OLMS field office for use by those who will be conducting the upcoming election.

Unions Must Allow Members to Exercise Their LMRDA Rights

- Union members have safeguards against improper discipline, equal rights to participate in union activities, freedom of speech and assembly with other members, and safeguards against improper dues increases.
- Union members and non-member employees have the right to receive or inspect copies of collective bargaining agreements.
- It is unlawful to use force or violence against union members who are exercising their rights under the LMRDA.

OLMS Assistance

Additional information about the Labor-Management Reporting and Disclosure Act or the Civil Service Reform Act may be obtained from OLMS field offices.

APPENDIX M – SUBMITTED FOR THE RECORD, U.S. DEPARTMENT OF LABOR, EMPLOYMENT STANDARDS ADMINISTRATION, OFFICE OF LABOR-MANAGEMENT STANDARDS, REPORTS REQUIRED UNDER THE LMRDA AND THE CSRA, www.dol.gov/esa, 4/4/2002

U.S. DOL

Employment Standards Administration
Office of Labor-Management Standards
Reports Required Under the LMRDA and the CSRA

Reports Required
Under the LMRDA and the CSRA

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OLMS Assistance

Appendix

- Union Reports
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- Other Reports

Reports Required

This pamphlet provides general information about the reports that the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), and the Civil Service Reform Act of 1978 (CSRA) require to be filed with the U.S. Department of Labor by labor unions, union officers and employees, employers, labor relations consultants, and surety companies.

The LMRDA applies to labor organizations which represent private sector employees and U.S. Postal Service employees while the CSRA applies to labor organizations which represent employees in most agencies of the executive branch of the Federal Government. The regulations implementing the standards of conduct provisions of the CSRA incorporate many LMRDA provisions, including those related to labor organization reporting requirements. (Federal sector labor organizations subject to the Foreign Service Act or the Congressional Accountability Act are also required to file the union reports described in this pamphlet.)

All reports must be filed with the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards (OLMS). Each reporting form prescribed by OLMS and the type of information to be reported are discussed in this pamphlet. The appendix at the back of this pamphlet lists the name and number of each form, the persons who are required to sign and file it, and its due date.

This pamphlet is designed to assist those subject to the reporting requirements of the LMRDA or the CSRA. It presents general information about the provisions of the laws and should not be construed as an official interpretation of their provisions. Detailed instructions concerning completion of the forms and information to be reported are included with the reporting forms.

General Reporting Requirements

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), and the Civil Service Reform Act of 1978 (CSRA) require certain reports to be filed with the U.S. Department of Labor.

Who Must Report

The reporting requirements apply to:

- labor organizations, except state or local central bodies and unions representing public employees whose employer is any state or political subdivision of a state, such as a county or municipality
- officers and employees of such unions
- employers
- labor relations consultants
- surety companies

Where to File

All reports must be filed with the U.S. Department of Labor at the following address:

- U.S. Department of Labor
  Employment Standards Administration
  Office of Labor-Management Standards
  200 Constitution Avenue, NW
  Washington, DC 20210

Public Disclosure

All reports are public information, and the Secretary of Labor may publish any information or data obtained from reports filed under the reporting provisions of the LMRDA or CSRA.

Any person may examine these reports or may purchase copies for 15 cents per page. All reports filed with the Office of Labor-Management Standards (OLMS) are available at its national office at the above address in Washington, DC. Each OLMS district office has duplicate reports for all reporting organizations and individuals within its geographic jurisdiction. See the end of this document for a list of OLMS field offices.

Recordkeeping

Every person who is required to file a report under the LMRDA or the CSRA, either as an individual or as an officer of a union or employer, is responsible for maintaining records which will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. These records must be kept for at least 5 years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, and applicable resolutions.

●Enforcement

Civil Enforcement

OLMS has authority to conduct investigations concerning compliance with the reporting requirements of the LMRDA and the CSRA. The Secretary of Labor may file civil actions in Federal courts to restrain violations and ensure compliance with the LMRDA reporting requirements.

Enforcement of the CSRA reporting requirements is through administrative action which involves the filing of a complaint by OLMS, a hearing before a Department of Labor administrative law judge, the judge's report and recommendation, and a decision and order by the Assistant Secretary for Employment Standards.

Criminal Penalties

The following acts are made criminal under the LMRDA:

- Willfully failing to file a report or keep required records;
- Knowingly making a false statement or representation of a material fact or knowingly failing to disclose a material fact in a report or other required document; and
- Willfully making a false entry in, or withholding, concealing, or

destroying documents required to be kept.

These acts are punishable by a fine of not more than $100,000, imprisonment for not more than 1 year, or both.

Filing a false report under the CSRA is a violation of 18 U.S.C. 1001 punishable by a fine of not more than $250,000, imprisonment for not more than 5 years, or both.

Union Reports

Form LM-1

Information Reports

The LMRDA and the CSRA regulations require that every covered union adopt a constitution and bylaws and file two copies with OLMS, along with a Labor Organization Information Report, Form LM-1, providing certain information about the structure, practices, and procedures of the union.

When Due: The initial information report, Form LM-1, is due within 90 days after the union first becomes subject to the LMRDA or the CSRA.

Signatures Required: Form LM-1 must be signed by the president and secretary or corresponding principal officers of the reporting union.

Information to Be Reported: Form LM-1 requires information such as:

- identification of the union
- identification of officers
- rates of dues and fees
- fiscal year ending date

Additionally, labor organizations (except Federal employee labor organizations subject solely to the CSRA) must indicate where in the union's constitution and bylaws certain practices and procedures are described or, if not in the constitution, provide a detailed statement describing the practices and procedures. Among the items to be reported are practices for:

- authorizing disbursement of funds
- selecting officers and other union representatives
- protesting a defect in the election of officers
- disciplining and removing officers
- fining, expelling, and suspending members
- ratifying contract terms
- authorizing strikes

All reporting unions except Federal employee unions subject solely to the CSRA are required to file an amended Form LM-1 to update the information on file with OLMS if there have been any changes in the reported practices and procedures which are not contained in the union's constitution and bylaws. The amended Form LM-1 must be filed with the union's annual financial report (Form LM-2, LM-3, or LM-4, as below) for the reporting period in which the change occurred.

File Number Assigned: OLMS assigns a six-digit file number to each union filing a Form LM-1. OLMS acknowledges receipt of each Form LM-1 and informs the union of its file number which must be entered on its annual financial reports and on all correspondence with OLMS.

Annual Financial Reports

Forms to Be Used for Reporting: Unions must file an annual financial report on one of three Labor Organization Annual Reports, Form LM-2, LM-3, or LM-4. The three forms vary in the level of financial details which must be reported. The filing requirements are determined by the total annual receipts of the union:

- *Form LM-2-* This 12-page annual report must be filed by unions with total annual receipts of $200,000 or more and those in trusteeship.

- *Form LM-3* -This simplified 4-page

annual report may be filed by unions with total annual receipts of less than $200,000 if not in trusteeship.

- *Form LM-4* - This abbreviated 2-page annual report may be filed by unions with less than $10,000 in total annual receipts if not in trusteeship.

When Due: The annual financial report is due within 90 days after the end of the union's fiscal year.

Signatures Required: Form LM-2, LM-3, or LM-4 must be signed by the president and treasurer or corresponding principal officers of the reporting union.

Form LM-2

Information to Be Reported: Form LM-2 is the most detailed annual financial report requiring completion of 24 information items, 50 financial items, and 15 supporting schedules. Information to be reported includes:

- whether the union has any subsidiary organizations
- whether the union has a political action committee (PAC)
- whether the union discovered any loss or shortage of funds
- number of members
- rates of dues and fees
- 7 asset categories such as cash and investments
- 4 liability categories such as accounts payable and mortgages payable
- 16 receipt categories such as dues and interest
- 18 disbursement categories such as payments to officers and repayment of loans obtained
- a schedule of payments to officers
- a schedule of payments to employees
- a schedule of office and administrative expense
- a schedule of loans payable

Form LM-3

Information to Be Reported: Form LM-3 is less detailed, requiring the completion of 23

information and 32 financial items. Information to be reported includes:

- whether the union has any subsidiary organizations
- whether the union has a PAC
- whether the union discovered any loss or shortage of funds
- number of members
- rates of dues and fees
- payments to officers
- 6 asset categories and 4 liability categories
- 6 receipt categories
- 10 disbursement categories

Form LM-4

Information to Be Reported: Form LM-4 is the least detailed annual financial report, requiring completion of 13 information and 5 financial items. Information to be reported includes:

- whether the union changed its rates of dues and fees
- whether the union discovered any loss or shortage of funds
- number of members
- total value of assets
- total liabilities
- total receipts
- total disbursements
- total amount of payments to officers and employees

NEW! ELECTRONIC FORMS

Software is now available for completing Forms LM-2, LM-3, and LM-4 electronically.

Simplified Annual Reports

A local union which has no assets, liabilities, receipts, or disbursements, and which is not in trusteeship, is not required to file an annual report if its parent union files a simplified annual report on its behalf. In order to be eligible for this simplified annual reporting, the local must be governed solely by a uniform constitution and bylaws filed with OLMS by its parent union and its members must be subject to uniform fees and dues applicable to all members

of the local unions for which the parent union files simplified reports. The parent union must submit annually to OLMS certain basic information about the local, including the names of all officers, together with a certification signed by the president and treasurer of the parent union.

If a parent body holds funds in the name of a local union and receives and disburses funds on behalf of the local, the local is considered to have receipts and disbursements and is not eligible to have a simplified annual report filed on its behalf by the national organization.

Terminal Labor Organization Reports

Any union which has gone out of existence by disbanding, merging into another organization, or being merged and consolidated with one or more labor organizations to form a new organization must file a terminal report.

The terminal report must be filed on Form LM-2 if the union filed its last annual report on Form LM-2. It may be filed on Form LM-3 if the union filed its last annual report on Form LM-3, and its total receipts for the part of the fiscal year during which it was in existence were less than $200,000. It may be filed on Form LM-4 if the union filed its last annual report on Form LM-4, and its total receipts for the part of the fiscal year during which it was in existence were less than $10,000.

When Due: The terminal report should be filed within 30 days after the effective date of the union's termination or loss of reporting identity.

Signatures Required: The terminal report, Form LM-2, LM-3, or LM-4, must be signed by the president and treasurer or corresponding principal officers who were serving at the time of termination.

Information to Be Reported: This report must contain a detailed statement of the

circumstances and effective date of the union's termination or loss of reporting identity. A union which is absorbed into another must report the name, address, and file number of the union into which it has been merged. The terminal report must reflect the union's financial condition at the time of termination or loss of reporting identity, must describe plans for the disposition of the organization's cash and other assets, and must cover the period from the beginning of the fiscal year through the date of termination.

Trusteeship Reports

"Trusteeship" is defined in the LMRDA as "any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws."

Forms to Be Used for Reporting: Trusteeship reports must be filed using the following forms:

- Form LM-15 - Trusteeship Report
- Form LM-16 - Terminal Trusteeship Report
- Form LM-15A - Report on Selection of Delegates and Officers

Signatures Required: All trusteeship reports on Forms LM-15, LM-15A, and LM-16 and the Form LM-2 filed on behalf of a trusteed subordinate union must be signed by the president and treasurer or corresponding principal officers of the parent union and by the trustees of the subordinate union.

Form LM-15

Initial Reports: Within 30 days after imposing a trusteeship over a subordinate union, the parent union must file an initial Trusteeship Report, Form LM-15, to disclose the reasons for the trusteeship, when it was established, the financial condition of the trusteed union at the time the trusteeship was established, and other required information.

Semiannual Reports: Within 30 days after the end of each 6-month period for the duration of the trusteeship, the parent union must file a semiannual report, on Form LM-15, explaining its reasons for continuing the trusteeship.

Annual Financial Reports: For the duration of the trusteeship, the parent union must file an annual financial report on Form LM-2 on behalf of the trusteed subordinate union within 90 days after the end of the trusteed union's fiscal year.

If the trusteed union made any changes during the reporting year in the practices and procedures listed in the instructions for Item 22 of Form LM-2, the parent union must file an amended Form LM-1 with the Form LM-2.

Form LM-16

Terminal Reports: Within 90 days after the termination of the trusteeship, or the loss of identity as a reporting organization by the trusteed union, the parent union must file a Terminal Trusteeship Report, Form LM-16, disclosing: the date and method of terminating the trusteeship; the names, titles, and method of selecting the subordinate union's officers; and other required information. A terminal trusteeship financial report on Form LM-2 must also be filed within 90 days after the termination of the trusteeship.

Form LM-15A

Report on Selection of Delegates and Officers: Form LM-15A must be filed with an initial, semiannual, or terminal trusteeship report if, during the period covered by the report, there was any:

- convention or other policy-determining body to which the subordinate union sent delegates or would have sent delegates if not in trusteeship; or
- election of officers of the union which imposed the trusteeship over the subordinate union.

The extent of the trusteed union's participation or nonparticipation in any such convention or election must be detailed on the Form LM-15A.

Other Requirements

The LMRDA requires every labor organization to:

- make available to all of its members information contained in all reports which must be filed with OLMS; and
- permit members, for just cause, to examine any books, records, and accounts necessary to verify such reports.

Members must file suit in state or Federal court to enforce these requirements. The CSRA contains similar provisions which are enforced by OLMS.

Other Reports

Form LM-30 **Labor Organization Officer and Employee Reports**

Conditions for Reporting: Union officers or employees (except employees performing exclusively clerical or custodial services) must file a Labor Organization Officer and Employee Report, Form LM-30, if they or their spouses or minor children:

- Have any of the following interests or dealings related to an employer whose employees their union represents or is actively seeking to represent:
    - hold any securities or other interest in, or have any income or other benefit from, such an employer (except wages or other benefits received as bona fide employees);
    - have a part in any transaction involving securities or other interests in, or loans to or from, such an employer;
    - have any business transaction or arrangement with such an employer (but not including work performed and income and benefits received as bona fide employees, or transactions in the regular course of the employer's business by which goods or services are purchased at prices generally available to employees of the employer); or
    - have any securities or other interest in, or income or other benefit from, any business consisting in substantial part of buying from, selling or leasing to, or otherwise dealing with, such an employer;

- Have received any payment of money or other thing of value from an employer or a person who acts as a labor relations consultant for an employer, except payments permitted by § 302(c) of the Labor Management Relations Act, 1947 (see LMRDA § 505); or

- Have any securities or other interest in, or income or other benefit from, a business which buys from, or sells or leases to, or otherwise deals with, their union or any trusts in which their union is interested.

Non-Reportable Activities: Reports are not required on bona fide investments in securities traded on a registered national securities exchange, in shares of a registered investment company, in securities of a registered public utility holding company, or on any income from such bona fide investments.

When Due: Labor organization officers and employees must file Form LM-30 within 90 days after the end of their fiscal year.

Signatures Required: Form LM-30 must be signed by the union officer or employee required to file it.

Employer Reports

Form LM-10

Conditions for Reporting: Employers must file annual reports to disclose certain specified financial dealings with their employees, unions, union agents, and labor relations consultants. Employer Report, Form LM-10, must be filed by employers to disclose:

- Payments or other financial arrangements (other than those permitted under § 302(c) of the Labor Management Relations Act, 1947, and payments and loans by banks and similar institutions) which they made to any union, its officers, or its employees;
- Payments to any of their employees for the purpose of causing them to persuade other employees with respect to their bargaining and representation rights, unless the other employees are told about these payments before or at the same time they are made;
- Payments for the purpose of interfering with employees in the exercise of their bargaining and representation rights, or obtaining information on employee or union activities in connection with labor disputes involving their company; and
- Arrangements (and payments made under these arrangements) with a labor relations consultant or any other person for the purpose of persuading employees with respect to their bargaining and representation rights, or for obtaining information concerning employee activities in a labor dispute involving their company.

Non-Reportable Activities: Employers need not report:

- Bona fide wages and other benefits for regular services;
- Arrangements or expenditures solely for obtaining information in connection with an administrative, arbitral, or court proceeding;
- Payments permitted by § 302(c) of the Labor Management Relations Act, 1947, which exempts certain payments, such as compensation for an employee's service to an employer, payment of a court award, payment for an article bought at the market price in regular business dealings, deductions from wages for union membership dues made on proper written authorization from employees, and payments to trust funds for an employee's benefit when those funds meet certain detailed standards; or
- The services of a labor relations consultant or any other person with regard to advice which that consultant or person has given to the employer, or with regard to the consultant representing the employer in a proceeding of the type referred to above, or who agrees to engage in collective bargaining on behalf of the employer.

When Due: Employers must file Form LM-10 within 90 days after the end of their fiscal year.

Signatures Required: Form LM-10 must be signed by the president and treasurer or corresponding principal officers of the company.

Labor Relations Consultant Reports

Form LM-20

Conditions for Reporting: Every person, including a labor relations consultant, who enters into an arrangement with an employer under which he or she undertakes activities where an object thereof is, directly or indirectly, to:

- persuade employees about exercising their rights to organize and bargain collectively, or
- obtain information about the activities of employees or a union in connection with a labor dispute involving the employer (except information solely for administrative, arbitral, or court proceedings)

must file an Agreement and Activities Report, Form LM-20.

Form LM-21

Conditions for Reporting: Every person required to file a Form LM-20 also must file an annual Receipts and Disbursements Report, Form LM-21, if any payments were made or received during the fiscal year as a result of arrangements of the kind requiring the Form LM-20.

When Due: Form LM-20 must be filed within 30 days after entering into each reportable agreement or activity. Form LM-21 is due within 90 days after the end of the consultant's fiscal year.

Signatures Required: Forms LM-20 and LM-21 must be signed by the president and treasurer or corresponding principal officers of the consultant firm or, if self-employed, by the consultant required to file them.

Form S-1 **Surety Company Reports**

Conditions for Reporting: Every surety company which issues any bond required by the LMRDA or the Employee Retirement Income Security Act of 1974 (ERISA) must file the Surety Company Annual Report, Form S-1, with OLMS regarding its bond experience under each act.

When Due: Form S-1 must be filed within 150 days after the end of a surety company's fiscal year.

Signatures Required: Form S-1 must be signed by the president and treasurer or corresponding principal officers of the company.

Forms LM-30, LM-10, LM-20, LM-21, and S-1 are not required under the CSRA.

OLMS Assistance

Additional information about the Labor-Management Reporting and Disclosure Act or the Civil Service Reform Act may be obtained from OLMS field offices

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Appendix - Reports Required Under the LMRDA and the CSRA

Union Reports			
Form Number and Name	Report Required to be Filed by	Signatures Required	When Due
Form LM-1 (initial) Labor Organization Information Report	Each union subject to the LMRDA or CSRA	President and secretary or corresponding principal officers of the reporting union	Within 90 days after the union becomes subject to the LMRDA or CSRA
Form LM-1 (amended) Labor Organization Information Report	Each reporting union (except Federal employee unions) which made changes in practices and procedures listed in	President and treasurer or corresponding principal officers of the reporting union	With union's Form LM-2, LM-3, or LM-4 within 90 days after the end of the union's fiscal year during which the changes were made

	Item 18 of Form LM-1 which are not contained in the union's constitution and bylaws		
Form LM-2 Labor Organization Annual Report	Each reporting union with total annual receipts of $200,000 or more and by the parent union for subordinate unions under trusteeship	President and treasurer or corresponding principal officers of the reporting union or, if under trusteeship at time of filing, by the president and treasurer or corresponding principal officers of the parent union, and trustees of the subordinate union	Within 90 days after the end of the union's fiscal year or, if the union loses its reporting identity through dissolution, merger, consolidation, or otherwise, within 30 days after date of termination
Form LM-3 Labor Organization Annual Report	Each reporting union with total annual receipts of less than $200,000 may use the simplified Form LM-3 if not in trusteeship	President and treasurer or corresponding principal officers of the reporting union	Within 90 days after the end of the union's fiscal year or, if the union loses its reporting identity through dissolution, merger, consolidation, or otherwise, within 30 days after date of termination
Form LM-4 Labor Organization Annual Report	Each reporting union with total annual receipts of less than $10,000 may use the abbreviated Form LM-4 if not in trusteeship	President and treasurer or corresponding principal officers of the reporting union	Within 90 days after the end of the union's fiscal year or, if the union loses its reporting identity through dissolution, merger, consolidation, or otherwise, within 30 days after date of termination
Union Trusteeship Reports			
Form Number and Name	Report Required to be Filed by	Signatures Required	When Due
Form LM-15 (initial) Trusteeship Report (including Statement of Assets and Liabilities)	Each parent union which imposes a trusteeship over a subordinate union	President and treasurer or corresponding principal officers of the parent union, and trustees of the subordinate union	Within 30 days after imposing the trusteeship
Form LM-15	Each parent union	President and treasurer	Within 30 days after the

(semiannual) Trusteeship Report (excluding Statement of Assets and Liabilities)	which continues a trusteeship over a subordinate union for 6 months or more	or corresponding principal officers of the parent union, and trustees of the subordinate union	end of each 6-month period during the trusteeship
Form LM-15A Report on Selection of Delegates and Officers	Each parent union which imposes a trusteeship over a subordinate union if during the trusteeship the parent union held any convention or other policy-determining body to which the subordinate union sent delegates or would have sent delegates if not in trusteeship, or the parent union conducted an election of officers	President and treasurer or corresponding principal officers of the parent union, and trustees of the subordinate union	As required, with Form LM-15 within 30 days after the imposition of the trusteeship or end of each 6-month period, or with Form LM-16 within 90 days after the end of the trusteeship or the subordinate union's loss of reporting identity through dissolution, merger, consolidation, or otherwise
Form LM-16 Terminal Trusteeship Report	Each parent union which ends a trusteeship over a subordinate union or if the union in trusteeship loses its reporting identity	President and treasurer or corresponding principal officers of the parent union, and trustees of the subordinate union	Within 90 days after the end of the trusteeship or the subordinate union's loss of reporting identity through dissolution, merger, consolidation, or otherwise
Other Reports			
Form Number and Name	Report Required to be Filed by	Signatures Required	When Due
Form LM-10 Employer Report	Each employer which engages in certain specified financial dealings with its employees, unions, union officers, or labor relations consultants or which makes expenditures for certain objects relating to employees' or unions' activities	President and treasurer or corresponding principal officers of the reporting employer	Within 90 days after the end of the employer's fiscal year
Form LM-20 Agreement and Activities Report	Each person who enters into an agreement or arrangement with an employer to persuade	President and treasurer or corresponding principal officers of the consultant firm or, if	Within 30 days after entering into such agreement or arrangement

	employees about exercising their rights to organize and bargain collectively, or to obtain information about employee or union activity in connection with a labor dispute involving the employer	self-employed, the individual required to file the report	
Form LM-21 Receipts and Disbursements Report	Each person who enters into an agreement or arrangement with an employer to persuade employees about exercising their rights to organize and bargain collectively, or to obtain information about employee or union activity in connection with a labor dispute involving the employer	President and treasurer or corresponding principal officers of the consultant firm or, if self-employed, the individual required to file the report	Within 90 days after the end of the consultant's fiscal year
Form LM-30 Labor Organization Officer and Employee Report	Each union officer (including trustees of subordinate unions under trusteeship) and employee (other than employees performing exclusively clerical or custodial services), if the officer/employee, or the office/employee's spouse, or minor child directly or indirectly had certain economic interests during past fiscal year	Union officers and employees required to file such reports	Within 90 days after the end of the union officer's or employee's fiscal year
Form S-1 Surety Company Annual Report	Each surety company having a bond in force insuring a welfare or pension plan covered by ERISA, or insuring any union or trust in which a union covered by the LMRDA is interested	President and treasurer or corresponding principal officers of the surety company	Within 150 days after the end of the surety company's fiscal year

April 4, 2002

News Release

OPA News Release: [01/23/2002]

Electronic Forms Now Ready for Unions
Unions to Receive Software for Required Annual Reports

WASHINGTON -- Unions are now able to submit required annual financial reports quickly and easily by using computer software to be supplied at no cost by the U.S. Department of Labor.

Approximately 30,000 unions nationwide, representing private sector and federal employees, must file annual Labor Organization Reports, called LM forms, with the Department's Office of Labor-Management Standards.

"The software will bring required union reporting into the 21st century and should save unions valuable time and enhance the accuracy of their financial reports," according to Don Todd, deputy assistant secretary of the Office of Labor-Management Standards. The CDs will be sent to unions along with traditional paper forms at the end of each union's fiscal year, Todd said.

Through the Internet, unions can now download information from their latest report to the electronic form. In addition, existing electronic officer and employee information can be transferred directly onto the forms. The system will perform calculations and check for errors or discrepancies, reducing the possibility that unions may have to file amended reports.

Once the forms have been completed on a computer, unions can submit printed, signed paper copies to the Office of Labor-Management Standards. Union officers will soon be able to secure digital signatures so reports can be submitted electronically over the Internet with automatic receipt confirmation. Information on digital signatures is available on the Internet at: http://www.dol.gov/dol/esa/public/olms_org.htm.

The software installs from the CD in just minutes on computers running Windows 95 or above. User guides with detailed instructions for using the forms are included with the software, but the electronic forms' look and feel is almost identical to the paper forms.

# # #

U.S. Labor Department news releases are accessible on the Internet at www.dol.gov. The information in this release will be made available in alternate format upon request (large print, Braille, audio tape or disc)from the COAST office. Please specify which news release when placing your request. Call 202-693-7773 or TTY 202-693-7755.

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HEARING ON REPORTING AND DISCLOSURE UNDER

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HEARING ON REPORTING AND DISCLOSURE UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT: LEGISLATIVE REFORM PROPOSALS

Thursday, June 27, 2002

Subcommittee on Employer-Employee Relations

Committee on Education and the Workforce

U.S. House of Representatives

Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:52 a.m., in Room 2175, Rayburn House Office Building, Hon. Sam Johnson, Chairman of the Subcommittee, presiding.

Present: Representatives Johnson, McKeon, Andrews, Kildee, Rivers, and Tierney.

Staff present: Steve Settle, Profesional Staff Member; Dave Thomas, Legislative Assistant; Travis McCoy, Legislative Assistant; Ed Gilroy, Director of Workforce Policy; David Connolly, Jr., Professional Staff Member; Patrick Lyden, Professional Staff Member; Deborah L. Samantar, Committee Clerk/Intern Coordinator.

Camille Donald, Minority Legislative Counsel; Peter Rutledge, Minority Senior Legislative Associate/Labor; Dan Rawlins, Minority Staff Assistant/Labor.

Chairman Johnson. The Subcommittee on Employer-Employee Relations will come to order. Since we had an unusual ruling out west, I am going to ask everyone to stand, and we are going to say the pledge of allegiance to our flag. Will you join me?

I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.

Thank you. You may be seated. The Subcommittee is going to hear testimony today on reporting and disclosure under the Labor-Management Reporting and Disclosure Act. We are going to specifically focus on two bills that I have introduced, H.R. 4054 and 4055, which would help to ensure that the financial reporting system under the Act benefits rank and file workers.

I am eager to get to our witnesses, so I am going to limit opening statements to the Chairman and Ranking Minority Member. If other Members have statements, they will be included in the record, if they so desire. With that, I ask unanimous consent for the hearing record to remain open 14 days to allow Members' statements and other extraneous material referenced during the hearing to be submitted for the official record. Hearing no objections, so ordered.

OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

I remember on April the 10th, this Subcommittee began hearings to assess the strengths and weaknesses of the programs to implement Congress' mandate for reporting and financial disclosure under the Labor-Management Reporting and Disclosure Act, or LMRDA, otherwise known also as the Landrum-Griffin Act.

This act was designed to give union members a variety of rights, including the right to know how their money is being spent. It also requires that these individuals and entities file reports. That hearing began with my stating something that I firmly believe; the cornerstone of union membership rights is the availability of current, complete, and reliable information about the activities of a labor organization.

It is clear that Congress expected, with the passage of LMRDA, that union democracy would be the first line of defense against union corruption. In essence, armed with knowledge, union members will elect leaders who work in their best interests, and rid themselves of union officials who serve their own interests.

As Cameron Findlay, Deputy Secretary of the Department of Labor stated in his April testimony, “Knowledge and information are among the most powerful tools for a democracy, including democracy within labor unions.” Findlay also mentioned that existing forums that were created 40 years ago and have been substantially unchanged since then simply have not kept pace

with changes in financial practice.

Despite the level of importance, what the Subcommittee learned at that hearing was very disappointing. Unions have exhibited a poor record of performance. In far too many instances, current information is not available, due to either a complete disregard for filing deadlines, or total failure to comply with the law. Amazingly, we discovered that in the year 2000 over one-third of the unions required to report annually did not. Can you imagine what would happen if one-third of America's taxpayers didn't report their earnings to the IRS?

How should Congress respond, after learning that reporting and disclosure obligations are at a 34 percent rate of non-compliance? That's a 34 percent failure rate, by any standard. That can only be described as full-fledged flaunting of the law. The rate is not acceptable, and these programs must be revised and reformed immediately. And today, we're going to begin the discussion of turning these programs around, and trying to find solutions.

First, these programs have been given a very low priority by previous administrations. In the past, the resources available to the Department of Labor have been inadequate. This Subcommittee is working with the Bush Administration and Secretary Chao to reprioritize LMRDA enforcement. Second, we found that it's necessary for the Administration to improve the regulatory requirements for reporting and disclosure, and hopefully update financial report forms. Our objective is to ensure the delivery of timely, accurate, and understandable information. Finally, we have found that a significant cause of the program's poor reporting performance is the lack of an effective enforcement authority.

In summary, the problems are threefold, the combination of fiscal limitation, administrative failure, and statutory weakness. And we will look at two specific proposals that I have introduced to correct the statutory weaknesses.

First, H.R. 4054 would amend LMRDA to provide for the assessment of monetary penalties by the Department of Labor for a failure of employers and unions to comply with the reporting obligations. The second, H.R. 4055, would enhance notification to union members of their rights, and would enable the Secretary of Labor to bring a civil action on behalf of a union member for violation of his/her rights.

Our panel of witnesses today has been asked to advise the Subcommittee on the values and merits of these two suggested approaches. Specifically, we want to know whether these proposed legislative solutions will take care of the problems they seek to address, and whether there are ways to improve the effectiveness of the proposed solutions.

WRITTEN OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE – SEE APPENDIX A

Chairman Johnson. I am going to yield now to Congresswoman Rivers, who is here representing the Minority, for an opening statement.

STATEMENT OF CONGRESSWOMAN LYNN RIVERS, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

Thank you, Mr. Chairman. Mr. Andrews, Ranking Member of the Subcommittee, is at a meeting on prescription drugs. But I would like to make two comments of my own as a way to begin the hearing.

The first is to point out that it may be correct to say that one-third of unions did not file reports on time. However, I believe it is completely inaccurate to say that one-third of unions did not file reports at all, which I believe is what you said. And so that should be cleared up, for the record.

Secondly, you talked about clear understanding and discussion of the merits of the bills. But I would also hope that we would have a clear understanding of what drives the desire for the bills and that we would make some sort of an attempt to examine the problems that currently exist.

In other words, are we finding that union members are filing a lot of complaints against their unions or with the Department of Labor? Do we find that there are problems that have existed for a long period of time? I would hope we would not jump at solutions until we make sure that the solutions have a reasonable attachment to some existing problem. Thank you.

Chairman Johnson. Thank you, Ms. Rivers. I appreciate your comments. Now, let me introduce our witnesses.

Our first witness is Paul Huebner, from Takoma Park, Maryland. Our second witness is Robert O'Brien, from the Tomar, O'Brien, Jacoby, and Graziano law firm in Cherry Hill, New Jersey. Our third witness is Paul Rosenzweig, from The Heritage Foundation, Washington, D.C. and our fourth witness is Phillip Wilson from LRI Management Services, Tulsa, OK.

Before the witnesses begin their testimony, I would like to remind Members that we will ask questions after the entire panel has testified. In addition, Committee Rule (2) imposes a five-minute limit on all questioning.

Concerning witness testimony, there are lights down there that give you five minutes to talk to us, with green, yellow, and red indicators. We would appreciate it if you would try to end your testimony when the red indicator light comes on.

Mr. Huebner, you may begin your testimony now. Thank you.

Mr. Huebner. Mr. Chairman, before making my statement, I would like to present the Subcommittee with testimonials from 10 other union members associated with the Association for Union Democracy, and Carpenters for a Democratic Union International.

Each of them believes strongly that Congress must take action to protect the rights of rank and file union members. I would suggest to you that over the next several weeks you will receive additional letters. I would also like to suggest that if this were not a working day for most men and women of the trade unions, we could have filled the room with people. Today's testimony will cost me $200 in wages, alone.

My point is that I am not alone today. In the future, if Congress is serious about reforming the LMRDA, I want to promise you that a chorus of voices from working men and women will be heard, asking that such actions to protect their rights be taken.

I would ask that the Subcommittee include these testimonials, and the others that will arrive over the next few weeks in the official record, please.

Chairman Johnson. Yes, without objection, they will be entered into the record. So ordered.

STATEMENT OF PAUL HUEBNER, CARPENTER AND UNION MEMBER, TAKOMA PARK, MD

Firstly, I would like to say that I am honored to appear before this august body. I never thought I would be sitting here. And I am honored to represent, to some small degree, the hopes and aspirations of thousands of carpenters and workers who know they need help, but may not know what they need or how to get there.

My name is Paul Huebner, and I'm just an ordinary rank and file union member, a carpenter by trade. Over the past several years, I have not only been active in union politics in my own local and district council here in Washington, D.C., I have also networked with carpenters and many other union members around the country. And we have been fortunate to get assistance from the Association for Union Democracy in our campaign of uncertain outcome to regain democratic control of our union. Some of my opinions this morning are based on very direct personal experience, and some on what I have learned by networking with others.

I must confess that it is with considerable apprehension that I am appearing here today. In the past, when I have stuck out my neck to “tell it like it is,” my honesty and forthrightness have caused great consternation among the officialdom of the union. And as a direct consequence, I have suffered harassment, physical intimidation, economic retaliation, as well as formal discipline and deprivation of my rights as a member. Not only will my union not be happy that I am here today, it will undoubtedly be even less happy with what I have to say.

While I will keep my comments brief, and focused on the two bills you are considering at the moment, the bulk of my concerns go way beyond these two bills, and are covered in the written statements by other union members that have been and may still be submitted for inclusion in the record.

The LMRDA has been on the books for over 40 years. And the time has come when it needs some serious fine-tuning. I have previously transmitted to the Committee staff my suggestions for additional amendments, which I hope the Committee will act upon in due course.

My general impression is that unions don't particularly care for the LMRDA. At best, they consider it a nuisance. But from a member's perspective, the LMRDA is absolutely critical. It's often the only thing that keeps union officials honest and accountable to members. That is, when it is working the way I think it was originally intended to work.

The problem is that, in a number of key respects, it's not working. First, if members are to hold their officers accountable to them in periodic elections, they need to understand that they enjoy a number of rights as union citizens, if you will, and that their officers have a duty to conduct themselves in accordance with a number of standards contained in the LMRDA.

While some significant fraction of union members are aware, generally, that their union constitution gives them a few rights and a lot of duties and procedures they must uphold and follow, only a very tiny fraction are aware of their democratic civil rights, and their officers' obligations under the LMRDA.

Without question, the life of a union officer becomes more difficult if the members exercise their rights and attempt to hold these officers accountable for their actions. Why, then, would officers want to educate their members about the LMRDA? They probably wouldn't. But section 105 says unions are supposed to inform members about their rights and their officers' responsibilities under the LMRDA.

So what have they done to comply with this section? Absolutely nothing. For the past 40 years, since the law was enacted, they simply ignore the provision. Finally, only with the help from the Association for Union Democracy, were a few machinists able to bring a lawsuit against their union a couple of years ago and win a decision ordering it to take concrete steps to comply with section 105. I refer to the Thomas v. Machinists case.

But how many other members are going to be willing and able to sue their unions to make them educate all their members about the LMRDA? Precious few. At the moment, the way the law is written, only union members can sue to enforce this provision. Too few members have the courage and way too few have the resources needed to sue their unions.

It doesn't take a rocket scientist to figure out that one reason the LMRDA hasn't worked the way it was intended to is because members who are entrusted with the responsibility of enforcing many of its provisions don't even know of its existence. And the only way all union members across the land are going to learn about it will be if the Labor Department tells each and every one of the unions exactly what they must do to inform their members about the LMRDA, and then

forces them to do it.

That's what I understand H.R. 4055 would make possible. It would merely correct a major oversight. A few lawsuits by members of just a few unions winning various different court orders simply will not breath life into section 105. Only the Labor Department could make that happen, assuming the Department takes its responsibility seriously, and does not knuckle under to pressure from unions, and allow them to continue to keep their members largely in the dark. Congress needs to tell the Department that its mission is not just to require unions to give their members some sort of legal notice; they need to educate their members about its provisions in a meaningful way.

I am somewhat less familiar with the rationale underlying H.R. 4054. As a former local secretary/treasurer of my local, I am familiar with the obligation of unions to prepare annual LM-2 financial statements with the Labor Department. When in office, I prepared and filed them in a timely manner for my local. But I gather that a number of unions did not file these statements in a timely manner, some not at all. The real issue here is not whether some piece of paper is or isn't mailed to some government agency, it's whether union members have access to rudimentary financial information about their unions and will permit the members to hold their officers financially accountable when spending their hard-earned dues money.

Without that information, members cannot make the LMRDA work the way it was intended. So, sure, if the IRS can make taxpayers file 1040s every year on April 15th, and the SEC can require corporations to submit various filings, why shouldn't the Labor Department have some tool to make union officials file their annual LM-2 reports by their deadline?

Currently I understand that the Department has no such tool. H.R. 4054 would simply remedy that oversight. How controversial can that be? If you have any questions, now or later, I would be happy to try to answer them.

WRITTEN STATEMENT OF PAUL HUEBNER, CARPENTER AND UNION MEMBER, TAKOMA PARK, MD – SEE APPENDIX B

Chairman Johnson. Thank you for your testimony, I appreciate it.

Mr. O'Brien, would you care to testify?

STATEMENT OF ROBERT F. O'BRIEN, ATTORNEY, TOMAR, O'BRIEN, JACOBY, AND GRAZIANO, CHERRY HILL, NJ

Ms. Rivers, Mr. Johnson, Mr. McKeon, I am a practicing attorney. I represent labor unions, both international and local unions, as well as on occasion those who run for office in labor unions.

I have been doing it for 33 years now.

I got a little anecdotal in my statement noting that when I was a teenager, I remember coming home and my dad worked shift work and I remember he had the McClelland hearings on, if you remember in the late '50s. I don't know if the tapes are still available, but there are some pretty interesting things on those tapes. John Kennedy sat on that Committee, it was a Senate select committee on improper practices in the labor management field. And as a result of the hearings of the McClelland Committee, they passed Landrum-Griffin.

And it's interesting that back then, historically, many of the union heads, the chieftains, were very arrogant and very much not particularly engaged in their members' interest. As a result of the McClelland hearings, however, we had Landrum-Griffin come forward, and here we are, 43 years later.

As a practitioner, I deal with the statute fairly frequently, weekly, if not more than weekly. And as a practitioner, that statute, in my experience, has been the easiest statute to deal with, compared with the plethora of other federal labor legislation such as the ADA, or the ERISA statutes. At least, in Landrum-Griffin, I know what the statute says. I also know, for the most part, in my experience it has been a learning curve for a lot of the unions. And it's not unlike Miranda in the criminal law, where there were a lot of complaints when Miranda came down from the Supreme Court. Professional policemen will tell you that they believe often times Miranda is a good decision, and that they can live with it.

And I think you will find that many of the unions that I represent simply take it for granted, and I think that's a truism, that they have to file these reports, that they have to file them not only timely, unless they get an extension and by the way, Ms. Rivers pointed out there is a big difference between not filing and filing late.

Lots of times the DOL does give extensions, and I don't know whether the assistant secretary talked about a new form. They now have a new form the DOL called the LM-4, which they are now experimenting with to get some of the less sophisticated unions to file. Hopefully it's a very simple form and hopefully you are going to get some good experience out of that.

But one of the things that is very, very important is not only the timeliness of it, but also what is in it. And it's been a long learning experience for a lot of our clients, particularly ones I represented 20, 25 years ago, that the accuracy of the form is really, really important.

Initially, when Landrum-Griffin started, there were a number of Justice Department prosecutions of officers. Now, the chief executive officer of a union has to file that LM form, and they have to indicate that they understand it's under penalty of perjury, and that they are conversant with the contents of the form.

There were a number of Justice Department prosecutions in the '70s and the '60s, after the statute took place, by people who put false information into it. There are not so many of those prosecutions any more, and I think it's because the union leadership is aware of the filing

requirements.

Interestingly, and as an aside, Mr. Johnson, they are now talking about requiring the chief executive officers of various corporations in their SEC filings you know, their section 14 and their section 8 filings to sign that personally, and to attest to what is in there, which has not up to this time been done. As some commentator said, they're flying at 50,000 feet up in the air, and their underlings are filing SEC reports which are incorrect and improper, and the contents of which are sometimes often not known by the CEOs.The Landrum-Griffin Act remedied that situation with labor unions. When those LMs get filed, the people who file them have to be conversant with what's in them, and that it is indeed true.

The other point that I would make is that it's been my experience that we are seeing now more activism in unions. There is more activism in taking on union leadership. And maybe I am from a unionized state, but we are seeing a high degree of involvement by officers.

In fact, we just had a big election from the biggest union in the State of New Jersey, the Bartender's Union and the Hotel Workers, where employees ran a slate, and they didn't get to the point where they could get an actual eligibility list, which was appropriate. The DOL sued last year, set the election aside, and they had a full-fledged election.

So, my point about the statute is in my experience, there is a lot of sophistication in the work place. There is a lot of knowledge. When they come to see me, they know about Landrum-Griffin. They come into my office, inevitably. They have got a copy of that LM-1 or that LM-2. They know what's in there. In fact, in the Bartenders' case I just told you about, they were running because of what they considered to be excessive expenditures of the local union.

But at this point, to take the statute and make changes to it which require some legalities to be complied with, including member notification, as well as to require that there be civil penalties, I think we're going down the wrong road.

Again, my experience has been with the sophistication level in the workplace and the statute's self-enforcing mechanisms, and lastly, the big thing in the statute is if you don't do it right, particularly with the election provisions, you get a rerun. And what a mess the reruns are. Nobody wants to have egg on the face and a rerun. But they are getting them, they are getting them.

In any event, I thank you for your attention.

WRITTEN STATEMENT OF ROBERT F. O'BRIEN, ATTORNEY, TOMAR, O'BRIEN, JACOBY, AND GRAZIANO, CHERRY HILL, NJ – SEE APPENDIX C

Chairman Johnson. Thank you for your testimony. I think after the length of time that law has been on the books, it does need looking at. You make some good points; we need to be careful about how we restructure it, if we do.

Mr. Rosenzweig, you may begin your testimony.

STATEMENT OF PAUL ROSENZWEIG, SENIOR LEGAL RESEARCH FELLOW, CENTER FOR LEGAL AND JUDICIAL STUDIES, THE HERITAGE FOUNDATION, WASHINGTON, D.C.

Thank you, Mr. Chairman, and thank you for inviting me to testify today. As you said, I am with the Heritage Foundation. I am also an adjunct professor of law at George Mason University, and those affiliations oblige me to begin with the ritual disclaimer that the opinions I express are my own, and not those of any of the organizations I am affiliated with. Indeed, sometimes they are shocked at what I say.

I come to this hearing with a very different perspective. I am not a labor law expert by any stretch of the imagination, like Mr. O'Brien, but I come as one who has been a prosecutor for 15 years before joining The Heritage Foundation, and who writes and thinks about the appropriate structures of enforcement regimes. Therefore, my testimony is principally directed at H.R.4054, the provision suggesting civil penalties for the reporting requirements, and less so to H.R.4055, though my written testimony contains something about it.

The LMRDA is, as far as I can tell, unique in a modern American regulatory system, in not providing for a graduated system of penalties. Every other regulatory structure that I am familiar with, and I am always hesitant to testify to a negative, “There are no others,” but I couldn't find any, and I know of none, has a graduated system of administrative penalties, followed by civil penalties in federal district court, followed by criminal sanctions for the most significant and severe. And there are two reasons for that.

One is normative, or philosophical, and one is practical. The normative or philosophical one, is that we want to restrict criminal penalties for the truly egregious violators, the most willful people who act in a way that is in violation of a known legal duty. And those people are deserving. We call it the “just deserts” theory of criminal punishment.

But there are wrongs that happen, and wrongful conduct occurs that is not done with willful intent that is the product of mistake or accident, neglect, or some lesser type of deliberate conduct that isn't a willful violation of law. And typically, we address those in a civil context, or an administrative context.

One thinks of the other provisions of the labor laws, the Fair Labor Standards Act, for example, and the OSH Act, the Occupational Safety and Health Act. One thinks of the SEC that has civil and criminal enforcement authority. One thinks of the Environmental Protection Agency, which has administrative, civil, and criminal enforcement authority.

So, as a normative matter, it is exceedingly weird and unusual to find a regulatory structure that has no civil penalty. It is also probably not as effective in deterrents. And I mean, we see the statistic you sited from 2000 of 34 percent delinquency or non-compliance.

I called over to the Department of Labor, trying to root out some statistics, and the preliminary numbers for 2001 are 60 percent. That will probably come down since there are late filings and all that, but obviously, the reporting requirement itself is not being adhered to, certainly in the timeliest way, if not altogether. And that reflects the fact that criminal sanctions are rightly rare, and difficult to use.

But if you don't give the regulatory system enforcement tools less than the blunderbuss of criminal sanction, and rely only on voluntary compliance, what you come up with is a system that simply doesn't have any deterring effect, doesn't induce the compliance that we want.

I read Mr. O'Brien's testimony and I thought it would be useful to respond, and he made some arguments about why civil penalties would be bad, that they would deter good people from joining the unions, that there would be increased costs through insurance requirements for union officers, and that if the union was to pay penalties, those would come out of the dues of innocent union members.

Those are all good arguments. They are the exact same arguments that are made against criminalizing, for example, corporate conduct. The innocent shareholder pays the fine, and if we have too many civil penalties against directors and officers we will deter good people from joining businesses. It's the same argument that is made in small businesses, that the increases in the regulatory state deter people from joining the business community.

Those may or may not be good. You have to make the judgment whether or not these reporting requirements that the LMRDA has are worth it. But once you make that decision, it makes no sense to say that there shouldn't be a graduated means of enforcing that law, such that we don't just use the blunderbuss, that we have some lesser method of ensuring compliance.

I thank you for your attention, and I look forward to answering any questions.

WRITTEN STATEMENT OF PAUL ROSENZWEIG, SENIOR LEGAL RESEARCH FELLOW, CENTER FOR LEGAL AND JUDICIAL STUDIES, THE HERITAGE FOUNDATION, WASHINGTON, D.C. – SEE APPENDIX D

Chairman Johnson. Thank you for your testimony, I appreciate it, and your frankness.

Mr. Rosenzweig. Thank you.

Chairman Johnson. It sounds like we have a divergence of feeling here, and that is okay.

Mr. Wilson, I appreciate you being back with us, and thank you for your book, which I am sure everyone has seen. You may begin your testimony now.

STATEMENT OF PHILIP B. WILSON, VICE PRESIDENT AND GENERAL COUNSEL, LRI MANAGEMENT SERVICES, INC., TULSA, OK

Thank you, Chairman Johnson, and Members of the Committee. I am happy to be back, and I appreciate you inviting me back.

I would like to limit my comments to, first of all, congratulating the Committee on the oversight that has occurred up to now. In April, when I was here last, you will remember Deputy Secretary Findlay from the Department of Labor came in and testified about the LM reporting form, and also, in particular, was questioned pretty aggressively about when these forms were going to go on the Internet.

Within the last month, the Department of Labor has posted all the LM-2, LM-3, and LM-4 forms on its website on the Internet. It is easy to search. I have been unable, so far, to find one that is not posted. There may be some that aren't, but any one that appears to have been filed is available on the Internet right now. That, I think, probably more than anything that we are going to talk about today, is a huge step for union members in the United States.

Now, I think one of the bills that is under consideration, H.R. 4055, which deals with giving access to information as a requirement within the first 90 days of joining a union, is even going to go a step further. The problem I am guessing, and Paul might be able to speak to this, is that the vast majority of union members in America and very few labor lawyers are not aware that the LM-2s are now available on the Internet. I am sure that most union members are not aware of that.

However, I think that if unions were required to notify their members, or if the Department of Labor was able to take some sort of action to notify union members that this stuff is available on the Internet, that is an enormous step. Any person who has access to a computer now can go and find out what their local union is spending money on, by looking at the forms. As you will probably recall, I have a lot of issues with the form itself, and the disclosures that are on those forms. But the fact that they are available on the Internet, I believe, is a huge step forward for access to information for union members.

In addition to that, we also have the two bills that have been submitted, H.R. 4054 and 4055. As you will probably recall from my testimony in April, I also believe that the enforcement strategy that currently exists in the LMRDA is very inadequate. I think that providing civil money penalties is a good approach. As Paul testified, I agree that there needs to be a graduated system.

Deputy Secretary Findlay testified last time that right now, the basic approach used by the Department of Labor for late filers or people that don't file is just nagging them with phone calls. That clearly is not enough. And when the Department of Justice says, and probably rightfully so, “Look, you know, we're not going to sue a union because they failed to file their LM-2 form, we've got other, more important things to do,” there is no incentive whatsoever for these forms to be filed. So, the fact that they are available over the Internet for free is great, but we still need to take steps to try to make sure that the things get filed.

Secondly, and as I alluded to earlier, I think the 90-day reporting requirement in H.R. 4055 is eminently reasonable because of the issue about the expense to hand out materials to their members being a burden on small unions. I think the Department of Labor has taken care of that. If it's posted on the Internet, a union, in my mind, simply has to say, "Union Member, you can get access at any time to all of our information by logging in to this website." And if union members are given that on a regular basis, I think anyone who is interested in pursuing that information will get it right off the website.

The other point that I would make is, in addition to the financial form we haven't really discussed the constitution and bylaws. I think that it's also vitally important that those are posted on the Department of Labor website as well, so that a union member that is interested, and wants to enforce their rights, or enforce the rules of their union has access to those rules. My experience is that unions typically do not hand out those documents. In fact, I know personally of several formal union organizers that just flat-out say, "We never would give that stuff out. We would make people jump through hoops to try to get it, and most people just wouldn't get it." I think if that was available on the Internet that would be another huge step for union members.

The bottom line reason why I think all of us are here is to try to make sure that the union movement is strong. It's in crisis right now, and I won't go into a lot of detail, it's in my written statement. But I think a strong, accountable labor movement is important. From a management consultant, that may sound strange. But I think it is very important that unions remain accountable and democratic. I think one of the main reasons that unions are in decline today is because people don't trust them. You see the same thing in the stock market. People don't trust companies right now because of the financial reporting problems. I think that the same thing has been happening in unions for years. People don't feel as if they get a good deal, and they don't join.

I look forward to your questions.

WRITTEN STATEMENT OF PHILIP B. WILSON, VICE PRESIDENT AND GENERAL COUNSEL, LRI MANAGEMENT SERVICES, INC., TULSA, OK – SEE APPENDIX E

Chairman Johnson. Thank you. I guess we could get Arthur Andersen to audit all of them, and they would be doing a lot better.

Mr. Huebner, how many members make up your local union?

Mr. Huebner. Between 550 and 600. That's the local, sir.

Chairman Johnson. You stated in your testimony that while you were secretary/treasurer of the local union, you prepared the financial statements required by the Department of Labor. Did you have any problem filing those forms on time, and is there any reason why you wouldn't file those

financial statements?

Mr. Huebner. No, sir. As a matter of fact, our international requires a semi-annual bond report. We had additional forms to submit to the international, so it was almost pro forma to have it.

Since we had income of a certain level, we did contract with a CPA to prepare the actual forms, but with the directive to my staff that we get it done in a timely fashion, because I knew that the limit was 90 days. So, halfway there, I would call up the CPA and ask him if we were on track.

Chairman Johnson. Were you ever late with your filings?

Mr. Huebner. No, sir.

Chairman Johnson. Okay. Thank you for that statement. Do you think it's easier now, with it on-line?

Mr. Huebner. Absolutely.

Chairman Johnson. And what do you think about Mr. Wilson's comment that your bylaws ought to be on-line as well?

Mr. Huebner. Well, if I can comment about that, not only do I think that's a good idea, but I think the wonderful place to put the LMRDA Labor Bill of Rights is right in the back of the constitutions that the international should be giving out to each and every member.

Chairman Johnson. I will make a note of that. We can put that on-line, too. If the members have access to that sort of thing, they can follow up on it.

Mr. O'Brien, in a letter to Mr. Andrews, who is my friend and yours, too, it was wiser that "compliance be achieved with a spirit of self-policing now effectively in place." The self-policing you referred to has resulted in a lot of unions not filing, and a lot of them filing late. Do you think that's a success, really?

Mr. O'Brien. One of the things I don't think the Department of Labor went into, Mr. Johnson, was the fact that the DOL gives extensions of time to file. In other words, it's not uncommon for a union to ask for an extension of time in which to file a report. In fact, I have a number of unions who have done that regularly, in getting it in.

In my view, it's very important that the report be accurate. I'm not here to protect non-filers; there is no excuse for that. And I think the DOL is addressing that with this new LM-4 form. And a lot of that is simply lack of resources, lack of sophistication.

Chairman Johnson. So you think it's the small unions that are not complying, for the most part?

Mr. O'Brien. I think so, sir.

Chairman Johnson. But I am aware that the Teamsters are having trouble filing, and that's a pretty good-sized union.

Mr. O'Brien. Timely, timely, yes. And I think it's important that they be timely filed, but I also think it's important they be accurately filed.

Now, my understanding is that I know the unions that I represent, and I know most of the international unions in the AFL-CIO do have filings. Whether they are as a result of extensions, I do know that they do get filed. In other words, it's not an absence of any filing.

And again, we advise the unions to, "Make sure the information in there is accurate; if you need an extension, get the extension but make sure the information in there is accurate, because that can come back to haunt you."

Chairman Johnson. But I think 19 of the 25 largest labor unions filed late or not at all in the year 2000, so it is not the small unions, necessarily, who don't have the resources.

Mr. O'Brien. I think they have filed late. I think you will find, though, that almost every international union has filed. Now, I don't know of any who have not filed at all. They have filed late, and often times that late filing is as a result of an extension DOL has given them. I do know that.

Chairman Johnson. Mr. Rosenzweig, do you agree with that statement?

Mr. Rosenzweig. Well, I know that there is a delinquency problem. And I called up when I heard what Mr. O'Brien had written.

My understanding is, and perhaps this is something you should clarify with the Department of Labor, that is not how they count them. They do not classify someone as delinquent who has gotten an extension, just as the IRS does not classify me as delinquent if I file on April 14th for an extension to August.

So as I understand it, the numbers that they are reporting to you, the 34 percent and the preliminary figure of 60 percent that I had gotten from the Department last week, are people who have either not filed at all, or filed late without previously having been granted permission to file late.

Obviously, we have a different understanding of that, and you should clarify that with the Department of Labor, which is the source of everything in this. But if my understanding is correct, then the problem is a different one. It's not being late and accurate permissibly; it's being late without permission. And that, I think, is something to address in the civil context.

Chairman Johnson. Yes, thank you. I am going to adhere to my own time schedule, and my time has expired.

I now recognize Ms. Rivers for questions.

Ms. Rivers. Thank you very much, Mr. Chairman.

I am looking at the materials that Mr. Huebner brought with him, the letters from the other union members, and I am particularly interested in the letter from Mr. Shotwell, which talks about his experiences at the UAW constitutional convention in Las Vegas.

He says, "Delegates are, theoretically, the highest tribunal in that organization, but we were treated like a captive audience, and browbeaten with speeches by politicians. Delegates were given very limited opportunities to debate issues relevant to our union. Controversial topics were cut short, and Roberts Rules of Order were honored at the whim of the ruling party. In a word, the convention was totally engineered."

After eight years of being here in the Minority, I would suggest that I deal with this behavior all the time, and that my complaints are treated as the disgruntled views of someone who has lost a democratic election. How do we know that the people who are raising these kinds of concerns are not just people who are on the wrong side of an outcome of a particular union election?

Chairman Johnson. Are you posing that question to one of them?

Ms. Rivers. To anyone. I am asking for the underlying problem. People are claiming that they are being mistreated.

Mr. Huebner. Have you ever been to one of these conventions?

Ms. Rivers. Mm-hmm, I have.

Mr. Huebner. They are set up like a dog and pony show.

Ms. Rivers. I understand.

Mr. Huebner. They arrange everything in meetings before you go, and you can't even discuss the issues. The core issue in our union, the United Brotherhood of Carpenters, is whether a member can vote on his contract and the people that represent him at the bargaining table.

Ms. Rivers. The point I am trying to make, Mr. Huebner, the point I am trying to make is that is exactly what happens across the street in the highest democratic body in the country. And the explanation for letting that happen is one party won the election and gets to decide, and the other party has to abide by the decisions of the winners.

And what I am asking is, as I read through these things, some of them look like people who lost elections. Their side didn't win. And I am trying to make a distinction between the unhappiness of having your point of view made manifest in the decisions that ultimately get made

versus real violations of law that are causing problems for us, from a public policy perspective.

Mr. Huebner. All right. Can I give a specific example about the reporting and disclosure?

Ms. Rivers. Yes.

Mr. Huebner. One of the members of my executive committee was giving out a copy of the Labor Bill of Rights in the work place, and he was told that he had to leave the work place, or he was going to be physically removed. He was threatened. He subsequently left the executive board and resigned from the union all together. This wais for passing out a copy of the Labor Bill of Rights in the work place.

Ms. Rivers. Did he file a complaint with the agency?

Mr. Huebner. What agency, the Department of Labor?

Ms. Rivers. The Department of Labor.

Mr. Huebner. For what? There is nothing that can be done.

Ms. Rivers. He was threatened, physically?

Mr. Huebner. All they can say is that he has the right. Nothing happens. He still gets thrown out of the work place; he still gets discriminated against by the employer and by the union for the opportunity to work. He is removed from the work place, he is physically threatened, and he is verbally intimidated.

Ms. Rivers. But there are laws against physical intimidation.

Mr. Huebner. That is a specific example of what happens to people.

Ms. Rivers. No, I am trying to understand. I understand your passion. But I am trying to understand, if he was physically intimidated, why didn't he file charges with the appropriate authorities? That is against the law right now. We don't need to change a law to deal with that.

Mr. Huebner. Well, if you would like to discuss my personal experience with this, a person physically intimidated me, and threatened me, and I wrote letters to the union. I am still appealing a charge, a conviction in 1998.

Ms. Rivers. A conviction for what?

Mr. Huebner. I don't want to belabor my testimony at this Committee. If you want the personal facts, I am still appealing a conviction for interfering with a business representative who is now incarcerated for three counts of attempted murder. He threatened me to get out of the work place. Then they charged me.

Ms. Rivers. How?

Mr. Huebner. I'm just trying to give you a specific example of what happened.

Ms. Rivers. No, no, I'm trying to understand how the change being advocated here would change those things.

Mr. Huebner. That's not the issue here at hand. You asked me about people exercising their rights, and if the other member, Mike, had gone to the DOL. Well, I have gone through the internal policies, I have been to the Department of Labor, I have been through an investigation, and nothing happened. Subsequently, this person that threatened me has been incarcerated for attempted murder.

Ms. Rivers. My question was about many of the people who are raising concerns about the LMRD, whether or not they were unhappy about other things, and your testimony seems to suggest they are. And then secondly, how the change in the law that is being proposed would address the problems you raise. It doesn't sound like they will.

Mr. Huebner. Oh, no, I would be happy to answer that. Number one, when I have gone to the DOL Report and Disclosure at Third and E, where the tunnel bridge is, not only are the reports late, they are years late. They tell me they come in 12 to 18 months after they are due.

A term in office is three years in a union. By the time you get the records, the guy is out of office, and his buddy is in office. Anything he did is past and long gone. What's the point? The DOL says, “By the time we bring suit another 18 months elapses, and there’s no fine, no penalty, no problem.”

Ms. Rivers. But you're not telling me how the change in the law is going to change things with regard to people who physically intimidate others.

Mr. Huebner. That's a different issue. I thought we were talking about reporting now.

Ms. Rivers. I'm trying to ask you how the reporting is going to change the complaints.

Mr. Huebner. The civil penalty for the reporting clause would strengthen DOL enforcement, because then there would be a penalty involved. With no civil penalty for enforcement of the reporting requirements, unions typically and systematically file 12 to 18 months after the 90-day reporting period has ended. That means that it has been two years since the fiscal year has ended, and at most, one year to the termination of office of anyone who has done anything wrong.

Ms. Rivers. The concerns that people are raising in these stories are about all kinds of things, most of which are not related to whether or not filing deadlines are being met, and what I am trying to determine is if these are complaints about being in the minority, or about not having your point of view manifest in the decisions reached by the organization. That is a separate issue from changes in the law around reporting, and I don't see the connection with many of these complaints. Are we

going to somehow answer these complaints simply by changing how we handle reporting?

Mr. Huebner. Oh, okay. First of all, those of us that are involved in rank and file union politics in many different unions hope this is a first step in an effort to change the laws. The address of grievances usually ends up not in the member's favor, but in favor of the administration or the organizational structure in the union because there are no penalties, no enforcement, or the law is woefully inadequate.

Our opinion is that the law is woefully inadequate to deal with the real issues. We see these bills as a part of a process. These are wrongs that need to be rectified. There are many other inadequacies with the law that we would like addressed further. Our understanding was that we should submit the other inadequacies in the law in writing to the Committee for the record, so that they can analyze these things outside of this particular hearing, which deals with the issues of civil penalties on reporting. I have been to the DOL, and filings are 12 to 18 months late after the 90-day period, routinely and all the time.

In terms of passing out the LMRDA Labor Bill of Rights, I tried to give you a particular example of one union member who was trying to exercise his rights with the Labor Bill of Rights that he got off the Internet. When he brought that to other members, he was harassed, he was intimidated, and he was removed.

Ms. Rivers. Who asked you to bring these?

Mr. Huebner. Who asked me what?

Ms. Rivers. You said you were told to bring in these examples so that they could be analyzed for future laws. Who asked you for that?

Mr. Huebner. Our organizations, the Association for Union Democracy and Carpenters for a Democratic Union, have been in contact with Steve Settle and with Maria Cuprill.

Chairman Johnson. Let me clear that up. They asked if they could, and we said we would welcome their submissions.

Ms. Rivers. That's not what he said. He said he was asked to bring them.

Chairman Johnson. No, we told them it was fine to do that if they wanted to.

Ms. Rivers. Thank you, Mr. Chairman.

Mr. Huebner. Would you like me to address the real issues that I care about? I care about these, but there are much more important issues. There are issues of far greater importance, and they have to do somewhat with the way international conventions are organized, they have to do with the corporate organization of unions, they have to do with the fact that members can no longer vote on dues increases because intermediary bodies can pass dues increases on members, they have to do with the fact that we can no longer vote on our contracts, and that we have no control over our

health and pension funds. These are issues that affect all members equally.

Ms. Rivers. I understand that.

Mr. Huebner. These issues affect members, too.

Ms. Rivers. But the legislation before us today would not impact any of those, correct.

Mr. Huebner. The legislation before us today will affect two significant portions in a ladder, in a succession of events that will amend the law so that it will substantially affect the lives of working people across the country.

Ms. Rivers. So your goal is many more changes in the law, beyond just what we are talking about today.

Chairman Johnson. The lady's time has expired, and we will explore all avenues. Thank you, Ms. Rivers.

I would like to recognize Mr. Andrews if he cares to make a statement.

Mr. Andrews. I do. I first want to apologize for my tardiness at the hearing, and thank Ms. Rivers for so ably representing the Minority side.

To carry forward a point Ms. Rivers just made, the reason I am late is one of the points she made about the rights of the Minority here. It is the intention of the Majority to bring the prescription drug legislation to the floor this afternoon, and it is the present intention of the Majority to deny the Democrats the opportunity to offer our alternative, so it can be debated and voted upon. So I was at a meeting with Ms. Pelosi and others in our leadership, trying to figure out how we can foster the cause of democracy in the House of Representatives.

I do want to thank the Chairman for having the hearing, and for his courtesies. I want to especially welcome Bob O'Brien, who has been a friend for many, many years, whom I know as a practitioner in this area. He is someone who has given very excellent and fair representation to his clients over the years, and who had a lot to do with my interest in this area of the law. Bob, it's great to formally welcome you to the Committee.

Mr. O'Brien. Thank you very much, Congressman.

Chairman Johnson. Thank you Mr. Andrews.

Mr. McKeon, do you care to question?

Mr. McKeon. Thank you, Mr. Chairman. I would like to thank the panel for being here, and especially Mr. Huebner, for giving up wages to be here. I think that is indicative of your passion about the subject.

I am really pulled in two directions with this. I would like to see less regulation, less reporting. We are working on a bill right now to try to streamline federal regulations, and I am concerned that there is a lot of reporting that nobody ever reads.

On the other hand, it seems to me that the purpose of this report is to let the union members know what their leadership is doing. It sounds like, from your testimony, Mr. Huebner, you cannot get that from your leadership, and the only way to get it would be from an outside force that required them to file this report. Maybe we should look at the report, maybe that could be simplified and more streamlined. I think that would probably be important.

I met with a group yesterday that came to my office representing a university that has civil penalties for what is called "incentive compensation," where a school gives a bonus for recruiting students. This particular school did that one year, decided not to do it, and were not aware of the law apparently. And when they found out about the law, they discontinued the practice. A couple of years later, the Department found out about it, and the auditing body that found it recommended a $7.7 million penalty, which could cause great disruption for that school, and eventually for their students who would end up paying for the penalty.

So, I think that we have to be careful about the size of a penalty, and probably as we look at it, it should be relegated to the size of the union. A large union with a great amount of dues could pay a higher penalty than maybe a local of 400 or 500 members. So I think that would be something that we should consider.

But I certainly see nothing wrong with civil penalties if that's what it takes to get people to report on time. We just came up with a new report for us, as Members of Congress. We have to file a report showing all kinds of things. My wife does that, and I hear about all of these hoops that she has to jump through to report, and it goes on the Internet.

So I see nothing wrong with doing the same thing, and I would support this bill. I would support doing something to clean up, simplify the reporting, and make it beneficial to the members who really are the ones that are looking for this report.

Mr. O'Brien. Congressman, part of the way the statute is proposed makes it applicable in the civil penalties both to persons and to organizations, and it talks about how those penalties are to be imposed.

And again, my experience with many of the unions that we represent has been that we are talking about people who hold full-time jobs outside of union office. And again, we are talking about trying to get the best and the brightest out to run for union office, often times taking them out of the store, for at least part of their time, or taking them off the shop floor.

The fact of the matter is, when you encourage rank and file democracy, you want to get the very best. But if you tell them that, "Hey, look, if your reports aren't going to be timely filed, or if you don't file a report you are subjecting yourself both to individual liability here, that is a fine from the DOL, as well as subjecting the membership, the treasury of the union." That's nothing more than money out of the members' pockets. You're going to subject them to a fine as well. I

have some problems with that.

Because, as I said, my experience has been one where information, and we all agree here I think, is power. I mean it gives the incumbent as well as those who decide to run against the incumbent, a lot of power. One of the good things perhaps, Congressman Johnson, that has come out of this is you now have the DOL with on-line LMs.

But getting that LM information and the fact that a member may now access it is power Previously a member could get it simply by writing or calling the DOL and get it overnight, and there are reporting companies that provide that information. But my experience has been when somebody wants to run, or somebody wants to get involved in union affairs, they have been able pretty much to get into the information about the union.

I agree, Mr. Johnson that occasionally it's not as fresh as sometimes we would like, but I'm sorry.

Mr. McKeon. In reclaiming my time, I agree with the point you are making. I have been in a union, and I have been on the other side, negotiating with unions. The stronger the leadership, the better they are at representing their people, and the better it all works. We should get the best people.

Mr. Rosenzweig, did you have a comment on that, also?

Mr. Rosenzweig. Yes. I guess my response is that it's a unique form of "particularism." The same arguments could be made in any other context. That the threat of enforcement penalties deters people, and that is their purpose, actually. The ultimate goal here is not to impose penalties on people who stand up and join the union. They are to be commended. The ultimate goal here is to ensure that they and the union that they belong to file the reports in a timely manner.

I am personally agnostic on what should be in the forms, because I don't know enough. But if you and the Department of Labor implementing the laws you passed, have reached the conclusion that these are useful reporting tools that are necessary for labor democracy, it doesn't make any sense to say that unions and union members should be treated, for enforcement purposes, in a way that is different from people who file tax returns, Congressmen who file returns, or small businessmen who file OSHA forms.

Everybody else has a graduated system because we actually think it's better. Because by graduating we think that we can calibrate punishment more. If you just have the blunderbuss of criminal law, it essentially becomes what we call an unenforced norm. Nobody enforces the criminal law, and rightly so.

I mean nobody should go to jail for filing an LM-2 late, ever, unless it is deliberate and willful, or to conceal some other financial skullduggery. We need some other way of saying to people who don't file on time, "Come on, and get with the program."

Mr. McKeon. Probably, if civil penalties were imposed that would take care of the problem.

Mr. Rosenzweig. The real answer is to file on time, and then there is no penalty at all.

Mr. McKeon. Thank you, Mr. Chairman.

Chairman Johnson. Thank you.

Mr. Andrews, do you care to question?

Mr. Andrews. I do. Let me begin with the assertion that I think that everyone on our Committee shares a common belief that we think everyone ought to comply with the law. And we think that every union member, irrespective of whether he or she agrees or disagrees with the leadership of that union, ought to have all the rights that the statutes and the constitution vest in them, and so forth. I don't think there is any disagreement over that.

Mr. Rosenzweig, I did want to ask you some questions, though, about some conclusions that you draw. You make reference to the fact on page three of your testimony that 34 percent of the LM forms in the year 2000 were filed either late or not at all. Can you tell us how many were filed not at all?

Mr. Rosenzweig. The Department of Labor does not provide data broken down that way, so I don't know.

Mr. Andrews. They did provide it to the Committee.

Mr. Rosenzweig. Okay.

Mr. Andrews. The "did not file at all" is about 13 percent, not 34 percent. So, first of all, about two-thirds of the 34 percent that you are talking about did file, they just filed late.

Do you know how many of those that didn't file were in the LM category, which is where the largest amount of money is involved? Could you guess?

Mr. Rosenzweig. Sure. It's relatively small. The larger ones are typically more compliant, yes.

Mr. Andrews. It's about 5 percent. Now, that's a serious problem. I don't disagree with you that it ought to be zero percent, and it should be zero percent in the smaller unions as well, with less amounts of money involved.

Do you know how many enforcement actions the Department of Labor initiated, with respect to non-filers in 2000 the year that you cite data for?

Mr. Rosenzweig. Relatively few. I don't have the number off the top of my head. I read it in Mr. Findlay's testimony.

Mr. Andrews. The reason I raise this is that I think there is a leap of logic here that I have a hard time following. You start with the assertion that 34 percent are filed late or not at all, but we now know that about two-thirds of that figure is filed late. So it's about one-third of your 34 percent that are not filed, so it's 13 percent.

And then you draw the conclusion that we need new remedies and new laws to make sure that the 13 percent is filed. But what we really don't have is much of an assessment as to whether the Department of Labor is adequately using the existing laws to do something about that, right?

What do you know about their use of the existing laws to do something about the problem?

Mr. Rosenzweig. I know that they have lost staff in the past few years and that they have asked for more money to do more enforcement.

Mr. Andrews. Would you support an increase in their enforcement staff? Is that something you think is a good idea?

Mr. Rosenzweig. I think that if the Department of Labor thinks it is, it is. I mean I'm not qualified to say how many is the right number.

But I think I disagree with the premise that underlies your question, which is that it is simply a redirection of effort. The problem with a structure that doesn't encompass civil penalties is that it creates perverse incentives, in a way. It relieves the Department of Labor in some ways of the obligation of adequately addressing the problem.

Mr. Andrews. But Mr. Rosenzweig, if I were the Secretary of Labor and you were my counsel, and I came to you this morning and said, "Mr. Rosenzweig, we have 4,025 filers that out of the 30,000 that should have filed, haven't filed. What can I do this morning to make sure they filed?" What's the answer to that question, assuming that this bill was not the law?

Mr. Rosenzweig. I assume that the answer is some other form of enforcement action in the Department of Labor such as injunctive relief, possibly, or criminal referral for somebody who is doing it deliberately and willfully.

Mr. Andrews. Well, until we know how thorough and how aggressive the Department has been in pursuing those means, how can we recommend new laws and new remedies?

Mr. Rosenzweig. Well, I guess my answer to you is two-fold. First off, we know now what doesn't work. I mean, 34 percent late.

Mr. Andrews. Doesn't work, or because they are not using the tools that they have?

Mr. Rosenzweig. Well, we know that the criminal law is too blunt a tool. We know that no other regulatory regime, as far as I can tell, in the entire cornucopia of American law has a criminal penalty without an attendant civil penalty, not in Fair Labor Standards, not in OSHA. So, even if it were purely a question of resources, I would object to a system that only has criminal penalties on

normative grounds.

Mr. Andrews. You make reference to OSHA. Could you tell us what percentage of OSHA complaints are followed up with an investigation in a civil penalty by the Department?

Mr. Rosenzweig. I have no idea.

Mr. Andrews. So how do you know, then, that civil penalties are an effective remedy there?

Mr. Rosenzweig. I know that they are an existing remedy, and I know that they outnumber criminal sanctions.

Mr. Andrews. Existing doesn't mean effective, though.

Mr. Rosenzweig. How do you know that of any enforcement system? I mean, if you want to know what an enforcement system is, and its effectiveness, you need to ask the Department of Labor to talk about compliance rates and not count beans at all.

Mr. Andrews. We did at the last hearing, and we are anxiously waiting for them to respond.

Mr. Rosenzweig. Yes, I'm sure. I read that.

Mr. Andrews. Well, having read that, I am a little curious frankly as to why you would then reiterate this misleading 34 percent figure? You then go on to talk about people not filing their SEC forms. I mean it's misleading.

Mr. Rosenzweig. No.

Mr. Andrews. It's not true that 34 percent of the people don't file?

Mr. Rosenzweig. The comparable rates in the SEC for filing late are substantially lower.

Mr. Andrews. Is it lower than 13 percent?

Mr. Rosenzweig. Yes.

Mr. Andrews. How much?

Mr. Rosenzweig. I believe, in the SEC, that the number of late filers who are impermissibly late is about 4 percent. The SEC is very aggressive. And the environmental area, which is an area I come from, is probably roughly comparable. I haven't looked in the last couple of years.

Mr. Andrews. But you do acknowledge that the 34 percent figure you use is not accurate, that it's not 34 percent that don't file.

Mr. Rosenzweig. I didn't say it was, sir. I don't acknowledge that. I said it was late, not filed or late. And that's an accurate figure.

Mr. Wilson. Mr. Chairman, I don't think Mr. Andrews was here when Mr. Huebner testified that the problem with late filings is that by the time the forms get filed and a member with an issue with someone who is in power can get access to the information, that person is no longer in power anymore. So, there is a huge problem with late filings.

Mr. Andrews. Well, I don't think you are aware of the fact that all of the late filings were within 60 days of the grace period. So these are not the kind of filings that Mr. Huebner was talking about. These are filings that are filed no later than about 60 days after the deadline. So it's really not the same issue.

Thank you, Mr. Chairman.

Chairman Johnson. Yes. Mr. Andrews, they tell me that 72 of the 91 unions with assets over $1 million either filed late or not at all during the reporting year, and that's a pretty large number.

Mr. Andrews. Seventy-two out of what?

Chairman Johnson. Out of 91. Those are unions with over $1 million in assets.

Mr. Andrews. Well, the Department of Labor's own data, which they gave us at the last hearing, talks about the LM-2 forms as being 272 not received out of 5,417.

Chairman Johnson. I hear you.

Mr. Andrews. I think that's a different figure.

Chairman Johnson. We're getting conflicting data.

Mr. Kildee, do you care to question?

Mr. Kildee. Mr. Chairman, I apologize for being tardy today, but my presence was required at a prescription drug meeting.

Chairman Johnson. Well, I am glad you all figured that out, because I like the decision, thank you.

Mr. Kildee. We said nice words about you, too.

Chairman Johnson. Am I going to be healthy now?

Mr. Kildee. Guaranteed. But I do appreciate the testimony.

[Laughter.]

Chairman Johnson. Go ahead.

Mr. Kildee. I have no questions I just appreciate the testimony.

Chairman Johnson. Okay. Thank you, sir.

Mr. Wilson, could you respond to a statement that a witness made in April? If a union official wanted to conceal a very large and unjustified salary without the threat of detection and enforcement because he or she was concerned that the size of this salary would jeopardize re-election, could the union official simply wait to file the annual union report, which would contain that information, until after the election? Help me understand how that is possible.

Mr. Wilson. I think we have heard today that there are a considerable number of these reports that are filed late. And with a 60-day window, or an 18-month window as Mr. Huebner testified, if you wait to file that form, then the other issue is that the union member has no way of knowing when the form actually gets filed.

So if you show up 60 days later and the form is not filed, unless you wanted to go down to the Department of Labor on a daily basis to see if the form got filed, there would be no way of knowing until they became available on the Internet.

But ultimately, to answer your question, you either wouldn't file, or another way to hide it would be to get paid through subsidiary organizations in $10,000 amounts, where those amounts are not reported on the form. We talked about that at the last hearing. There would be plenty of places to hide large salaries in these forms either throughout other subsidiary organizations, or within very large aggregate amounts that currently are reported on the form.

That's why I think that the Committee has made huge progress in getting these things on the Internet, but ultimately, if the forms are going to be effective, and if union members are going to be able to exercise their rights effectively, I believe that the forms also need to be modified so that the amounts that are reported on them actually tell you something.

Chairman Johnson. Thank you. Mr. O'Brien?

Mr. O'Brien. Thank you, Mr. Johnson. I want to point out that under the statute, there is a provision in section 201 that says every labor union that is required to submit a report under the statute shall make available the information required in the report to all of its members, and that its officers shall be under a duty enforceable at the suit of any member in any United States district court.

So there is a provision currently in the statute and if the filing isn't made, underlying information such as the union's financial information, and I'm not saying it's the easiest procedure to invoke, but it is available if you go into federal district court, and there is no surfeit of lawyers

willing to take those cases many times. And if they are successful, often times there is a fee shifting provision in the statute. Thank you.

Chairman Johnson. So it's a lawyer bill that you like.

Mr. O'Brien. We have to live.

Chairman Johnson. Mr. Huebner, did you want to reply?

Mr. Huebner. First, I'd like to make a comment about Mr. O'Brien's statement. As an elected trustee of the local union on a slate with the financial secretary, I went to the union office to view the financial bills, and I was told I didn't have access to them. I had to call the international to get in there.

Now, many members don't know about their labor bill of rights. They don't have the time or the energy. I have gone to the Department of Labor over here I live in Washington. But for the guys that we talk to out of state, in Utah or wherever, if the forms are filed late, they have to call on a daily or a weekly basis to find out if the reports have ever been filed.

And you can't get through on the phone, so they have no realistic, reasonable means to ascertain if the reports have been filed on time, without continually calling the Department of Labor. The DOL reporting and disclosure is not going to call a guy back in Washington state, or Oregon, and tell him that the LM-2s have been filed for his local, or for his counsel. So he has no realistic way and can be hindered at the local level from gaining access to records, unless he is really willing to stick to his guns and put his job on the line.

And that's the perspective of people around the country. We feel we need some sort of penalty clause invoked. Because when unions don't file there is no deadline, and DOL really won't do anything.

Chairman Johnson. I want to thank all of you all for being here today. Your energetic responses are stimulating for us, and I thank all the witnesses for their participation.

If there is no further business, the Subcommittee stands adjourned. Thank you.

Whereupon, at 12:05 p.m., the Subcommittee was adjourned.

APPENDIX A - WRITTEN OPENING STATEMENT OF CHAIRMAN SAM JOHNSON, SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE

OPENING STATEMENT OF
CONGRESSMAN SAM JOHNSON (TX-03)
CHAIRMAN, SUBCOMMITTEE ON
EMPLOYER-EMPLOYEE RELATIONS
HOUSE EDUCATION AND THE WORKFORCE COMMITTEE
JUNE 27, 2002

"REPORTING AND DISCLOSURE UNDER THE LMRDA: LEGISLATIVE REFORM PROPOSALS"

GOOD MORNING.

ON APRIL 10TH THIS SUBCOMMITEE BEGAN HEARINGS TO ASSESS THE STRENGTHS AND WEAKNESSES OF THE PROGRAMS TO IMPLEMENT CONGRESS' MANDATE FOR REPORTING AND FINANCIAL DISCLOSURE UNDER THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT (LMRDA), OR OTHERWISE KNOWN AS THE "LANDRUM-GRIFFIN ACT."

THIS ACT WAS DESIGNED TO GIVE UNION MEMBERS A VARIETY OF RIGHTS-INCLUDING THE RIGHT TO KNOW HOW THEIR MONEY IS BEING SPENT.

IT ALSO REQUIRES THAT THESE INDIVIDUALS AND ENTITIES FILE REPORTS.

THAT HEARING BEGAN WITH MY STATING SOMETHING I FIRMLY BELIEVE: "THE CORNERSTONE OF UNION MEMBER RIGHTS IS THE AVAILABILITY OF CURRENT, COMPLETE, AND RELIABLE INFORMATION ABOUT THE ACTIVITIES OF A LABOR ORGANIZATION."

IT IS CLEAR THAT CONGRESS EXPECTED, WITH THE PASSAGE OF LMRDA, THAT UNION DEMOCRACY WOULD BE THE FIRST LINE OF DEFENSE AGAINST UNION CORRUPTION.

IN ESSENCE, ARMED WITH KNOWLEDGE, UNION MEMBERS WILL

ELECT LEADERS WHO WORK IN THEIR BEST INTEREST AND RID THEMSELVES OF UNION OFFICIALS WHO SERVE THEIR *OWN* INTERESTS.

AS CAMERON FINDLAY, DEPUTY SECRETARY OF THE D.O.L, STATED IN HIS APRIL TESTIMONY, "KNOWLEDGE AND INFORMATION ARE AMONG THE MOST POWERFUL TOOLS FOR A DEMOCRACY - INLCUDING DEMOCRACY WITHIN LABOR UNIONS."

FINDLAY ALSO MENTIONED THAT "EXISTING FORMS, WHICH WERE CREATED 40 YEARS AGO AND HAVE BEEN SUBSTANTIALLY UNCHANGED SINCE THEN, SIMPLY HAVE NOT KEPT PACE WITH CHANGES IN FINANCIAL PRACTICES."

DESPITE THIS LEVEL OF IMPORTANCE, WHAT THE SUBCOMMITTEE LEARNED AT THAT HEARING

WAS VERY DISAPPOINTING - UNIONS HAVE EXHIBITED A VERY POOR RECORD OF PERFORMANCE.

IN FAR TOO MANY INSTANCES, CURRENT INFORMATION IS NOT AVAILABLE, DUE TO EITHER A COMPLETE DISREGARD FOR FILING DEADLINES OR A TOTAL FAILURE TO COMPLY WITH THE LAW.

AMAZINGLY, WE DISCOVERED THAT IN THE YEAR 2000, OVER 1/3 OF THE UNIONS REQUIRED TO REPORT ANNUALLY DID NOT.

COULD YOU IMAGINE WHAT WOULD HAPPEN IF 1/3 OF AMERICA'S TAXPAYERS DID NOT REPORT THEIR EARNINGS TO THE I.R.S? (PAUSE)

HOW SHOULD CONGRESS RESPOND AFTER

LEARNING THAT REPORTING AND DISCLOSURE OBLIGATIONS ARE AT A 34% RATE OF NON-COMPLIANCE?

THAT'S A 34% FAILURE RATE!

BY ANY STANDARD, THIS COULD ONLY BE DISCRIBED AS A "FULL-FLEDGED" FLAUNTING OF THE LAW.

THIS RATE IS NOT ACCEPTABLE - AND THESE PROGRAMS MUST

BE REVISED AND REFORMED - IMMEDIATELY!

TODAY, WE WILL BEGIN THE DISCUSSION OF TURNING THESE PROGRAMS AROUND AND FINDING SOLUTIONS.

FIRST, THESE PROGRAMS HAVE BEEN GIVEN VERY LOW PRIORITY BY PREVIOUS ADMINISTRATIONS.

IN THE PAST, THE RESOURCES AVAILABLE TO THE D.O.L. HAVE BEEN INADEQUATE.

THIS SUBCOMMITTEE IS WORKING WITH THE BUSH ADMINISTRATION AND SECRETARY CHAO TO REPRIORITIZE LMRDA ENFORCEMENT.

SECOND, WE HAVE FOUND THAT IT IS NECESSARY FOR THE ADMINISTRATION TO IMPROVE THE REGULATORY REQUIREMENTS FOR REPORTING AND DISCLOSURE AND, HOPEFULLY, UPDATE THE FINANCIAL REPORT FORMS.

OUR OBJECTIVE IS TO INSURE THE DELIVERY OF TIMELY, ACCURATE AND UNDERSTANDABLE INFORMATION.

FINALLY, WE HAVE FOUND THAT A SIGNIFCANT CAUSE OF THE PROGRAM'S POOR REPORTING PERFORMANCE IS THE LACK OF AN EFFECTIVE ENFORCEMENT AUTHORITY.

IN SUMMARY, THE PROBLEMS ARE THREEFOLD:

A COMBINATION OF FISCAL LIMITATIONS...

ADMINISTRATIVE FAILURES...

AND STATUTORY WEAKNESSES.

WE WILL LOOK AT TWO SPECIFIC PROPOSALS I HAVE INTRODUCED TO CORRECT THESE STATUTORY WEAKNESSES.

THE FIRST, H.R. 4054, WOULD AMEND THE LMRDA TO PROVIDE FOR THE ASSESSMENT OF MONETARY PENALTIES BY D.O.L. FOR A FAILURE OF EMPLOYERS AND UNIONS TO COMPLY WITH THE REPORTING OBLIGATIONS OF THE LMRDA.

THE SECOND, H.R. 4055, WOULD ENHANCE NOTIFICATION TO

UNION MEMBERS OF THEIR RIGHTS UNDER THE LMRDA AND WOULD ENABLE THE SECRETARY OF LABOR TO BRING A CIVIL ACTION ON BEHALF OF A UNION MEMBER FOR A VIOLATION OF HIS OR HER LMRDA RIGHTS.

OUR PANEL OF WITNESSES TODAY HAS BEEN ASKED TO ADVISE THE SUBCOMMITTEE ON THE MERITS OF THESE TWO SUGGESTED APPROACHES.

SPECIFICALLY, WE WANT TO KNOW WHETHER THESE PROPOSED LEGISLATIVE SOLUTIONS WILL EFFECTIVELY TAKE CARE OF THE PROBLEMS THEY SEEK TO ADDRESS AND WHETHER THERE ARE WAYS TO IMPROVE THE EFFECTIVENESS OF THESE PROPOSED SOLUTIONS.

I WOULD NOW ASK MY COLLEAGUE FROM NEW JERSEY, MR. ANDREWS, IF HE WOULD LIKE TO MAKE AN OPENING STATEMENT.

APPENDIX B - WRITTEN STATEMENT OF PAUL HUEBNER, CARPENTER AND UNION MEMBER, TAKOMA PARK, MD

TESTIMONY OF PAUL HUEBNER

June 27, 2002

Good Morning.

Mr. Chairman, members of the committee, I would like to thank you for the opportunity to address the important subject of this hearing.

My name is Paul Huebner. I am just an ordinary, rank-and-file union member. A carpenter. Over the past several years, I have not only been active in union politics in my own local and district council here in Washington, D.C., I have also networked with Carpenters and some other union members around the country. And we have been fortunate to get assistance from the Association for Union Democracy in our campaign -- of uncertain outcome -- to regain democratic control of our union. Some of my opinions this morning are based on very direct, personal experience, and some on what I have learned networking with others.

I must confess that it is with considerable apprehension that I am appearing today. In the past when I have stuck out my neck to "tell it like it is," my honesty and forthrightness has caused great consternation among the Carpenter officialdom and, as a direct consequence, I have suffered harassment and physical intimidation, economic retaliation, as well as formal discipline and deprivation of my rights as a member. Not only will my union not be happy that I am here today, it will undoubtedly be even less happy with what I have to say.

While I will keep my comments brief, and focused on the two bills you are considering at the moment, the bulk of my concerns go beyond these two bills and are covered in the written statements by other union members that have been, and may still be, submitted for inclusion in the record. The LMRDA has been on the books for over 40 years and the time has come when it needs some serious fine-tuning. I have previously transmitted to the Committee's staff my suggestions for additional amendments which I hope the Committee will act upon in due course.

My general impression is that unions don't particularly care for the LMRDA. At best, they consider it to be a nuisance. But, from the members' perspective, the LMRDA is absolutely critical. It's often the only thing that keeps their officials honest and accountable to them. That is, when it is working the way I think it was originally intended. The problem is that, in a number of key respects, it is not working.

First, if members are to hold their officers accountable to them in periodic elections, they need to understand that they enjoy a number of rights as "union citizens", if you will, and that their officers have a duty to conduct themselves in accordance with a number of standards contained in the LMRDA. While some significant fraction of union members are aware generally that their union constitution gives them a few rights and a lot of duties and procedures they must uphold and follow, only a very tiny fraction are aware of their democratic, civil rights and their officers' obligations under the LMRDA.
Without question, the life of a union officer becomes more difficult if the members exercise their rights and attempt to hold the officer accountable for his actions. Why, then, would officers want to educate their members about the LMRDA? They wouldn't. But Section 105 says unions are supposed to inform members about their rights, and their officers' responsibilities, under the LMRDA. So what have they done to comply with that Section? Absolutely nothing. For the past forty years, since the law was enacted, they simply ignored the provision.

Finally, only with help from the Association for Union Democracy, were a few Machinists able to bring a lawsuit against their union a couple of years ago and win a decision ordering it to take concrete steps to comply with Section 105. I refer to the Thomas v. Machinist case. But how many members of how many other unions are going to be willing and able to sue their unions to make them educate all of their members about the LMRDA? Precious few. At the moment, the way the law is written, only union members can sue to enforce this provision. Too few members have the courage and resources needed to sue their unions.

It doesn't take a rocket scientist to figure out that one reason the LMRDA hasn't worked the way it was intended is because members, who are entrusted with responsibility for enforcing many of its provisions, don't even know of its existence. And the only way all union members, across the land, are going to learn about it will be if the Labor Department tells each and every one of their unions exactly what they must do to inform their members about the LMRDA, and then forces them to do it. That's what I understand H.R. 4055 would make possible. It would merely correct a major oversight.
A few lawsuits by members of just a few unions, winning various different court orders, simply will not breathe life into Section 105. Only the Labor Department could make that happen, assuming the Department takes its responsibility seriously and does not knuckle under to pressure from unions and allow them to continue to keep their members largely in the dark. Congress needs to tell the Department that its mission is not just to require unions to give their members some sort of legal notice of the LMRDA, they need to educate their members about its provisions in a meaningful way.

I am somewhat less familiar with the rationale underlying H.R. 4054. As a former local secretary-treasurer, I am familiar with the obligation of unions to prepare and file annual LM-2 financial statements with the Labor Department. When in office, I prepared and filed them in a timely manner for my local. But I gather that a number of unions do not file these statements in a timely manner -- some not at all.

The real issue here is not whether some piece of paper is mailed to some government agency. It's whether union members have access to rudimentary financial information about their unions that will permit the members to hold their officers financially accountable when spending their hard-earned dues money. Without that information, members cannot make the LMRDA work the way it was intended.

So, sure, if the IRS can make taxpayers file 1040's every year on April 15th, and the SEC can require corporations to submit various filings, why shouldn't the Labor Department have some tool to make union officials file their annual LM-2 reports by their deadline. Currently, I understand that the Department has no such tool. H.R. 4054 would simply remedy that oversight. How controversial can that be?

That concludes what I have to say. If you have any questions, now or later, I'd be happy to try to answer them.

APPENDIX C - WRITTEN STATEMENT OF ROBERT F. O'BRIEN, ATTORNEY, TOMAR, O'BRIEN, JACOBY, AND GRAZIANO, CHERRY HILL, NJ

Testimony of Robert F. O'Brien

BEFORE THE
HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS

June 27, 2002

Good morning. My name is Robert F. O'Brien. For the last 33 years I have been engaged exclusively on a full time basis as an attorney in private practice representing Local and National Labor Unions as well as members of unions seeking elected union office.

As a teenager in the late 1950s, I would often come home to find my father, who was a shift worker, watching late afternoon television viewing what was then known as the "McClellan" hearings. It seemed to me, as a young person at the time, that the some of the individuals, particularly International Union Labor Leaders who appeared before that committee, oftentimes exhibited the most arrogant of behavior as well as an abiding disrespect for the rights of the membership in the labor organizations that they headed. Things have changed dramatically since that time.

It is an honor to be here today to address the issue of the legislation that grew out of those McClellan hearings, the Landrum-Griffin Act, and my view as a labor law practitioner, of that Act's effectiveness. It is important when the "labor movement" is thought of, one must remember that oftentimes local unions are operated by officers who, in many instances, are not full-time union officers, but rather are employed in the very industries in which they represent their membership.

As a labor practitioner who weekly deals with the statute, I have found that in my practice that particular federal labor statute has worked quite well, particularly compared with the other array of litigation that has continued to arise under other federal labor statutes, including the National Labor Relations Act, the Equal Pay Act, the ADA, and the plethora of other federal labor legislation.

Unfortunately, I cannot speak with the authority of the various academics who have testified before this Subcommittee, but I can, however, testify to involvement in a number of cases over the years concerning the Landrum-Griffin Act. Just in the last six months, I had occasion to be involved with a rerun election concerning Local 54 Hotel Workers representing some 15,000 employees in the casino industry in the State of New Jersey. That union, over a year ago, ran a representation election for local union leadership and ran afoul of the Landrum-Griffin Act. Specifically, it did not provide an up-to-date membership eligibility list of all of the voters except to

the incumbent officers. Upon a complaint made, the Department of Labor immediately undertook to have that election set aside and ordered a rerun election. This time all of the candidates and their slates had an up-to-date membership eligibility list. The slate that I represented actively engaged in those rerun proceedings and that election was successfully concluded and the results certified by the DOL just this past February.

That kind of action involving the Department of Labor has very often been unnecessary simply because of self-enforcement of the statute by organized labor. Much of the experience I have had under the statute involves self-regulation by officers of both Local, Intermediate and National unions who have, for the most part, engaged in strong self-policing effort. The reason for this is because of the draconian penalties involved for failure to abide by either their own internal constitution and by-laws or alternatively, failure to abide by safeguards in the statute, including the obligation to allow free and fair campaigning of individuals for elected union office. There has never been a dirth of information about the statute available to candidates and generally speaking the statute has been utilized to its full force and effect by individuals desirous of entering union politics.

As this Committee knows, Section 105 already mandates the imparting of information by labor unions to their membership concerning provisions in the Landrum-Griffin Act. I do not believe that there has been an issue with any individual not having sufficient information about the Act so as to be able to exercise his or her rights. Rather, unlike a number of years ago, union meetings more recently have been better attended, in my experience, and individuals are more willing to exert Landrum-Griffin rights and run for office than ever before. Three active slates campaigning for office with the aforementioned Local 54 Hotel Workers election, convinced me of the viability of the statutory provisions protecting members' rights to undertake campaigns against incumbent leadership.

An example might also be in order here. Oftentimes unions find that some of the provisions in their constitutions or by-laws may well run afoul of the Labor Department's general view that all members should be involved in union activities if they so desire. If you will recall some 25 years ago, there was a spade of litigation including cases before the U.S. Supreme Court on restrictive union rules about the ability to run for union office and a meeting attendance requirement. Those rules generally prescribe that an individual cannot run for union office unless the individual had attended a set number of meetings over a period of time before the union election. Many labor unions still have those kinds of provisions in their constitution but they are not generally enforced simply because of the knowledge that the DOL will sue to insure full eligibility for union members desiring to run for office.

With what I consider to be a resurgence of interest in running for union office, it does not seem to me to be appropriate to encumber elected union leadership further with penalties concerning violations of the Landrum-Griffin statute. It is very important to encourage the best and the brightest to come out of union ranks and to

ascend to union leadership positions. This is true whether it is a full time union office position or a part time union position held by a full time worker in an industry. Encumbering individuals in those positions with civil penalties for failure to abide by the statute, does not seem to be good legislative policy, particularly when the Act has not, in my experience, been found wanting in its protective provisions.

Interestingly, just in the last year another rerun election was held up in the Boston area under U.S. Department of Labor supervision involving several thousand IBEW members. In that election, the outside challenging slate won the rerun election against the incumbents, which election was conducted under DOL supervision.

In my view, the problems today are ones which involve encouragement of the very best of the membership of labor organizations to come forward and participate in affairs of the union. After working a long day, it is often burdensome for a member to come out to a union meeting to discuss the mundane union business. Attendance at these union meetings and encouragement of individuals to partake in issues involving collective bargaining and union leadership is important. It does not seem to me that in an effort to encourage that kind of conduct is going to be advanced by imposing onerous requirements such as "Beck" type notification to members with its attendant liabilities and litigation is appropriate. Nor does it seem to me that the imposition of civil penalties against both individuals and unions is appropriate particularly when the statute's provisions are well known and the results for violation of same are a rerun election and ejection from office if the rerun is not favorable to the incumbent. It is for those reasons that I urge that the current statute be left alone. Indeed the absence from the television screen as well as the pages of the newspaper of individuals like Dave Beck and Jimmy Hoffa, arrogantly defying the United States Congress as well as not well representing the interests of their members are long gone and in some large measure that is because of the Landrum-Griffin statute. I believe this Committee is aware that a new breed of union leadership has been developing and that such has developed without substantial changes in the Landrum-Griffin statute.

Again, I urge the Committee to allow the statute to continue in its current form.

Respectfully,

Robert F. O'Brien

APPENDIX D - WRITTEN STATEMENT OF PAUL ROSENZWEIG, SENIOR LEGAL RESEARCH FELLOW, CENTER FOR LEGAL AND JUDICIAL STUDIES, THE HERITAGE FOUNDATION, WASHINGTON, D.C.

TESTIMONY OF
PAUL ROSENZWEIG
SENIOR LEGAL RESEARCH FELLOW
CENTER FOR LEGAL AND JUDICIAL STUDIES
THE HERITAGE FOUNDATION
214 MASSACHUSETTS AVENUE, NE
WASHINGTON, DC 20002
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND THE WORKFORCE
SUBCOMMITTEE ON EMPLOYER-EMPLOYEE RELATIONS
REGARDING
UNION REPORTING AND DISCLOSURE: LEGISLATIVE
REFORM PROPOSALS – CONSIDERATION OF
H.R. 4054 AND H.R. 4055

27 JUNE 2002

Good morning Mr. Chairman and Members of the Subcommittee. Thank you for the opportunity to testify before you today on the topic of Union Reporting and Disclosure Requirements and, particularly, the utility of adding civil penalties to the Labor-Management Reporting and Disclosure Act ("LMRDA").

For the record, I am a Senior Legal Research Fellow in the Center for Legal and Judicial Studies at The Heritage Foundation, a nonpartisan research and educational organization. I am also an Adjunct Professor of Law at George Mason University where I teach Criminal Procedure and an advanced seminar on White Collar and Corporate Crime. I am a graduate of the University of Chicago Law School and a former law clerk to Chief Judge Anderson of the U.S. Court of Appeals for the Eleventh Circuit. For much of the past 15 years I have served as a prosecutor in the Department of Justice and elsewhere. During the two years immediately prior to joining The Heritage Foundation, I was in private practice representing criminal defendants.

Thus, as the Subcommittee will recognize, my perspective on the proposed legislation is different than that typically brought to the Subcommittee. I understand and appreciate the values of labor democracy and managerial transparency that animate the LMRDA. Certainly knowledge and information are among the most powerful tools in a democracy and union members are entitled to information about the activities of the organization to which they belong – just as the American public is entitled to information about Congress and shareholders are entitled to information about a corporation. But whether the particular substance and form of the reporting requirements of the LMRDA are good policy or not is a question I am, candidly, not qualified to answer.

The question I can answer, from the perspective of a former prosecutor and one who writes and teaches regularly on the criminal law, is the one that is the focus of today's hearing: Assuming that current LMRDA reporting and disclosure requirements are appropriate, what is the best means of enforcing those requirements and ensuring that labor unions and others obliged to report under the law comply with the law's requirements? That question is both normative and utilitarian – it asks both what is a just, or proper, method of enforcement for this type of law and also what method of enforcement will work most effectively. On both grounds the current structure of the LMRDA is wanting.

"Just Desert" and the Concept of Criminal Punishment

The LMRDA is unusual (and, perhaps, unique) in its enforcement structure – it authorizes the Secretary of Labor to seek civil injunctive relief or to refer matters for criminal prosecution (pursuant to section 209 of the Act, (29 U.S.C. § 439)) but it does not, presently, contain any provision authorizing the imposition of civil monetary damages (either in federal court or administratively) for violations of the Act.

With this structure, the LMRDA is different from virtually every other regulatory statute. Typically, regulatory statutes have a graduated enforcement scheme that provides for administrative enforcement by the regulatory agency, civil enforcement actions in federal district court, and, for the most egregious offenses, criminal prosecution. Thus, the Occupational Health and Safety Act provides for both civil and criminal penalties, as do all of the environmental statutes, the antitrust laws, and the other regulatory statutes that have become common in American governance. Indeed, though it is always difficult to prove a negative, in the time I have had to conduct research on the question I have found no other regulatory statute with criminal enforcement provisions that does *not* also contain civil enforcement penalty provisions. In other words, the LMRDA is exceedingly unusual – and frankly, one can offer no rational explanation for the structure.

As a matter of theory the current structure of the LMRDA is normatively objectionable. Put most succinctly, government properly imposes criminal liability only on those who commit acts of misconduct with bad intent, and not on those merely accused of negligence or mistake. This is the fundamental moral component of the criminal law – the "just deserts" aspect of punishment – and it is trivialized when the criminal law is used to address conduct that is not intentionally wrongful. The criminal law in a free society must be carefully crafted to target wrongful conduct, and not be used simply to ameliorate adverse consequences attributable to non-criminal conduct. The public interest is vindicated not based on successful prosecutions, but on successful administration of justice. Criminal sentencing should reflect society's collective judgment about the kind of conduct that warrants the most severe condemnation, seizure of property, and loss of liberty and life.

The LMRDA's criminalization of an essentially regulatory scheme is, in one sense, part of broad pattern diverging from this model of criminal sanctions. Increasingly,

we are seeing across the spectrum of federal regulatory systems prosecutions for offenses that are better handled as civil matters. In modern America, as the regulatory state has grown, the number of such criminal offenses has grown apace. These types of criminal offenses are different from the classic frauds and personal wrongs that ought to be the focus criminal law. This new type of offense involves the criminalization of conduct that, in most instances, is not inherently wrongful in the same way that fraud and bribery are. The growth in this form of regulatory criminal offense is, as Professor John Coffee has said, the "technicalization" of crime.

Consider: In 1999, the ABA Task Force on the Federalization of Criminal Law noted that there were now more than 3,500 federal criminal offenses. Those offenses incorporate either directly or by reference prohibitions contained in more than 10,000 separate regulations. Remarkably, nobody knows the exact number either of criminal statutes or criminal regulations. They are so diverse and so widely scattered throughout the federal code that they are literally uncollectable. I am told that, when it was recently asked to undertake the project, the Congressional Research Service said that the task was virtually impossible. This, too, breeds disrespect for the law and disaffection from the judicial system: When those who make the laws cannot themselves identify all the laws they have made, it borders on the arbitrary and capricious to allow prosecutors to select from among those laws and to criminalize conduct that, in the eyes of others, might warrant only civil sanctions.

This trend is exacerbated in the context of the LMRDA. The failure to timely file a required disclosure report is precisely this sort of technicalized offense and is inappropriately treated as a crime. The reporting requirements of the LMRDA, while certainly of great significance and importance to union democracy and the efficacy of the Act, are not the sort of requirement for which criminal sanctions are typically thought necessary. With the exception of situations in which a union official, for example, willfully and deliberately violates his known legal duty to report society ought not impose criminal sanctions.

The current LMRDA criminal provisions are not, however, completely objectionable. In one important sense section 209(a) is consistent with the general principle of criminal law. It punishes only those who act willfully. And, as the Second Circuit construed the statute more than 25 years ago, in *United States v. Ottley*, 509 F.2d 456 (2d Cir. 1975), an act in violation of the statute is done willfully only if it is done with a wrongful purpose – that is, if the defendant knew what the law required and failed to comply with it or was willfully blind to its requirements.

It is useful to note, parenthetically, that as a practical matter this standard is difficult for a prosecutor to prove – and deliberately so. It reflects a judgment (in my view a correct one) that the criminal sanctions should be rarely imposed and only on those who deliberately and willfully refuse to conform their conduct to societal norms.

But this does not, of course, exhaust the scope of appropriate governmental sanctions. Social behavior in a free society is governed by governmental norms that broadly distinguish between two kinds of wrongful acts: Crimes, which typically require such elements as malicious intent and harm, and deal with offenses against the state rather than merely against an individual; and civil wrongs, which are torts against persons or property, or violations of regulatory requirements, which are more loosely defined, typically carry lesser penalties or no penalties, and are adjudicated under less-rigorous procedural rules.

In the absence of applicable civil penalties, the LMRDA's structure leaves the latter category of wrongful conduct unaddressed. Just as it is inappropriate to criminalize conduct for which there is no deliberate wrongful act, it is equally inappropriate for the civil law to ignore the wrongful act and the civil harm that flows from the act in those situations where the wrongful act is the product of mistake, accident, neglect of a legal duty or otherwise non-willful conduct. Imagine a world in which there were only criminal law and no tort system to redress civil wrong. Surely we would not think that structure well designed – yet that is precisely how the LMRDA works.

Therefore, as a matter of just deserts the current structure of the LMRDA is simply flawed. It is necessary to recapture the balance between criminal and civil law by providing an alternate civil sanction in those situations where enforcement is necessary but criminal prosecution is simply inappropriate.

Effective Deterrence

Now, I turn to the second aspect of the inquiry in today's hearing -- the question of effectiveness. As Horace Mann said, "The object of punishment is the prevention of evil." We might tolerate an oddly structured enforcement system, however philosophically objectionable, if it were effective. But it seems evident that the present enforcement regime is not as effective as it ought to be.

In report year 2000, the most recent year for which data are available at the Department of Labor, over 34% of required reports were either late or not filed at all. Preliminary figures for 2001 are even worse: According to the Department of Labor it appears that as many as 60% of the filings are delinquent. That's simply an unacceptable record of non-compliance.

Imagine if 34% of all corporations failed to file their SEC disclosure forms timely (or at all). Or if 34% of production plants in America didn't file their pollution monitoring reports. In those contexts that rate of non-compliance would be a scandal. The only explanation for this rate of non-compliance that one can posit is that the absence of a sure and certain enforcement regime causes a failure in deterrence and thus a lack of incentive to comply.

This is not pure supposition – the limited data available support the conclusion. Because of their draconian nature, the criminal sanctions of the Act are rarely

utilized. As the GAO reported in 2000, Department of Justice officials are (appropriately) reluctant to prosecute cases criminally where reporting violations are the only basis for the case. An electronic database search reveals approximately 50 cases in the last 43 years prosecuted under section 209 of the Act. And of these, the vast majority of the reported cases were prosecutions for knowing false statements on required forms – that is deliberate willful lies. Typically these frauds were in service a larger criminal enterprise – they were, for example, used for the purpose of concealing some other substantive crime (e.g. embezzlement of union funds).

Indeed, my research disclosed only one case – *United States v. Spignola*, 464 F.2d 909 (7th Cir. 1972) – involving a pure willful "failure to file" case, without any indicia of personal benefit to the union official or union who failed to file the requisite forms. And that case resulted in a reversal of the conviction.

Plainly this search may understate the instances of criminal enforcement of the Act under section 209 – not all criminal cases brought are reported in the electronic databases. But I think it is fair to say that the criminal enforcement authority of section 209 is rarely used. And this is understandable – the criminal sanction is the societal blunderbuss reflecting, as I've already noted, a high degree of moral opprobrium. Criminal penalties are not appropriate in most failure to file cases and the Departments of Labor and Justice are rightly hesitant to seek criminal penalties for such conduct.

But in the absence of alternative civil sanctions, as the GAO noted, when criminal penalties are not appropriate the Secretary is reduced to hoping for the voluntary compliance of unions with their LMRDA reporting obligations. There is no middle ground sanction to be applied between the blunderbuss of criminal law and the paring knife of voluntary compliance. In effect, the substantial and serious penalties attending criminal sanctions make them effectively unusable for the run-of-the-mill case where a reporting requirement is not met.

And thus, with no fear of the blunderbuss that is never used and no other incentive for voluntary compliance, individuals have no reason to act vigorously to ensure compliance with the LMRDA. The civil sanctions proposed in H.R. 4054 are tools, appropriate to the enforcement task and commensurate with the scope of the regulatory injuries they seek to address.

H.R. 4054 and H.R. 4055

Finally, let me turn to the text of the two bills before you. In general they are salutary efforts to remedy the flaws in the current enforcement structure of the LMRDA. By giving the Secretary of Labor civil authority to secure monetary penalties from delinquent or deficient unions the legislation will give the Secretary an important, indeed, essential tool for achieving compliance with the reporting requirements of the Act.

With respect to H.R. 4054, it is highly likely that the imposition of civil penalties will have a deterrent effect of precisely the sort that is necessary. The structure for the administrative penalties chosen is both moderate and measured. The bill requires the Secretary to takes into account the nature of the violations involved; the revenues of the violator; and the violator's prior enforcement history. Thus, it focuses accurately on questions of the magnitude of the harm and recidivism that are commonly understood as the appropriate metrics for calibrating punishment.

If I could offer one suggestion concerning this bill it would it would be to explicitly incorporate a graduated civil sanction based upon the intentional nature or *scienter* of the conduct in question – accidental violations or those arising through neglect ought to result in fines less severe that those arising from gross negligence or deliberate but non-willful conduct. Perhaps that is what the bill intends to capture by specifying that the Secretary take account of the "nature of the violations involved" but greater clarity on the issue would be welcome.

With respect to H.R. 4055, this bill too appears to be well structured. My principal observation is that the bill sets the standard for the initiation of a civil action too high and will therefore result in fewer civil actions than appropriate. The "probable cause" standard is a common one in the criminal law – it is the standard police must meet before they may invade a home with a search warrant and it is the standard a prosecutor must meet before asking a grand jury to return a criminal indictment. Both of these are highly intrusive, dislocating acts – much more intrusive than the mere act of filing a civil suit. It would, in my view, be unwise to cabin the Secretary's discretion to bring a civil suit to only those instances where the probability of a violation of law is as great as that a crime has been committed. Like any other civil litigant, the Secretary should be obliged to have a good faith basis for the allegations of the Department's lawsuit, but I see no ground for imposing a higher burden of justification on the Secretary before the government may sue.

Mr. Chairman, thank you for the opportunity to testify before the Subcommittee. I look forward to answering any questions you might have.

APPENDIX E - WRITTEN STATEMENT OF PHILIP B. WILSON, VICE PRESIDENT AND GENERAL COUNSEL, LRI MANAGEMENT SERVICES, INC., TULSA, OK

Testimony of Phillip Wilson
Vice President and General Counsel
LRI Management Services, Inc.

June 27, 2002

Chairman Johnson, and Members of the Committee:

I am pleased to be invited back to appear before you today to continue to discuss reforms of the Labor Management Reporting and Disclosure Act (LMRDA). As you are aware, I submitted extensive recommendations in April regarding reform of the Act, and while I remain happy to discuss any of those recommendations, I will limit my comments today to the current legislation before the House. I am very excited about the reforms being considered by this committee. These reforms represent a tremendous improvement in the LMRDA that will ultimately allow it to meet its important purpose of ensuring openness and accountability for unions in America.

First, let me complement this committee on the hard work and results it has achieved thus far. Since I testified before you last April, the Department of Labor has posted on its web site the financial information for virtually every union in America. This project, one that has been in progress for years, has finally gone live thanks in no small part to the oversight of this committee. Today union members around the country have free, real-time access to all the available financial information about their unions. If the internet were around in 1959, this is exactly the type of access to information the framers of the LMRDA would have envisioned. This is a tremendous improvement over the past, when union members or researchers who wanted access to an LM-2 were required to engage in a time-consuming and often expensive process to get the documents. In effect, these financial reports were inaccessible to the vast majority of union members that might want access to the information those forms include.

In addition, two pieces of legislation have been introduced in the House that address several of the shortcomings of the current statute that we discussed in April. Last time I was before your committee I suggested several reforms to the LMRDA reporting requirements. These two pieces of legislation go a long way to implementing changes I believe will allow the LMRDA to serve its originally intended purpose, to create democratic and accountable unions in America.

One proposal provides for money damages penalties for unions that fail to comply with the LMRDA reporting requirements. This is a critical enforcement provision that tracks the penalty framework found in other important laws enforced today by the Department of Labor, like the Occupational Safety and Health Act and the Fair Labor Standards Act. The LMRDA today has no such penalties, making compliance

with the financial reporting requirements almost optional. History has proven that the current framework fails to get important financial information into the hands of union members where it can be used.

The second piece of legislation gives the Secretary of Labor the authority to bring a civil action on behalf of an aggrieved union member to remedy violations of Section 105 of the LMRDA. It further provides for the full dissemination of the reports required by the Act to each new union member within 90 days of joining the labor organization and periodically thereafter as required by the Secretary. These two proposals go even further in ensuring a voice for union members in America. As I testified in April, the current statute puts the bulk of the enforcement burden on those least likely to be able to bear it, aggrieved union members themselves. In order to enforce the reporting requirements today a union member must hire an attorney and sue his own union, risking subtle and sometimes open retaliation. These are not the kinds of cases normally taken on a contingency basis. History has also proven that union members are unlikely to make the effort required to exercise their rights under the LMRDA.

Additionally, the requirement that a union provide each new member with copies of its constitution, bylaws and financial statement within 90 days of joining the union is very important. Most unions today simply refuse to provide this information to members unless forced to do so through the threat or actual commencement of legal action. Recently a circuit court of appeals rejected a claim by a union that it had met its notification requirements under the LMRDA by sending a notice to all its members in 1959. This is a good example of the lack of seriousness with which unions take their obligation to keep members informed today, and the legislation proposed goes a long way to fixing a broken system.

The AFL-CIO complained at the last hearing that this issue is not important. They pointed instead to pension fund reform and restrictions on corporations as better uses of the committee's time. In my opinion, there is very little this committee could be working on that is of more importance than ensuring an accountable and democratic labor movement in our country. With respect to the issue of pensions the point was made in April that this is the bigger issue, with trillions of dollars at stake. However, the trustees of many pension funds in America include union leaders. Many times each month a union leader, acting in his or her capacity as a trustee of their member's pension funds, is found guilty of embezzling that money or for using it for personal gain. Openness and democracy can help prevent unscrupulous union leaders from stealing from their members and help ensure that those that do steal can be found and brought to justice.

With respect to the issue of corporate accountability, there is no doubt in the wake of the Enron and Global Crossing debacles that the issue of transparency and accountability are of critical importance in the corporate world. Yet several prominent union leaders have been investigated in their roles in a similar financial scandal involving ULLICO. The goal of transparency and accountability is a worthy one for both companies and unions.

Perhaps the most important reason to consider legislation to improve transparency and accountability for unions is to save the labor movement from itself. This may sound strange coming from a management consultant, but I believe that an active and democratic labor movement is good for America. While I believe that most employees today are better off working together with an enlightened management group and without a union as a go-between, there are still many others that can benefit from union representation. Particularly in undisciplined organizations that do not place a high value on employee input or contributions, unions can provide a structured means for employees to communicate with management and exert market pressure on the company to improve work conditions. This is a valuable and important vehicle for these employees.

Unfortunately, today unions are on the brink of collapse. While union membership numbers have steadied somewhat, private sector unions today still represent less than 1 in 10 workers. According to our firm's data, unions are filing a record low number of petitions to represent workers this year. A variety of explanations are given for this. Many point the blame to people like me, arguing that anti-union campaigns are the cause of union membership declines. Others blame the globalization of the economy, with the concomitant loss of jobs in highly unionized sectors where companies from other countries are able to compete due to lower labor costs. Still others blame the law itself, arguing that the National Labor Relations Act is tilted in favor of management. Without getting into the details, I feel that at best these explanations only touch the margins of the issue of union membership decline. I believe there is a more fundamental explanation for the decline in union membership.

I believe that the labor movement has lost relevance for the vast majority of private sector workers (the public sector is a different story due not so much to differences in the law than the fact that the government is a monopoly). Many workers, when confronted with the choice to support or join a union, look at what unions do for their members and simply decide it is not a good deal. If unions really did deliver a greater voice, more dignity and better pay and benefits for their members everyone would belong to a union. But unions, by and large, don't deliver these things. People aren't stupid – they can see for themselves that unions today don't deliver benefits that justify their cost to members. So they choose not to join.

Why don't unions deliver? I believe this is in large part due to the fact that they are not open and accountable to their members. When it comes to deciding day-to-day issues like grievances or other workplace complaints, union leaders are often just as arbitrary as the managers they criticize. Where it really counts, choosing the key leadership positions, unions are not very democratic either. The key issue is trust. Unions are finding, just like in the companies they criticize, that when key stakeholders lose trust and confidence in their leaders they turn away.

The stock market is hovering around its September 11th lows and many observers believe this is due to the fact that investors simply no longer trust Wall Street or companies to give them accurate financial information. In my opinion, the same

thing is true with union membership. Each year unions are losing members, and failing to make significant strides in gaining new members, because they have lost trust. Workers today don't have confidence that unions will do anything to make their lives better. It appears that most unions will not make the necessary changes to ensure workers have a voice and confidence in their union. In extreme cases the government is required to step in and put unions under trusteeship just to ensure some small amount of accountability to members. Yet most of the time entrenched leadership is allowed to remain in power, muddling along doing what it has done for decades. This is a recipe for the complete marginalization of the labor movement in America.

To prevent this from happening requires bold action. The AFL-CIO, representing the vast majority of unions in America today, complained in April that these reforms are simply onerous requirements that divert their resources and attention from more important issues. This argument proves exactly why this committee must act. The AFL-CIO sees openness and transparency for union members as a non-priority. Unions left on their own will do absolutely nothing to keep members informed. Uninformed members, like an uninformed electorate in the country at large, are powerless to make the democratic process work. Congress realized this in 1959 when it enacted Landrum-Griffin. Today, with the advantage of seeing the statute's shortcomings, it is clear that more must be done to protect the democratic rights of union members. I commend the committee for the actions it has taken thus far, and encourage the committee to support the two legislative proposals currently on the floor. Thank you, and I look forward to your questions.

APPENDIX F – SUBMITTED FOR THE RECORD, STATEMENT OF THOMAS J. VERDONE, FORMER RECORDING SECRETARY, MILLWRIGHT LOCAL 1693 – CHICAGO, JUNE 15, 2002

June 15, 2002

Statement of Thomas J. Verdone

Dear Congresspersons:

My name is Thomas J. Verdone. I was, up until this month, the Recording Secretary of Millwright Local 1693, which is one of an estimated 30+ union locals that make up the Chicago and Northeast Illinois District Council of Carpenters, which in turn is a subordinate body of the United Brotherhood of Carpenter's and Jointers of America. I was elected by members looking for some accountability and democracy, which has been in short supply in local 1693. I started my term off by basically observing the operations of the local executive board and to my surprise and dismay I found that the EB led by full time staffers of the district council in the capacity of appointed business representatives and organizer were consistently involved in widespread malfeasance and fraud. These same individuals (at staffer salaries paying in the area of $100,000.00 per yr.) Also double as part time President, Vice President, and Financial Secretary/Treasurer collecting from the local approximately $2500/year for serving on the Local's Executive Board.

I made an inquiry into the lack of financial reporting by the Financial Secretary/Treasurer and trustees. According to the U.B.C. constitution, they were in clear violation of their responsibilities by not reporting to the members the numerical and financial status of the local etc. My inquiry was met with mostly ambiguous rhetoric, double talk, and obstinate silence at that executive board meeting. In my capacity as recording secretary I brought this issue to light at the following monthly meeting by reading the minutes, as my position requires. As a result, I was brought up on fraudulent charges of causing dissension which have up until this point been supported by the governing district council despite my consistent inquires for any proof of wrong doing. I believe from my research the money is being funneled from the local in what I believe is a scheme to draw as much money from the local as possible without the members knowledge.

In discussing this issue in great detail with the Department of Labor, they've stated that they can only pursue this issue if it's a matter embezzlement for personal gain and that diverting money from one organization to another, be it improper, is not a crime.

Also there has been, with our most recent election, a plethora of procedural violations pertaining to election guideline also as outlined in the UBC Constitution:

Members making nominations who were on the Ultra list* who should not have been on the Ultra list (violating Section 31)
Members making nominations who were not on the Ultra list (violating Section 31)
Retires appointed to serve on election committees (violating Section 31, Paragraph D)
A candidate on a ballot who served on the election committee counting ballots (violating

Section 31, Paragraph G)
The Financial Secretary/Treasurer campaigning instead of tending to the books (violating Section 31, Paragraph G)
Campaign literature containing false and misleading instructions in regards to voting requirements
Campaign literature that falsely and maliciously singles out individuals and a specific contractor implying collusion (section 51A-1)
Contractor members on the Ultra list of members able to vote, be nominated, and run for office who should not be on the list (violating section 44, paragraph G)
Contractor members voting in the election (violating section 44, paragraph G)
The improper removal of a candidate three days before the election. In approaching the Department of Labor on these blatant violations, their response was less than enthusiastic due to the stringent guidelines they have to follow and the very limited powers allowed them in intervening during such corrupt situations. It is my hope and that of many union persons around the country that the US Government step in and help the average worker from being exploited by the same organization, which was established to protect them in their livelihood. We need laws to help us reform labor organizations that have gotten completely out of control.

Sincerely,

Thomas J. Verdone
Former Recording Secretary
Millwright Local 1693 - Chicago

APPENDIX G – SUBMITTED FOR THE RECORD, STATEMENT OF GREGG SHOTWELL, DELEGATE, UAW LOCAL 2151, JUNE 22, 2002

June 22, 2002

Submitted for the Record

Gregg Shotwell
54 Fitch Place S.E.
Grand Rapids, Mi 49503
616 451 4401

To Honorable Members of Congress Concerned with the Democratic Rights of Union Members:

I attended the UAW 33RD Constitutional Convention in Las Vegas, June 3 - 6, as an elected delegate. It was held at the MGM -- but Circus Circus would have been more appropriate. According to our constitution, delegates are theoretically "the highest tribunal in the UAW" but we were treated like a captive audience and brow beaten with speeches by politicians and dignitaries with no connection to the UAW other than the stipends they received. Delegates were given very limited opportunities to debate issues relevant to our union, controversial topics were cut short, and Robert's Rules of Order were honored at the whim of the ruling party. In a word, the Convention was totally "engineered."

The power of the incumbent administration in a one-party democracy is such that all International officials were elected by a voice vote of acclamation. There was only one snafu when the delegates from Region 2 rubber-stamped the wrong guy. The Administration Caucus was so incensed that they retaliated with a constitutional amendment to dissolve Region 2. You can well imagine the power implicit in retroactive redistricting. It would be as if Democrats upset about the election results in Florida resolved to dismember the state by giving the panhandle to Alabama, the northern trunk to Georgia, and the toe to Puerto Rico.

Rather than raise our dues, the Administration Caucus absconded with $75 million from our strike fund by passing a constitutional amendment. And you thought you knew something about fast track.

UAW International leaders do not feel accountable to the members because the members do not elect them in a one-member/one vote, secret ballot election. All members of the UAW's ruling caucus are initially appointed and they are accountable only to those who appointed them, not the members they are supposed to represent. Americans take one-member/one vote secret ballot elections for granted. We consider it an inalienable right, but we are denied this right by the ruling party of our union, which behaves like a dictatorship. We need direct election of all International officials who represent us by one-member/one vote secret ballot elections.

I understand that you are interested in making unions more accountable by enforcing stricter adherence to LM-2 reports. The UAW is way ahead of you. Nineteen cents for each hour worked is deposited in a fund administered by a separate non-profit, tax-deductible corporation. International UAW officers, and corporate officials sit on the board and control all expenditures. There is no accountability to the members and no requirement to report on an LM-2. This is in effect a dues assessment, and de facto taxation without representation. These funds also enable the International to appoint members in local unions to sinecures, thus securing their influence at the local level as well. In a one party state the power to appoint trumps the power to elect.

Respectfully,
Gregg Shotwell, Delegate
UAW Local 2151

APPENDIX H – SUBMITTED FOR THE RECORD, STATEMENT OF PHILIP LAVALLE, CARPENTERS LOCAL 225, ATLANTA, GA, VICE PRESIDENT, CARPENTERS FOR A DEMOCRATIC UNION INTERNATIONAL

STATEMENT OF PHILIP LAVALLE

SUBMITTED FOR THE RECORD

Currently, the LMRDA does not have enough bite in it for the changing society of today. The DOL should have more authority to enforce provisions for the filing of forms, as some unions seem to feel that they are above the law.

Locally, in Atlanta, Ga., Carpenters Local 225 was put in trusteeship and the law requires that a form LM-15 be filed within 30 days of establishment of a trusteeship. The UBC did not file the form for almost 60 days. This left a large number of members without a clue why the trusteeship had been imposed and, with the loss of autonomy, unable to get answers, and without the means to challenge the trusteeship. Yet the membership was still responsible for the payment of dues.

The law must be amended such that union leaders are held accountable to the membership.

In particular, the LMRDA should be amended to include a requirement that a parent union demonstrate it to be valid with a preponderance of evidence either before imposing it, or in the case of an emergency trusteeship, within 90 days – not 18 months later. Also, the only to assure a fair hearing would be to have a genuine neutral, such as a DOL representative, participate in any hearing to determine whether to impose or continue a trusteeship. This will show rank and file members that there will be some impartiality on the hearing committee.

And, the elected officers of the local put in trusteeship who have not had charges filed against them should be reinstated to finish their term if the term has not expired. After all, they were duly elected by the membership.

Also, in the Carpenters union, the right to vote on collective bargaining agreements has been taken away from the rank and file members. This I feel is a monstrous injustice. We pay dues for a say in our livelihood and in the workplace. Therefore the affected members in good standing in a secret ballot referendum should vote all collective bargaining agreements. In turn, any union official who negotiates or enforces our labor agreements should be elected by the same process.

I hope you look into these issues and make the necessary changes to ensure a fairness to all working Americans.

Philip Lavallee
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Carpenters Local 225, Atlanta, Ga.
Vice President, Carpenters for a Democratic Union International

APPENDIX I – SUBMITTED FOR THE RECORD, STATEMENT OF MICHAEL BILELLO, CARPENTERS LOCAL 157, NEW YORK, NY

Submitted for the Record

My name is Michael Bilello, I am a member of Carpenters Local 157, in New York City. Local 157 is part of the New York District Council of Carpenters. The following is one example of why changes to the LMRDA are needed.

The New York District Council of Carpenters was put into trusteeship in June of 1996 by the United Brotherhood of Carpenters and Joiners of America (UBC). The trusteeship was lifted in January of 2000. When the UBC pulled out, they had put in place uniform bylaws to govern the New York District Council, as well as other councils around the country.

One section of the New York District Council Bylaws relevant to the LMRDA is Section 21C: "The Council may establish monthly dues or increase working dues payable to the Council by a majority vote of the Delegates voting at a Special Convention of the Council held upon not less than 30 days written notice to the principle office of each Local Union."

This language was written into the Bylaws to impose monetary assessments on the membership, without a rank and file vote, while supposedly satisfying the requirements of Section 101(a)(3)(B)(i) of the LMRDA. The so-called "special convention" was merely a regular monthly meeting of delegates with the exception of a letter that was sent to each delegate, titling the meeting a "special convention" and informing them that a vote will be taken to impose the assessment.

Anyone familiar with the Carpenters Union knows the term "convention" refers to the "General Convention" which is held every five years, and that we specially elect delegates to attend that convention, and vote for General Officers and on various issues. The delegates are elected solely to attend that one single convention. I have been a member since 1975 and have only seen a "Special Convention" held once, in 1995, when the Department of Labor ordered an election overturned, and there had to be a new election (and therefore a new election of local delegates to attend). The language in 21C was purposely written into the Bylaws to circumvent the LMRDA.

The rank and file were not aware of the impending assessment prior to the vote and they had no way politically to weigh in on the subject. They were not given the opportunity to advise their delegates of their views or to instruct them how to vote.

The delegates voting on the assessment were by in large, full-time, appointed, paid staff of the District Council who were politically and financially beholden to the Council leadership that wanted the assessment. Any opposition to the wishes of the administration could result in the termination of the delegates' full-time (and lucrative) appointed position. The vote was not by secret ballot. Several full-time staff people who were not "team players" had been fired since *elected,* full-time, salaried positions, were changed to *appointed* positions. The majority of the remainder, were unpaid delegates, who thought

they stood a chance to be hired on staff, with the additional monies brought in by the assessment.
The majority of the membership did not find out about the assessment until they received their vacation fund check (the mechanism used to collect the money from the member) six months later. There is no bylaw or federal law in place to prevent the same delegate body from increasing the assessment at any given time.

Michael Bilello
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APPENDIX J – SUBMITTED FOR THE RECORD, STATEMENT OF ROBERT L. CARLSTON, MEMBER, UBC LOCAL 1977, LAS VEGAS, NV

Submitted for the Record

My name is Robert L. Carlston. I have been a member of the Las Vegas, NV UBC local(s) for 30 years. I served three terms as Trustee for Local 1780 and one term for Local 719, now defunct. I was a charter delegate to the Silver State District Council (defunct) and served one term & one year as a charter delegate to the Southern California – Nevada Regional Council (now Southwest Regional Council).

I write to share with the reader a saga of political manipulation by the UBC, and what I consider to be blatant abuse of trusteeship power in order to prevent politically independent persons from coming to power even though they had the democratic support of the membership.

Prior to 1994, there was one independent Carpenter's local in Las Vegas, Local 1780. In March of 1993, the International Brotherhood of Carpenters and Joiners of America (UBC) imposed a trusteeship over Local 1780, allegedly to correct political unrest caused by the actions of an inexperienced elected Business Representative. The membership repeatedly pointed out that the regular election, scheduled to be held in just three months, would correct any problem. All members and officers pleaded with the UBC to allow the elections to proceed but they were rebuffed. After imposition of the trusteeship, all officers and representatives of the Local were removed from office (with one exception) and the operation of the Local was placed in the hands of two International Representatives (Wright & Dunford). All membership meetings were suspended and membership participation in the local was forbidden despite language in the UBC constitution to protect the rights of the membership. The trustees unilaterally signed and modified labor agreements, fired secretarial staff, attempted to deny one secretary (Bernadine Montoya) earned pension benefits, and threatened the employment of members who dared protest.

After 18 months, steps were initiated to lift the trusteeship; an executive committee was appointed for the Local and tightly controlled membership meetings were allowed; however, Wright & Dunford remained in total control. After two months it was announced that the UBC was forming the Silver State District Council of Carpenters and that Local 1780 would be broken into four small locals (Local 719, Local 817, Local 857, & Local 1780). These small locals along with Local 971 (Reno) and Local 1827 (millwrights) would form the new District Council. Dana Wiggens, who had been appointed Business Representative for Local 971, was appointed Executive Secretary/Treasurer (EST). The Executive committees of the various locals were likewise appointed, as were the delegates to the Council (I represented Local 917). While the small locals were forced to hold meetings in small rented warehouses, the hiring hall remained at Local 1780, as did all other activities. Wright and Dunford were retained to supervise the District Council, though no Trusteeship officially existed.

During this period, it was discovered that approximately $350,000 in funds were unaccounted for and every member had lost ½ to 1 pension credit. The members protested the changes to the UBC General Executive Board (GEB) three members were selected to present the case; Roger Tufaro, Richard Russo and myself. General President Lucassen told us that he had the power to do anything he wished and that we wouldn't have a union in Las Vegas if he so decreed. The only member of the GEB to oppose Lucassen was 2nd Vice-President McCarron who stated that he saw no reason for such extreme action. Wright & Dunford testified that the break-up was necessary because the "activist element" in Las Vegas couldn't be controlled otherwise. They further stated that the lost pension credits were caused by embezzlement by a Trust fund secretary; to this day the funds have never been accounted for, no charges of embezzlement were ever brought, and as far as I know no claim was ever made against the bonding company to recover the money.

Soon afterwards the Department of Labor decided that General President Lucassen had violated Federal law during the prior convention and set aside his election. A new convention was ordered; it was held in Las Vegas. Wright & Dunford first tried to prevent the Las Vegas locals from conducting delegate elections and attempted to appoint delegates. Both attempts were

forbidden by the Department of Labor, which had to step in, order and supervise elections of officers and executive committees for the new Las Vegas locals. Despite D.O.L. supervision several questionable practices were allowed to take place (officers with keys to the ballot box, unaccounted for ballots, & counts conducted by involved parties). Protests were turned aside because, we were told, if they were upheld, given the time constraints, the Las Vegas locals would have no representation at the convention. The D.O.L. also decreed that EST Wiggens must stand election by the entire membership before the end of the year.

Douglas McCarron was selected the new General President and soon after met with delegates from Locals 719 & 817 who requested that they be allowed to return to Local 1780. General President McCarron denied the request on the grounds that Local 1780's Executive Committee didn't want to have to face election by the entire Las Vegas membership. In November, General President McCarron and several International Representatives entered the union hall and forcibly removed EST Wiggens. The membership was told that Wiggens had attempted to use pension fund monies to buy doctor's accounts receivables and pocket $1.8million in finder's fees. Rick Whilkening, who was the only Business Representative retained when the trusteeship was originally imposed, was appointed EST and elections were cancelled.

Three months later Herman Bernsen, president of the Southern California District Council was the featured speaker at a pin party held to honor long-time members. Bernsen's speech was an announcement that General President McCarron was combining Locals 719 & 817 into a new local (Local 1977), dissolving the Silver State District Council and forming the Southern California – Nevada Regional Council. Marc Furman (former head of organizing for the International) was named Administrative Assistant and given sole and absolute control over the Nevada Carpenters. All of this was done without notice to or consultation with either the membership or delegates.

I was appointed a delegate to the Council representing Local 1977; one of our first duties as delegates was to approve bylaws for the Council. The Nevada Delegates were instructed by the membership to oppose several clauses in the bylaws. At the meeting all delegates who also held staff positions stated that it would cost their jobs to oppose the provisions. It was left to the six rank and file delegates to vote nay (we were joined by the five delegates from the Pile-drivers local). Those eleven of us who had voted nay were forced to stand in order to vote. During the 4½ years I served as a delegate, we were never called on to approve one item of business. Mr. McCarron claims that the delegates operate similar to Congress, but I can vouch that that is not the case. The delegates meet every three months, minutes of the Executive Board meetings and a list of political contributions are read; there is no discussion and no vote. All decisions are made by the EST, approved by the Executive Board, and merely read to the delegates.

I'm bringing this to your attention because the Southern California – Nevada Regional Council of Carpenters was the prototype for the Regional Councils the UBC has formed across the country. The modus operandi has been similar in every case I'm aware of; trusteeship, denial of membership participation, followed by unilateral imposition of a Regional Council with appointed officers and the authority to perform the representational functions previously performed by Locals headed by officers actually elected by the members. I might add that the term or entity, "Regional Council," was not even added to the UBC Constitution until five years after the first one was formed.

The clearest example I can give of the effects of General President McCarron's actions is that of local elections. Prior to the trusteeship, 50% to 75% of the Local 1780 members voted in elections. In the last election conducted before the trusteeship, 890 of 1500 members voted in an off-year election to fill a relatively insignificant position -- trustee (I won over two other candidates by 687 votes). Similarly, in the last contract ratification vote over 90% of the membership participated. Local 1977 recently held an off-year election for trustee, two delegate positions, and

two executive committee positions; two Executive Committee member/delegates had resigned after the last election. I chaired the election committee; of a total eligible membership of 3575, only 107 voted.

Thank You.

Robert L. Carlston
624 Garden Place
Las Vegas, NV 89107-4123
(702) 878-5524

Member, UBC Local 1977
Las Vegas; NV

APPENDIX K – SUBMITTED FOR THE RECORD, STATEMENT OF CHUCK CANNON, UBC PILE DRIVERS LOCAL 34

Chuck Cannon
Retired 50-year UBC member

Submitted for the Record

June 21, 2002

I write to share some information and my concerns about the UBC.

People whom I refer to as the "business-unionism partners" have, in my opinion, taken over the Carpenters Union to satisfy their own brand of corporate greed; from an insurance company's plan to increase its Taft-Hartley plan market share, to satisfying contractors' desires for cheap skilled workers. They are high-level labor officials, executives of pension fund administration firms, investment houses, construction businesses, and financial organizations with interconnecting interests. They are all employers of building trades workers and have combined all of their political expertise and power to dominate union workers.

In the world of Wall Street, taking over a targeted business can cost hundreds of millions of dollars. The shareholders of the targeted company are legally entitled to receive fair value for their equity and they dance all the way to the bank.

Taking over a labor union with billions in assets is a much cheaper operation. Even though the members are the creators and the rightful owners of billions of dollars in equity, they don't legally own any claim to a damn thing. No one has ever converted the value of union equity into shares of stock or some other form of legal ownership. Instead of mounting an expensive proxy war, all the well-placed predator has to do is to trick the members into political disenfranchisement to install his own hired managers. The business-union is then functionally, if not literally, his. As long as he can keep the members thinking that his acts are concerned with organizing and other traditional labor concerns, the majority will never wake up to the fact that the union is a valuable financial asset and has been stolen for that reason. The piracy is perfectly legal if the members cannot prevent it.

The predator is almost always a highly paid union official whose job it is to protect and represent the members. His method of usurpation is invariably the same: employ every tricky device possible to deny the rank-and-file member an effective means of self-defense and democratic remedy. Unfortunately, labor has a long history of endemic corruption. Laws that encourage the application of democratic principles and practices must be supported.

Amendments to the UBC Constitution (similar to those in boldface text throughout) to enhance democracy in the Carpenters Union were officially proposed to the 2000 Chicago United Brotherhood of Carpenters' General Convention. None were adopted.

Title I- Bill of Rights of Union Members
Location in Official Constitution: **BOARD OF TRUSTEES**
Page # 23 Paragraph E Section: 15

Reasons for inclusion to Amendments:
To make new provisions for the management and control of the Headquarters and real estate of the United Brotherhood of Carpenters and Joiners of America in the City of Washington D.C. and elsewhere. The intent is to re-structure the Carpenters' Union into a democratic members' union, by the creation of an Asset Trust under which all vested members would be direct owners/beneficiaries in their own names by implication, of the tangible assets of the United Brotherhood of Carpenters. This is the membership's takeover of the International Union.

The Asset Trust shall hold all property, real estate, and other tangible assets for the sole purpose of assigning the advantages, benefits, and responsibilities of ownership of the assets to the union members and to their direct control. This amendment would make the union's members, whose investment of money and labor created the union's wealth, the true legal owners of their international union's assets. The value of Carpenter real estate, including a new headquarters building in Washington D.C., which alone will generate millions of dollars annually in rent and lease revenues, can be measured in the billions of dollars.

Original, official text as amended January 1, 1996:
E Section15. The title of the Headquarters and real estate now held by this United Brotherhood, or which may be hereafter acquired, shall be vested by proper conveyance in said Board of Trustees and their successors in office, to be held by said Board of Trustees in trust for the sole use, benefit and behalf of this United Brotherhood of Carpenters and Joiners of America.

(NEW) proposed amended text.

E Section 15. The title of the Headquarters and real estate now held by this United Brotherhood, or which may be hereafter acquired, shall be vested by proper conveyance in THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OFAMERICA BENEFICIAL REAL ESTATE, PROPERTY AND ASSETS TRUST, a non-profit trust, to be managed by said Board of Trustees in trust for the sole purpose of inuring a beneficial interest in all said real estate, property and other tangible assets to the members of the United Brotherhood of Carpenters and Joiners of America. THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICABENEFICIAL REAL ESTATE, PROPERTY AND ASSETS TRUST (hereafter referred to as the "Asset Trust"), is the entity which holds the common assets of the persons named in the membership rolls who have been members in good standing for five cumulative years of the United Brotherhood of Carpenters and Joiners of America (hereafter referred to as the "Members"), and who are in fact, the titular and beneficial owners of the Asset Trust, by necessary implication. Said Members shall be the vested, beneficial owners-in-common of all its assets. This beneficial ownership shall be computed upon the total number of accumulated years of membership, plus a fraction of any year exceeding a 0.25 fraction of any partial year of membership. The ownership rights shall not be voided or otherwise lost by a lapse in membership subsequent to becoming a vested Member. There shall be three classes of beneficial ownership: Class A Members (as defined above), in good standing shall have voting rights. Class B Owners(Members not in good standing and former Members of the Carpenters Union),shall have no voting rights . Class C Successors (those persons who have received a beneficial interest by bequest or gift), shall have no voting rights. Each Member shall have the right to bequeath or convey his/her ownership rights to a Successor. This right of ownership shall be transferable by bequest or gift only by the Member and the Owner, and not by any Successor in title; except, that the Successor may sell his/her interest to the Asset Trust. The Member, Owner, and Successor may each sell or encumber by way of loan for consideration, but only to the Asset Trust. Rights of ownership shall not otherwise be transferable. Unclaimed and expired rights of ownership shall revert to the Asset Trust. An account separate from the General Fund account shall be established in the Asset Trust's name which shall be the repository of all revenues deriving from rents, leases, sales, and all receivables due the Asset Trust. The Asset Trust may receive funds from other United Brotherhood accounts and resources. However, the Asset Trust accounts and funds shall not otherwise be co-mingled with any other accounts or funds of the United Brotherhood of Carpenters and Joiners of America. The Trustees shall within 60 days of the adoption of this amendment proceed to put its

provisions into effect. The Trustees shall submit all subsequent transactions that require a change of title or deed to a Members vote. This vote shall be decided by a majority union membership vote, by secret ballot. The Trustees shall engage the services of an independent auditor to distribute, receive, count, and report on all ballot votes by the Members on matters, which involve the Asset Trust. (End of E__ Section 15)

The exercise of freedom of speech, or of the right to publish, or of the right of members to peaceably assemble, or to form political caucuses or political slates which may express ideas, positions, or philosophies contrary to official union policies; shall not be the subject to, or cause for censorship, or penalties. Further, members shall enjoy the right to post documents, handbills or other such informational materials upon union property, in a prominent place, which shall be provided for such purposes.

The affected Rank-and-File members represented by and subordinate to the contract negotiating authority, whether it be a Local Union, District Council, State Council, Regional Council or Provisional Council, shall have the unrestricted right to ratify all contracts and contract changes by secret ballot. The right to vote to approve all Bylaws, Bylaw changes, dues or other monetary assessments by secret ballot shall be inviolable.

Title II-Reporting Requirements

We are members of a labor union. But our pension plans transform our unions into much, much more. Pension funds are, in reality, mutual funds. Money is deposited into an account established for us in our names to be invested for our benefit at retirement. Union pension fund participants are denied most of the rights and privileges afforded regular mutual fund participants, such as monthly or quarterly account statements, quarterly investment manager's reports, annual reports, annual stockholder's meetings, and the right to vote directly for officers and directors of the fund. We are as dispossessed in this regard as we are unrepresented as union members.

In addition to being shareholders in union mutual funds and being institutional investors, union pension fund participants are, unknown to them, also members of a very elite club of merchant bankers. Many mutual funds are, in fact, merchant banks, or function as merchant banks through their investments in the real estate markets, venture capital investments and other money-lending practices.

Our pension fund/merchant banks have introduced a new layer of complexity into their operations that are the outgrowth of business-unionism's Private Equity investments. We now have gatekeepers, general partners, limited partners, and advisors who advise advisors. Pension fund operations are a daunting challenge for even a financial expert to clearly understand, and hopeless for the average union member to understand, yet this is precisely the area that is readily open to opportunistic pension fund abuse. Congress must guarantee that the sun shines on this issue and all of its operations.

Title III -Trusteeships

In early 1997 Local 34 received a letter instructing it selected officials to resign their local union positions and become paid appointed employees of the Regional Council. Many local unions all over America must have received similar letters. These messages were the precursors of a carefully hatched plot to eliminate and transfer the historical power base of the union to the office of General President from its business agents and other locally-elected officials. This action, directed by GP Douglas McCarron, was supposedly based upon constitutionally, mandated Bylaws. An examination of the Carpenters constitution discloses no such Bylaws. Using this fictionally constructed code, McCarron created the Northern California Carpenters Regional

Council (NCCRC) and other councils by fiat. The NCCRC then invited GP McCarron to intervene and annul all democratic rights held by the Council's union members and to institute a complete dictatorship. Pile Drivers Local Union 34 vigorously resisted McCarron and was placed under a court-approved trusteeship later the same year.

Prior to instituting the trusteeship a hearing was conducted for the stated purpose to "determine why Local Union 34 should not be placed in trusteeship." UBC International Representatives strongly attempted to elicit testimony from members pertaining to knowledge of malfeasance by officials of Local 34. No member presented testimony alleging improper conduct.

The International's agents' first attempt to seize our union hall was thwarted by courageous local officials and members who prevented their entry into the hall. Had the seizure been successful there is good reason to believe that the "books would have been cooked" to fraudulently manufacture evidence of malfeasance that the International sought to find in its fishing expedition during the hearing.

Any new amendments to this section of law should contain due process language that establishes protection against the possible abuses mentioned above, such as:

The taking possession of said records by the Trustee or his deputies shall not occur until said records have been first sealed in a manner according to civil law, under the observance of a legal Notary Public, or other similarly recognized Official, who shall witness the taking possession of said records, and shall deliver to the representative of the Local Union, District Council, State Council or Provincial Council a signed receipt for all documents and records seized. Representatives of the Local Union, District Council, State Council or Provincial Council being trusteed shall be permitted to be present when the records are sealed and unsealed, in the presence of a Notary Public or other similar Official, and may make and take possession of copies, photographs, or other forms of duplicate records, for the purpose of protecting the interest of all parties. The General president or his representative shall bear the expense of this seizure until the Local Union, District Council, State Council or Provincial Council is found guilty of violating civil or federal laws or of violations of the Constitution of the United Brotherhood; upon the establishment of guilt, the Trustee may recover the costs from the appropriate source(s).

The presumption of validity of a trusteeship during the period of eighteen months from the date of its establishment shall not apply to any trusteeship established in whole or in part to directly enforce, compel, or accomplish a merger, affiliation, or takeover of the labor organization under trusteeship with or by another labor organization unless such organizational change has been approved in a secret ballot vote by the members of the trusteed labor organization. If a trusteeship is established for such purposes without the approval of the membership, it shall be presumed invalid in any proceeding challenging the trusteeship and its discontinuance shall be decreed unless the labor organization imposing trusteeship shall show by clear and convincing evidence that the trusteeship is necessary for a purpose allowable under section 462 [29 USC:462] of Title III.

Title IV- Elections

McCarron's disenfranchisement of union members' voting rights through the gimmick of transferring power to regional councils from local union members, is a deft piece of smoke and mirror magic calculated to fool members and to provide a plausible excuse for Department of Labor complicity. But, thanks to the Harrington vs. Chao (DOL) case, it may not work according to plan and may force the DOL to adhere to its own precedents.

Has the U.S. Department of Labor (DOL) become a covert player in an endeavor to deregulate laws protecting union democracy that prevent labor union privatization? Is the DOL a knowing participant carrying out undeclared policies or an unwitting dupe involved through McCarron's political connections? Either way, the DOL's original finding for the UBC International can be construed as deregulation of the laws protecting the democratic rights of union members.

Harrington vs. UBC http://laws.findlaw.com/1st/011577.html: "Thomas Harrington, a member of the United Brotherhood of Carpenters and Joiners of America, alleges that the functions and purposes traditionally accorded to local unions in the New England Region of the UBC are now served by the New England Regional Council. That Council, he says, must be treated as a local union and not as an intermediary body. Consequently, Harrington argues, the officers of that Council must be elected in the manner that the LMRDA prescribes for local unions, that is, by direct election by secret ballot among the union members rather than by vote of delegates who are elected from the local unions, as the UBC has chosen to do for the Council. Id. ? 481(b), (d) (1994). Harrington filed a complaint with the Secretary of Labor asking her to require the Council to hold a new election as a local union. The Secretary declined for reasons stated in a brief Statement of Reasons.

"Harrington sued under the LMRDA. On motion by the Secretary, the district court dismissed his suit. See Harrington v. Herman, 138F. Supp. 2d 232 (D. Mass. 2001). Because the Statement of Reasons is insufficient to permit meaningful judicial review, we reverse the district court, vacate the Secretary's Statement of Reasons and remand the case to the district court with instructions to remand to the Secretary. We do not now decide whether any refusal by the Secretary to bring suit as sought by Harrington would be arbitrary or capricious."

In reversing and vacating the DOL's and the lower court's decision and remanding it back to the DOL, Judge Lynch writes for the majority: "We are confronted here with a different problem than was faced in Bachowski, created by what appears to be an inconsistency between the Secretary's approach and her regulation and prior decisions, which may represent a about-face by the Secretary. And, "The Secretary denies there has been any change in interpretation or policy, but it is far from evident that this is so, and the Statement of Reasons does not adequately address this topic." In other words, Judge Lynch is saying, what's going on here?

In fact, Judge Torruella for the minority, in stronger language, concurs, "we should set aside her decision as 'arbitrary and capricious' " and, "the secretary has stated her present interpretation of the Act with reasonable clarity and her present interpretation does not gibe with the readily discernable past policy and practice."

He also says, "Since my view does not command a majority of this panel, I must await, with morbid curiosity, a persuasive clarification of the reasons for the Secretary's decision that could not be articulated in the original Statement of Reasons, the Secretary's thirty-one page brief, or the fifteen page submission of the amicus union."

I would like to think that the Harrington's case would reverse the UBC's attempted end-run around the LMRDA. However, I doubt that it will succeed without Congressional intervention. Union members simply must be on guard against other attempts, and further must actively lobby for the direct increased oversight, expansion of regulation and enforcement by the DOL of the laws pertaining to union democracy.

All union labor organizations, including International Unions, State or Provincial Councils, Regional Councils, District Councils, and Local Unions, shall elect their officers by direct secret ballot vote. (One person, one vote.)

Title V- Safeguards For Labor Organizations(Pension Funds)

In 1959, when the Labor Management Reporting and Disclosure Act became law, only a few financial visionaries might have conceived of labor unions becoming merchant banks. Very few union members know what a merchant bank is and they are presently unaware of the tremendous potential of their pension funds. Even though the term business-unionism is increasingly being used when describing restructuring and changes in labor organizations, most of us still don't understand what it is.

What is business-unionism?

Leo Gerard, International President, United Steelworkers of America states in the foreword of WORKINGCAPITAL: The Power of Labor's Pensions. "The use of worker's capital is one of the key challenges facing the labor movement today. Our deferred wages underpin capital markets in the United States and around the world. Although we have paper ownership of $7 trillion of deferred wages in the form of U.S. pension fund assets, this fact has not altered financial markets in any significant way. All too often, investments made with our savings yield only short-term gains at the expense of working Americans and their families. Destructive investment practices that rely on layoffs, mergers and acquisitions, plant closures, and offshore job flight can create quick profits and short-term stock price increases, but over time these practices erode America's wealth. The challenge for labor is to find ways that align workers' savings with workers' values. We need to invest our deferred wages in companies that provide good jobs in stable, strong communities. We want to reward companies that value all stakeholders in the enterprise, not just their shareholders. Our capital is patient and long term, and our challenge is to develop a capital strategy that moves our savings beyond the quick saccharine highs of destructive corporate behavior . . .."

http://www.heartlandnetwork.org/links.htm (contains chapters of Working Capital)
Chapter [V] page 93 "Building On Success Labor Friendly Investment Vehicles and the Power of Private Equity" by Michael Calabrese: a series of papers presented by scholars and academics on the subject of "creating conceptual, financial, and educational tools for capital strategies that will advance labor's agenda in the twenty-first century." The book makes the case for and describes in essence what business-unionism is, in relation to labor's pension fund investments, the financial markets and the expected social benefits.

However, the book does not expound on the inevitable conflicts of interest and potential abuses that are inherent in the developing partnerships. Working Capital also does not illuminate the obvious, that the failure of labor's advocacy for union jobs has led to an attempt to buy, through the lending of pension funds to employers, what it could not obtain through the diminished status of the unions.

The creative uses of Private Equity and Economically Targeted Investments (ETIs) as sources of union jobs, pose the risk of reliance on their uses as acceptable adjuncts of or substitutes for traditional organizing efforts. The business partners attempt to create an illusion in the minds of members that the pension fund fiduciaries and gatekeepers who manage the investments are doing the members a great service, and maybe some are. But, in reality, pension fund management and gate keeping are very lucrative businesses beyond the revenue earned from management fees. Some pension funds' fiduciary-managers wear multiple hats, giving rise to the potential for conflict of interest, corruption and possibly illegal abuses. Testimony to this fact can be gleaned from the Enron and Ullico/Global Crossing scandals that are referred to in the Committee on Education and the Workforce's own introduction to "Suggested Reforms to Title II of the LMRDA" by Phillip B. Wilson, Esq.

Ralph Nader asks in an article in Business Week, "Is Wall Street Corrupt?" Inside, the reporters showed the answer to be yes, yes, yes!"

The business-unionism concept establishes an alarmingly attractive and friendly environment for the propagation of corrupt abuses and corporate greed. If Mr. Gerard's vision for ethical investing of labor's assets is to stand a chance of succeeding, vigorous regulation and oversight of all forms of pension fund investments is necessary. LMRDA must be amended and strengthened to take into account institutions and practices that were not previously anticipated. Provisions must be enacted that guarantee a paper trail traceable to every entity that is involved in the flow of assets, identifying the owners of any assets produced through use of the funds. This information must be accessible to any person who wants to research the investment trail.

There is a correlation between the easing in 1994 of ERISA rules, the establishment of pension investment funds dedicated to Private Equity and ETI investments, the undemocratic takeover and restructuring of the Carpenters Union, and to ULLICO and its investments. We live in an age where deregulation and privatization are capitalist mantras; a panacea for all that ails world economies. With membership in American unions in a free-fall, one must suspect that privatization of unions is on somebody's mind, not far behind Social Security.

The ex-President of the AFL-CIO, Robert Georgine, and the business interests of the company that he now heads, ULLICO, formerly Union Labor Life Insurance Company, have vital interests in maintaining the continuance of pension funds. If the decline in union membership is threatening to the vitality of the AFL-CIO, then the membership decline must really unsettle executives whose businesses are built upon an organized union member base. They could be expected to employ all of the usual business strategies to turn their situation around.

ULLICO has been maneuvering for a number of years to increase its share of the Taft-Hartley plan market. Some sources estimate its current share at 1/3 or more of the Taft-Hartley plan market (*1999 Best's Insurance Reports—Life/Health; and 1999 Best's Insurance Reports—Property-Casualty).

McCarron has been and may still be a member of ULLICO's board as well as the boards of Perini Corp (Ron Tutor), and PB Capital (Richard Blum). To suspect the exercise of its influence and concomitant conflict of interest in UBC politics is reasonable. The company may possibly have been a helping architect of the 1994 ERISA prudent investment rule changes and the Carpenters Union's authoritarian takeover by McCarron. If McCarron is the horse, could ULLICO be a rider? If it is, it's not bragging about it, but it certainly has expertise and some urgent motives. McCarron's Carpenter Union takeover and similar takeovers of other unions could also be ULLICO's ticket to a much greater share of the Taft-Hartley plan market.

Restructuring the union will concentrate diverse Carpenter pension funds into fewer, but bigger, investment funds sponsored by Regional or Super-Regional Councils, that under McCarron's control someday may become one big mega-fund. The many and diverse northeastern states' Carpenter pension funds now are reportedly being coalesced into fewer, larger units. Bigger investment units may be desirable, but the methods being used to accomplish the mergers gives rise to a concern for their safety and future security.

Since the 2000 Chicago Carpenters' General Convention, rank-and-filers have narrowly won back two Regional Councils. But their control over the Councils is indirect, i.e., through their elected delegates who may eventually become, yet again, politically and financially beholden to the new leadership, which without democratic accountability checks, may drift into an autocratic state. Other Carpenter locals have been placed in trusteeship because of their opposition to McCarron

and his actions. It is imperative that labor law is amended to favor the growth of union democracy and that rank-and-file union members are provided with an effective means of defense against the potential for business-unionism abuses and Wall Street corruption.

Chuck Cannon, UBC Pile Drivers Local 34
Chuckcan@jps.net

APPENDIX L – SUBMITTED FOR THE RECORD, STATEMENTS, JEFF RUHA, ONGOING IBT/OFAA BATTLE OVER LOCAL 2000 AUTONOMY, JULY 10, 2002, ET AL

-----Original Message-----
From: Jeff Ruha [mailto:jruha@mn.rr.com]
Sent: Wednesday, July 10, 2002 1:51 PM
To: Jeff Ruha
Subject: Ongoing IBT/PFAA battel over Local 2000 autonomy

Dear Fellow Flight Attendants:

My name is John Bumanglag and I have been a flight attendant for NWA approximately 13 1/2 years and based in San Francisco. I'm also currently a full time student at San Francisco State University as an Asian American Studies major with a history emphasis. I have one more year in achieving my BA. After this 4th of July holiday and all the literature and rhetoric that has been circulated since the inception of Professional Flight Attendant Association (PFAA), I have been inspired to write to you, my fellow flight attendants, and to appeal to your intelligence.

First off, let us take a lesson from history. I have learned that we have history to marvel in our accomplishments and to learn from past wrongs with the hopes and possibilities of not repeating our mistakes. At the time of the Northwest Orient/Republic merger, flight attendants had an opportunity to control their destiny and progress in their careers as flying safety professionals. A representation election occurred between the Association of Flight Attendants (AFA) and the Teamsters. With a well calculated and divisive campaign, the Teamsters won. Approximately 10 years ago, we had another opportunity to control our destiny with another representational election again between AFA and the Teamsters. With the merger behind us and a group of flight attendants unified, I was hopeful that we would have a new union that would understand our needs as flying professionals. And once again, with a campaign filled with intimidation, fear, and out right mudslinging, the Teamsters prevailed. Now here we are in the 21st Century. An independent professional union has come on the property with the same structure and promise of that of AFA with one added benefit. It would be run by NWA Flight Attendants. A professional union that would understand our needs as flight attendants. But not just flight attendants in general, flight attendants of Northwest Airlines. A professional union that understands the specifics of our corporate culture. One cannot ask for any better.

Let me just say that I am a 13 1/2 year flight attendant who enjoys my job and the people I work with. I am looking forward to retire with this airline. I am looking forward to be represented by a union that understands my needs. However, I am not a big name in union or airline politics. And admittedly, I am not a person who gets involved in union or airline politics. I am just a flight attendant, like you. Like you, I have shared

numerous stories, humorous and otherwise, with friends and families. Like you, I have been rescheduled, plans suddenly postponed or canceled because of operational irregularities, loved ones at home worried about my safety, and given to customers until I am energetically spent. And like you, I want and deserve the respect that we have long awaited from our customers, our airline and especially, our union.

Yes, my name is under the list of supporters for PFAA. However, I am not here to say that PFAA is better, or Teamsters is worse. And I am not writing to you to say that PFAA should be your choice. However, we cannot progress as flying professionals with the current system we have right now and change is overdue. Is PFAA the answer for us? I do not know. However, it is our right as Americans for us to choose. It is our right to ask for a representational election. So, I am asking you please send in your authorization cards and let us exercise our right to choose. My college experience has taught me that one must use one's own mind to make an informed and intelligent decision. This is a long involved process, which includes doing research to obtain facts from reputable sources, questioning any and all information and forming an opinion based on what you have learned. I would like to emphasize the word FACTS. I question every bit of information that comes my way and as an intelligent flight attendant you should too. Please do not allow yourself to be intimidated by "bully" tactics and fear that would interfere in your process of making an informed and intelligent decision, whatever that may be. And when you have done your research and formed your opinion, that opinion is YOURS. Own it and be proud that the choice you have made is an informed and intelligent one!

In Solidarity
John Bumanglag
SFO Flight Attendant

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Date: Sun, 7 Jul 2002
From: "Elaine Darling"
Subject: Hoffa Charges

Dear Fellow Flight Attendants:

I have just returned from celebrating the Fourth of July to read your e-mails. I would LOVE to receive a formal charge from Mr. Hoffa for signing our new Union cards and mailing it in.

As you recall, when the TEAMSTERS would not allow us to picket against NWA in our last contract, I merely contacted the ACLU (American Civil Liberties Union) and my attorneys. We proceeded to picket and pass out leaflets.

When Hoffa and his gang were in town, for the World Trade Organization protest rally, I asked "why weren't NWA flight attendants invited"? They forgot! And now they are fighting to keep us in their Union. Give me a break! I was so insulted that day, that I went with the pilots' Union-ALPA to march. I decided that I did not want to march with Hoffa and a bunch of truckers that I have nothing in common with. ALPA invited and paid for over 100 pilots from all airlines to join in the WTO march against big business.

The most infuriating thing about the TEAMSTERS, is that they tried to shove that ugly first contract down our throats. But, the flight attendants prevailed and voted it down. I was VERY proud of them because it showed that we have power and unity and don't need the TEAMSTERS.

It is time for our own Union. One that knows and understands our reality in these diffcult times. I have faith that the flight attendanst will see the big picture and send in their card to VOTE for a new Union. That is all we want to do is VOTE to change. And now see how ugly this is getting i.e. threats, intimidation etc. I just celebrated our great country's independence and I have the right to VOTE for another Union.

So, come on Mr. Hoffa, get your attorney boxing gloves on and file a charge

against me. I will even give you a photo I had taken with you at the TEAMSTERS HALL here in Seattle. It would look good in your scrapbook.

I love a good fight and so do my attorneys. Thank you and Happy Fourth of July.

Elaine Darling
Seattle Flight Attendant

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Dear Ms. Reilly,

Are you not a student of History? Please allow me to enlighten you with a few observations from former times...

Civil War has often been a regrettable, yet necessary evil. It has been part and parcel of progressive movements throughout human civilization.

Witness the English Civil War of 1648, The French Revolution of 1789, The Russian Revolution of 1917, our own American Civil War of 1860, and the more recent struggles between Asian Nations e.g., North and South Korea.

Indeed, had it not been for Afghan Civil Warfare, the Taliban would still be in power!

Many of these Civil Wars have given rise to Republics. Some were ultimately unsuccessful (as was the case of the U.S.S.R.) and some outcomes have yet to be determined (we await the results of the fledgling Afghan Government).

We must ask ourselves, "What is the Common Denominator here?"

I submit that it is the struggle for FREEDOM.

FREEDOM FROM OPPRESSION, FREEDOM FROM DICTATORSHIP, FREEDOM FROM ABSOLUTE RULE.

IT IS NOTHING LESS THAN THE STRUGGLE FOR THE WILL OF THE PEOPLE.

With this in mind, let our own internal struggle proceed! Let the battle rage for within it is our salvation.

We do not need to be "protected from ourselves" or protected from the onslaught of an "outside entity." Last time I checked, this was still America and WE LET OUR BALLOTS DO THE TALKING not usurping officials quoting some chapter and verse of a 230 page nightmare (the IBT Constitution) designed to manipulate the Democratic Process and disenfranchise the general populace.

I feel like it's Ground Hog Day and I'm caught back in the 2000 Election Cycle!

If as Flight Attendants we are engaged in a Civil War over Union Representation, we should embrace the challenge--for it is not irresponsible to offer a choice, an alternative. Even our Founding Fathers knew this to be true. Remember they too had their critics, but they did not waiver in their resolve to get the hell on with it. Their choice was to remain complacent under the tyranny of a

distant
government, or shake things up a bit. Imagine if they would have stayed in their
comfort zones!

Yes, Civil War is an unfortunate byproduct of sweeping change and all but
unavoidable in many cases, but that's the Beauty of Democracy and the Beauty of
the Land we live in.

As the Poet W.B. Yeats once wrote, it is a Terrible Beauty.

Amy Morton

Former IBT Convention Delegate and SFO Flight Attendant

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Dear fellow flight attendants,

Prior to current events, Hoffa taking over Local 2000 and placing his two
puppets in control, we were emailing you our constitution. Instead of emailing
you the entire document one piece at the time, we have placed the document on
our web site - with each section separated - so that you can easily read it.

- http://www.pfaa.com/Facts/Constitution/Default.asp -

We are including some additional information that we believe you will find very
useful.

Sincerely,
Jose Arturo Ibarra

Flight Attendants Seek "Independence"
Of Their Own Type
"An INDEPENDENT
Union--PFAA"

This weekend marks the anniversary of the Declaration of Independence--a
document that has served the American people extremely well since the birth of
our Nation. We encourage you to take a look at it as we celebrate our many
freedoms during this holiday period. A Tribute to July 4th, 1776. Take special
note at the list of things King George did that upset the people at the time and
see if you don't see a resemblence to what the Teamsters is doing to Northwest
flight attendants. July 4, 1776 (King George) Seriously, folks, you will be
amazed at the similarities. Read on--

It's the Fourth of July holiday and we're preparing for a major "fireworks
display" as the International Brotherhood of Teamsters brings in their so-called
"Big Guns." Things heated up last week as Local 2000's duly-elected President,
Danny Campbell, and the other 6 executive board members were locked out of their
offices and told that their services would no longer be needed. But wait, WE
elected them, didn't we? What happened to the concept of majority rule? Isn't
that the very essence of a democratic union? Regardless of how you might feel

about how Danny and his fellow officers were handling the day to day activities
at Local 2000, that doesn't give the International the right to throw out our
elected officials and replace them with members of their own choosing, does it?
These tactics are very similar to those we witnessed when the International
attempted to force the first tentative agreement down our throats not long ago.
Rule by intimidation, threats and terror! Well, Mr. Hoffa--if it's a war you
wanted, it's a war you've got.

Peter Rachleff, a Macalaster College history professor was quoted in the July 2,
2002, issue of the Minneapolis Star Tribune as saying that the PFAA's organizers
"might be signaling to other dissidents within the Teamsters union that they all
ought to look at walking away and creating (sic) their own organizations. It
could be a kind of poking a hole in the dike," said Rachleff.

When Hoffa imposed a trusteeship on Local 2000 on June 30, 2002, he sealed the
IBT's fate as the collective bargaining agent for the NWA flight attendants.
The PFAA is very pleased with the many letters we have received from fellow
flight attendants telling us they were on the edge of signing an authorization
card up until that time--but the imposition of the trusteeship made it an easy
decision for them to sign on immediately.

Interestingly enough, if one studies the Professional Flight Attendants
Association's Constitution (available here online) you will quickly see that
this sort of thing could not happen under the PFAA. Their Constitution allows
for recall (removal) of officers who are ineffective. There is no
international governing body from Washington D.C. who steps in and meddles into
our flight attendant affairs. We are autonomous. What the majority of the
membership says, is what the membership gets--and that goes for dues increases
as well as bylaws and amendment proposals. No more wasted days and wasted
nights coming up with bylaw proposals and elections to adopt them, only to have
them shot down by a group of guys who don't even belong to your own class or
craft.

~ JUST FOR THE RECORD ~

Over the past several days, you have had an opportunity to hear the Teamsters
make some pretty silly statements. This is our little tribute to some of those
tell-tale Teamster tid-bits.

· Teamster Tid-Bit #1
The Teamsters delight in trying to denigrate the
Professional Flight Attendants Association by saying we operate with an
answering machine and a P.O.Box. The information provided by the IBT on PFAA's
structure is simply inaccurate. Their reference to an answering machine and a
P.O.Box is an example of just how little they know about PFAA. What's
interesting about all this is that John Murphy, the IBT's Director of Organizing

and the man referred to in Hoffa's demands to Campbell, is quoted as saying in
earlier correspondences that, "My dream is that the organizing
department....should be a desk and a telephone." If you weren't already
smiling, then look at the return address of the Notice of Withdrawal of Support
card that showed up in your U.S. Mail recently from the IBT. It references 9409
Yukon Avenue South in Bloomington, Minnesota--yes, that is the home of NWA FA
Dottie Malinsky, the Central Region Vice-President. At least the PFAA has an
entire Administratiave Staff located in a building with several offices and a
complex telephone system along with satellite offices throughout the United
States and doesn't operate out of the basement of some home on Yukon Avenue.

· Teamster Tid-Bit #2
Charges were presumably filed against the five organizers
of PFAA by Brad Slawson, of Teamsters Local 120--a truck driver's union located
in St. Paul, Minnesota. A copy of the letter signed by Slawson is available for
viewing elsewhere on this site; however it is interesting to note that none of
the five officers ever received it. To date, none of the interim officers of
PFAA have received any formal charges as alluded to by the Teamsters. We can
only surmise that the Teamsters themselves thought it was odd that out of nearly
12,000 Northwest flight attendants they couldn't find a single one to bring up
charges against their fellow flight attendant co-workers. Rather, they had to
rely on a truck driver from another Local to do their dirty work for them.
Perhaps this is just another "empty promise" that the International Brotherhood
of Teamsters is not going to follow through on. It's no secret that in every
other representational election campaign at Northwest involving the IBT and a
rival union; they threatened to bring everybody up on charges but NEVER actually
acted upon it. Much ado about nothing as usual.

· Teamster Tid-Bit #3
More about this Teamsters Local 120 in St. Paul. You
know, the truckers union who likes to meddle in our affairs at Local 2000.
Notice who their key players are: Tom Keegel, President. Brad Slawson, Sr.,
Vice President (and of course our "overseer" at Local 2000 in his capacity as a
personal representative to James Hoffa, Jr.), Brad Slawson, Jr.,
Secretary-Treasurer, and then there's Louie Miller, Recording Secretary. Quite
an interesting line up over there at Local 120 if you ask me. Notice the name of
the Recording Secretary--Louie Miller. Hmmm. Isn't that the same last name of
the Secretary who was dismissed by Local 2000 in the recent past? Yep, you're
getting the picture. The Teamsters like to keep it all in the "family" so to
speak. The two Millers are indeed husband and wife and to add insult to injury,
Mollie Reiley, the newly appointed Trustee of Local 2000, has reportedly

just
rehired Lynn Miller to perform secretarial duties yet again at Local 2000. Talk
about reinventing the wheel and history repeating itself. This is surely a move
that will backfire greatly against Reiley, Hoffa, and the IBT's efforts to hold
on to what few followers they still had prior to the imposition of trusteeship.

· Teamster Tid-Bit #4
Local 120's President Tom Keegel in his comments to the
press on June 18, 2002, said quite a few erroneous and eye-opening comments.
Keegel is quoted as saying, "Teamsters Local 2000 (is) a local comprised of only
Northwest Airlines flight attendants." This was a serious oversight and deals a
tremendous blow to the hard working men and women of Sun Country Airlines who
are also dues-paying members of Local 2000. Perhaps more astounding was
Keegel's comment that Northwest flight attendants should not leave the Teamsters
"as the airline industry demands concessions from workers in the wake of
September 11." Is Keegel STUPID? Why on earth would someone from the Teamsters
want to even raise the topic of concessions when our contract with Northwest
doesn't even become amendable until June 1, 2005? It was highly irresponsible
of Tom Keegel to come out with a statement like that and begin bargaining with
NWA in the media--but it follows right along with the type of fear-mongering
tactics, threats and intimidation for which the IBT has become so well known
over the years.

· Teamster Tid-Bit #5
The bizarre comments of Tom Keegel don't stop there. When
you go to the Teamster's website, you find all sorts of quotations attributed to
Secretary-Treasurer Keegel. Here are some of the more note-worthy in light of
our recent dues increase and the reasons why we want out from under the IBT's
stronghold. Keegel says, "We (the Teamsters) are repairing years of financial
mismanagement and pure carelessness with the members' dues." He talks about not
having had a budget surplus for more than a decade and he mentions "years of
irresponsible and scandalous spending." It's pretty incredible to see these
words in print on the IBT's public documents in light of all the hoopla the IBT
is now feeding us about being so powerful, so full of clout and so economically
superior to the Professional Flight Attendants Association. We say, "Phooey".
It's more smoke and mirrors and big bully talk from the International guys in
Washington.

· Teamster Tid-Bit #6
Enough on Keegel for the time being. His statements speak
volumes in and of themself. Many of you will remember the name Vicki
Frankovich--you know, the lady who used to work at TWA and then was hired to
help the Teamsters Airline Division. She got a little carried away at the
roadshows trying to convince us to accept the first tentative agreement. Got
the picture? She since changed her name and now goes by Victoria Gray. At a

Coalition of Flight Attendants meeting conducted in the recent past, Vicky Frankovich-Gray explicitly invited Local 2000 to decertify from the Teamsters
and "go independent" in her words. Ms. Gray's comments were made "in the presence of numerous witnesses, including witnesses from other labor organizations," according to a November 28, 2001, letter sent to Ray Benning,
IBT Airline Division Director. Is it any wonder the PFAA is a popular alternative to the graft and corruption that the IBT has become known for over
the years? We're simply taking Miss Vicky up on her suggestion and, in fact,
we'd like to publicly thank her for the mighty fine suggestion to break away from the Teamsters.

· Teamster Tid-Bit #7
It's been ever so enlightening going on to the IBT's
website and reading their information. Talk about playing right into the hands
of the PFAA. Their publication entitled, "Why Teamster Convention Delegates Voted for a Dues Increase" was especially informative...but not for the reasons
the IBT cites. We, at PFAA, received the following response to that IBT explanation from a supporter and would like to share it with you in the attached
file. Simply click here and enjoy this supporter's feedback. The author speaks
for thousands of us who are just now experiencing the joy of paying increased
union dues effective July 1, 2002.
"Why Teamster Convention Delegates Voted for a Dues Increase"

· Teamster Tid-Bit #8
Mollie Reiley seems to be adding her own spin on what
Junior Hoffa is telling the Local. In all the documents we read where Hoffa is
mentioned, he makes reference to internal charges being made against the five
leaders of the PFAA and possibly any Teamster "official" who declines to oppose
the raid. (We still don't really know if Kathy Jo Smith, Greg Riffle and Jaki
Ross were forced to sign the document denouncing the PFAA since their signatures
don't actually appear on the recent letter sent out by the IBT. Someone seems
to have "rubber stamped" them in on it, perhaps without their knowledge.) But
Mollie seems to be bucking for the Teamster of the Year Award by overstepping
Hoffa's dictum. According to the Detroit News article of July 2, 2002, Reiley
is quoted as saying, "Charges also will be filed against ANY Teamster who doesn't oppose the membership raid." Now if this isn't a fear tactic, we don't
know what is. Local 2000 is going to be very, very busy over there in Dottie
Malinski's basement filing charges against the HUNDREDS of flight attendants who
are openly showing their support for the Professional Flight Attendants Association, if this is truly the case. We prefer to think it's more threats
and hot air designed to scare the NWA flight attendants. There is no possible
way, the IBT can learn who signed an authorization card supporting the PFAA. They are in the custody of a bonded, third party management firm which carries a

five million dollar policy to see that no one--and especially the IBT, sees those signed cards. Your privacy is assured and it is your right as an employee to seek union representation of your own choosing per the Railway Labor Act. Don't be intimidated by the Teamsters' empty threats. The risks far outweigh the rewards when it comes to the IBT filing charges against the thousands of rank and file members. They can't afford to tick off what few followers they have for fear that they, too, will send in their signed authorization cards post haste.

· Teamster Tid-Bit #9
Much has been said lately regarding the perceived strength and so-called clout of the Teamsters. The IBT loves to flaunt their affiliation with the AFL-CIO, yet according to a May 29, 2002 article in The Labor Educator, Harry Kelber states that, "The AFL-CIO's organizing record is so disappointing that, at its present pace, it hasn't the remotest chance of reaching its goal of one million new members in 2002." The article says they will have less than one-fifth of its million member goal. Kelber states, "...union members are entitled to know why the organizing campaigns are doing so poorly, since they're paying for them with million of dollars of their dues money. Unions should play it straight with their members, letting them know about defeats and faulty strategies instead of just bragging about victories." (emphasis added) So as usual, the Teamsters and the AFL-CIO will continue to keep its union members in the dark about the federation's dismal recruiting record. Kelber ends his informative article by saying that "Unions won't improve their organizing efforts significantly unless they do a better job of involving their members. It's no secret that the success of most organizing campaigns depends on well-informed volunteer organizers. But the AFL-CIO and its affiliates discourage input from union members." We couldn't have said it better ourselves, Mr. Kelber. (Kelber's complete article can be viewed at www.laboreducator.org/afldisc.htm)

· Teamster Tid-Bit #10
In yet another excellent article entitled "Imperfect Union," authored by Kim Phillips-Fein and found in the March 12, 2001, issue of The American Prospect, Inc., it states, "The ability of the Teamsters to organize new workers and to represent existing members effectively is what really matters for the future of the union--more than financial scandals, Mafia or garden-variety corruption, or even political endorsements. For the political might of the labor movement ultimately rests, after all, on its capacity to exercise power in the workplace. And the Hoffa administration is not, at this point, focusing its resources on organizing in the way that it must if it wants the union to be an influential political force in future years."

· Teamster Tid-Bit #11
On the topic of organized crime, Hoffa himself said, "We have been under a consent decree for over 11 years and it has cost this union (International Brotherhood of Teamsters) OVER $100 million dollars." In a special report in the Detroit News, Hoffa goes on to say, "It is our

position
that the consent decree was to rid this union of the influence of organized crime. That influence is gone. And now it is time for the government to leave."
It would be the PFAA's position that it's the Teamsters' influence that's gone
and that it is now time for the International Brotherhood of Teamsters to leave
the Northwest flight attendants alone to form their own independent association,
comprised solely of NWA flight attendants.
Closing Thought
Charles Kingsley once wrote, "We act as though comfort and
luxury were the chief requirements of life, when all that we need to make us really happy is something to be enthusiastic about." We sense that the Professiona Flight Attendants Association is giving you something to feel enthusiastic about. We, the interim officers, have been working night and day,
fielding your many telephone calls, e-mails and letters and we share fully in
your enthusiasm.

Thank you for your tremendous showing of support!

We CAN Make it Happen!

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Jeff Ruha
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www.evictordebs.org

Before there was a UNION,
there was simply SOLIDARITY.

THE UTU REFORM PARTY
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"They say the Pharaohs built the pyramids Do you think one Pharaoh dropped one bead of sweat? We built the pyramids for the Pharaohs and we're building for them yet."
--Anna Louise Strong

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The Eugene Victor Debs Committee

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APPENDIX M – SUBMITTED FOR THE RECORD, STATEMENT OF MICHAEL LIVINGSTON, L.U. 157, NEW YORK, NY,

Statement of Michael Livingston

Good day honorable committee members,

My name is Michael Livingston. I am a carpenter out of Local Union 157 United Brotherhood of Carpenters and Joiners of America . My Local operates in Manhattan New York.
I am making this statement because I believe that it is of extreme importance to amend the LMRDA and restore democracy to the members of all local unions. Recently our members, U.S. and Canada, have been restructured into a smaller group of district and regional council's throughout our countries. Our General President Douglas McCarron has appointed his people to head these councils, many of them to appointed paid staff positions and delegate spots. The People appointed by McCarron in New York are at best questionable. Before I tell you about them, I would like to refer back to the Statement of Douglas McCarron before the Subcommittee on Employer-Employee Relations U.S. House of Representatives on Thursday June 25, 1998.
In this 36 page statement McCarron goes into detail about the need to restructure our union and eradicate corruption. McCarron uses New York in particular to emphasize how pervasive the corruption and organized crime influence is in New York. He goes on to make examples of all the different crime families that had a grip on union carpentry and the steps needed to clean up the union. Much of McCarrons testimony is true. However, He handed over the New York City District Council to many of the same people that he claimed he needed to remove. McCarron Fired honest people and kept the corrupt. He did this to further his own agenda knowing he couldn't be stopped because the membership could not elect their own Business agents an organizing personnel. See related articles marked exhibit A-D. Getting back to the questionable appointments that I referred to earlier, I would like to start with Mike forde. Forde was appointed Business Agent by McCarron despite McCarrons knowledge of his involvement with organized crime. McCarron refused to intervene even after Forde was indicted in September of 2000 on charges of enterprise corruption. Forde is currently the elected EST of the NYC District Council of Carpenters in NY and still awaiting trail. Martin Devereaux was another BA appointed by McCarron. Devereaux and Forde were both involved in the same conspiracy to defraud the UBC . Devereaux was charged and found guilty by the court appointed Internal Review officer but McCarron refused to take disciplinary action. Martin Devereaux is still a paid Business agent. I ask this committee to consider why McCarron refused to impose a trusteeship on NY in light of the corrupt circumstances while he indiscriminately imposed a trusteeship on Local 225 in Atlanta after two failed attempts to install his own people? See testimony of Phillip Lavalle and Darrel Zube. In closing Macarron stated that he believed there was no need to amend the LMRDA sugar coating his methods while basically disenfranchising the members. He has complete control over the hiring and firing of Business Agents, Organizers and Labor Management staff, the majority of whom decide what happens to our union. I could tell you many stories of the corruption in New York, I have documented many cases. I have provided a copy of the

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Statement of Doug McCarron and news articles regarding some of the the corruption that still exists. Please remember McCarron controls our political contributions but he cant control our vote. Thank you for taking the to read this statement. If I can be of any further assistance please call
(516) 798 0594.
Michael Livingston L.U. 157,
New York, NY

APPENDIX N – SUBMITTED FOR THE RECORD, STATEMENTOF MARTIN CONLISK, IBEW #134, JULY 4, 2002

My dear Representatives - July 4, 2002

I am a 23-year member of the International Brotherhood of Electrical Workers, a journeyman wireman by trade in the construction industry. I am also a registered Democrat, vote for their candidates in every election. Only Allah knows why, since they won't even back their own candidates. Bush stole the election. Period.

I am going to sign my name to this even though it will put me on another blacklist. I've been dogged by mysterious removals from the jobsite for many years. I am not a paranoid slacker, but I am a vocal proponent of democratic action and worker control. This same govemment of ours threw people like me in jail - remember the Palmer Raids? Well, many good citizens are suffering through the Ashcroft raids. I wouldn't doubt you'd advance my name to Homeland Security. Put me on another list, what the hell.

So do I really think appealing to a bunch of millionaires to change the Law is going to help the average drone? Your bank accounts are full because of exploited labor. To see a group complain that they are exploited by their Boss AND their "union" has got to set you off rolling in the aisles with laughter. No, I don't expect anything from you.

I stand with the men and women who came forward because that is where Right is. They are as lost and delusional as the rest of America, thinking that the government belongs to them. That may be a rough statement directed at my co-complainers, but the fact their hearts and minds continue to struggle for justice makes me want to help. Many tactics and battles have to be joined to achieve success. This is just the most distasteful to me personally. They are men and women with guts, willing to fight, no matter the odds. They are the lightbearers in the dark world of organized labor. People like this are my friends. That is why I'm entering this statement, foolish or not.

Currently, there is a civil lawsuit that has passed the 5 1/2 year mark with definitive proof my so-called "leaders" took over 411,000 dollars from employers (Chathas v. Local 134, NE Illinois, Case No. 99C 0400, Judge Zagel). They will not release 16 months of records, so the number is much higher. The case is still grinding away until time is right to let them go. I have no faith in the judicial system. The suit was filed under Section 501 of the LMRDA. If you make the laws enforce them because during this time our hard fought legacy of over 100 years has been sold, stepped on, been thrown out the window. My inaliable civil rights were taken away by these people when a group called "the Alliance", something they joined me to, makes me give them my body fluids on demand or face unemployment (with continuing dues payments, of course). I'm sure a judge somewhere will back them up, too. The lawyers get rich, the workingman lose! s. I forget, most of you are lawyers - another funny joke. my Business Manager is a lawyer!!! - it's all just so down right hilarious. I get most of my mail from another group I never joined, an IBEW/NECA - becoming partners with the businessman, this is what is considered unionism

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today. I must be cracking you up, I know.

I hold no illusions that however you twist the verbiage of this legislation it is somehow going to help working people in this country. They have to do it themselves and, more than likely, they are going to collide with the forces of the government you represent. I know what side of the police line you will be on. I will be with my friends there, too, looking at you.

Respectfully Yours,

Martin Conlisk
IBEW # 134

APPENDIX O – SUBMITTED FOR THE RECORD, STATEMENT OF DAVID JOHNSON, CARPENTERS UNION 44, CHAMPAIGN, IL

Subject: statement of Dave Johnson

My name is David Johnson. I have been a member of Carpenters Union 44 in Champaign Illinois since 1977.
For those of you who are not familiar with what a union is SUPPOSE to be, a union is a voluntary association of people of the same occupation or who work in the same industry. The members of a voluntary association or union, pay dues money to support the functioning of their organization and to hire people to ; represent them, and to perform clerical and administrative functions to support the organization. The members of a union are very similar to shareholders of a company, who deceide who their executive officers and management are, and what policies and actions should be done to further their interests.
What has happened in the Carpenter's union during the last several years has been an almost complete disenfranchisement of the dues paying membership in deceiding ; who are representatives are, what policies and actions should be done, how our pension fund monies and health insurance should be administered, and in many local unions, the right to deceide what our working contract should contain and the right to approve it.
By using loopholes in the current laws, and at times flagerently disregarding the law, the bureacrats of the Carpenters union have achieved this disenfranchisement and in addition have persued a policy of ; intimidation, slander, interfering with the ability of Carpenters to obtain employment, and at times even used the threat of physical violence against individual Carpenters who have questioned and/or criticized actions and policies of the " leadership ".
Union officials who are payed with OUR dues money to represent us (and under the current law, required to represent us), have often times persuaded contractor employers to not hire critics and/or political opponents by slandering our abilities as craftsmen and/or have stated to management personel that we are " troublemakers " , implying that we will cause problems on jobsites.
In my particular case, I began publishing a newsletter for working Carpenters in February 2000, and in August 2000, ran as a candidate against an incumbent vice president of our international union at the Carpenter's convention. Since then I have only worked an average of two to three months a year, when in the past I worked six to eight months a year on average.
Fellows Carpenters who have witnessed the collusion between officials of the Carpenters union and management personel of contractors, in preventing many Carpenters from being hired by various contractors, are frightened to come forward as witnesses and signing depositions out of fear of losing their current jobs and suffering a similar fate of long-term harrasement and denial of future employment.
When large numbers of Carpenters have attempted to make changes at their union meetings, the will of the majority has been totally disregarded, roberts rules of order ignored, and the meeting adjourned against the vote of the majority of members present.
When elected representatives of the membership have questioned policy and certain expenditures of funds at regional council meetings, they have been routinely shouted down and insulted by paid staff members of the council.
Many of us Carpenters fear that with the current situation of unaccountability of union officials to the membership,

that it is only a matter of time until we will lose our pension fund monies and become another ENRON scandal. A situation that would be devastating to hundreds of thousands of hard working tax-paying carpenters, who do not want to end up dependent upon public aid, but instead proud self-sufficient retirees.
In conclusion, I would like to urge the committee in the best interests of fairness and a free democratic society, to increase the enforcement and penalties of current laws and enact new laws to enable all union members to hold their leadership and staff people accountable to the membership and to allow us the ability to govern ourselves without fear of reprisals and intimidation.

Thank You !

David Johnson
Champaign Illinois
Carpenters Union 44

APPENDIX P – SUBMITTED FOR THE RECORD, STATEMENT OF MIKE GRIFFIN, DECATUR, IL

Carpenter Dictatorship Out of Control

For the hundreds of thousands of Carpenters and Millwrights who make up the UBC [United Brotherhood of Carpenters and Joiners of America], democracy and fundamental union values, are but fleeting segments of the union that once was. Systematically stripped of the right to elect who represents them, to vote on contracts, and any credible voice over union affairs, many are left shaking their heads in disbelief. Much in the style of Corporate America, the international union has used, District and Regional Councils as Storm Troopers to consolidate locals, seize local membership funds, and initiate questionable trusteeships to intimidate locals who dare resist. All of these actions continue to alienate the rank and file and in some cases, force members to travel hundreds of miles to attend local union meetings.

Under the pretext of "representative democracy", delegates attend District Council meetings where the dictates of the Secretary Treasurer are thrown out for a vote that has never been placed before any membership tribunal. Many of the delegates are Business Agents who are employed by the District Council and can be fired by the council Secretary Treasurer. That is mirrored in conventions as well, and as a result of that dictatorial forum, UBC International President Douglas McCarron, without consulting rank and file members, pulled the UBC out of the AFL-CIO.

Amid a barrage of smoke and mirrors from the UBC headquarters, the truth behind McCarron's actions are revealed in letters exchanged between McCarron and John Sweeney, President of the AFL-CIO. McCarron's demands center on suspending provisions of the AFL-CIO constitution concerning jurisdiction. Under the guise of dissatisfaction with organizing, McCarron is demanding the right to raid work under other union's jurisdiction and in Nevada, that theory is tested by the existence of a new UBC contract laying out the pay and conditions for a "Concrete Specialist and Helper".

Just as disturbing, is what McCarron has to say before his Contractor Friends. In Hawaii, before the National Erectors Association, McCarron said, "You need the freedom to assign the work based on what makes sense, what makes us competitive on the job. If there is a dispute, let the owner settle it. It's his job and his money". That outrageous response represents a far cry from basic union representation and respecting the jurisdiction of other unions, and in fact, calls for violating the AFL-CIO constitution. McCarron goes on to tout his views as similar to Jack Welch, former CEO of General Electric, and refers to union members as "strong product".

In an L.A Times interview, McCarron called those in the UBC who oppose his dictatorship, "selfish bureaucrats, deranged loners and communists". "God bless them, they are very hateful people". I suppose this author will have to re-think his position on democracy. I never understood until McCarron pointed it out, that standing against tyranny, dictatorship, and struggling for democracy were communist ideals. Thanks to McCarron, I now understand that the overwhelming majority of UBC members, who want the right to vote and elect their representatives, are communists, deranged loners, and hateful people.

It was that same description that was applied to UBC members in British Columbia. So upset by McCarron's attempt to apply his dictatorship in that Canadian province, B.C. carpenters walked out of their hall and turned out the lights, leaving a rejected McCarron sitting alone in the dark. B.C. leaders polled their members and with overwhelming support, pulled out of the UBC. McCarron, after calling them brothers for years, called them communists. Is it really McCarron, or McCarthy?

McCarron's obsession with power has moved far beyond his dictatorship of the UBC, with the stakes much higher and far more damaging to an already struggling labor movement. Another of McCarron's demands for UBC re-affiliation, is the resignation of the current President of the Building Trades and dismantling that division of the AFL-CIO. McCarron's demands would weaken the Building Trades and make it ineffective and unable to deal with the nation's hostile employers. Employers, who McCarron views as his friends and whose business style he has eagerly sought to imitate. Another principle demand is that voting in the Trades be conducted based on the size of the affiliated union, guaranteeing the UBC even greater power to influence how the Trades function; a possibility that could have disastrous consequences. McCarron's far right, business union mentality could destroy smaller unions and distance greater numbers of current union members who believe in fundamental union values.

McCarron is not alone in his efforts. Several other Trades unions are poised to join his efforts and the fear of permanently damaging the union movement is most certainly on the minds of AFL-CIO leaders who have laboriously negotiated to settle the issues and bring the UBC back into the fold. Unfortunately, giving into McCarron's demands will not resolve McCarron's thirst for power and will not work in the interest of union members or of the movement as a whole. It is no accident that business publications are praising McCarron for his antics and his "business acumen". It is unfortunate for union members who work for a living, there are many in union leadership positions that mirror McCarron and have the same regard for members and member's rights.

To add insult to injury, McCarron and soul mate James Hoffa Jr., have been publicly wallowing with labor's most ardent enemy, George Bush. Bush, who has spent more time bashing workers rights than starting wars, has seized the opportunity to use McCarron and Hoffa to drive a wedge into the house of labor. One theory is that Hoffa and McCarron have a common agenda by sucking up to the Bush administration. Hoffa wants rid of federal oversight and McCarron wants assurances the labor department won't interfere with his plans to gut members' rights in the UBC. Both unions are rampant with corruption.

For AFL-CIO leadership, the loss the hefty per capita payments once paid by the UBC and the power of such a huge membership, have proven to be a stunning loss. At a time when regaining control of the House of Representatives for Democrats, McCarron's open defection could not be more damaging. Just as damaging, McCarron's willingness to openly divide not only the Building Trades, but also the entire labor movement, has made the process of unification difficult, and for some AFL-CIO Executive Board members, impossible. A few board members are speaking out, but in limited circles and with few details on McCarron's thirst for power and pro-business agenda. It is past time to take the gloves off and deal with McCarron, but that will not happen.
Make no mistake, it is the business union model based on cooperation with employers, top down control of nearly all present day unions, and the denial of union democracy, that has brought the house of labor to its current level of relevancy. While the political climate and increasingly hostile employers have contributed, it is undemocratic and corrupt leadership that has done the most damage.
McCarron's rise to power was supplemented by lawsuits centered on Carpenter pension funds and the lack of fiduciary responsibility by UBC bureaucrats in southern California. Ron Tutor, owner of Tutor-Saliba Construction and fellow trustee of the fund, aided his efforts. After catapulting himself to power on the heels of Sig Lucassen, former President of the UBC in what the labor department determined was a rigged election, McCarron's handling of the funds proved to be just as inept and questionable. Heavy investments in Perini Construction cost the fund 22 Million in a single day loss when Perini stock took a nosedive as Perini prepared for bankruptcy. McCarron held a paid board seat on Perini. That activity sparked a lawsuit by retirees, led by Horacio Grana, who has recently died. Questions raised by the suit are not only the losses, but also fees charged by investor and McCarron crony, Richard Blum; husband of Senator Diane Feinstein. Blum took 54 million for himself on investments that earned 459 million; Blum handled only a small part of that fund.
Currently, McCarron is among those being investigated in the ULLICO {Union Labor Life Insurance Company} scandal. It is alleged that McCarron and other ULLICO board members profited personally while membership retirement funds did not fare as well. With the consolidation of hundreds of locals into Regional councils, UBC members should have new fears. What happens to local pension funds and who oversees them? With billions in UBC pension funds, can this dictatorship be trusted. There are currently, many retired members who have lost all they worked most of their lives for.
More questions are raised by the Mayoral election in Los Angeles. Without rank and file approval, tens of thousands of dues dollars were given to the election of James Hahn. Why would UBC members in Illinois, Michigan and eastern states care about the Mayor of Los Angeles? They don't! Through the Carpenters Contractors Cooperation Committee, the money was funneled to the Hahn campaign. Ron Tutor is a member of the executive board and its' Executive Director is listed as Bill Luddy, McCarron's 129,000 dollar a year assistant. According to the LA Times, When Hahn became mayor; he assumed the role of the most powerful member of the Metropolitan Transportation Authority Board[MTA]. With Hahn's election, four members of that board are about to change.
Tutor-Saliba was charged by the MTA with filing false claims and fraudulently billing for work on a massive subway project. Tutor-Saliba has been barred from bidding on future public works projects, which makes up the bulk of Tutor-Saliba contracts. According to the Times, the walls of the tunnel built by Tutor-Saliba were thinner than required and two of the three workers killed on the project were Tutor-Saliba employees. Tutor spent more than a hundred thousand dollars on the election. Tutor remains a member of the executive board of the Carpenter pension fund.
Inside the UBC, fear and intimidation reign. For working Carpenters and Millwrights, speaking out can be hazardous to your health; being starved into submission is common. With a wink and a nod from the Business Agent {BA} to some contractors, you can find yourself unemployed. "Piss off your BA and see the USA" is a common term, which means you will have to travel far and wide to find work. When you refuse to accept the intimidation, charges are filed and your membership will be taken. Contractors will refuse to hire you in some cases. In some areas, the threat is much more physical. The second phrase heard is, "I just want to make it to retirement and get out of this mess".
In this "Brotherhood" nepotism and corruption are rampant. Out of work lists are only for show for the Department of Labor. It is difficult to envision a Brotherhood where some members make75,000 dollars a year and others make 10,000; where members fear their own leaders and have no voice. A Brotherhood where members are increasingly assigned to perform the work of other crafts and work for 90% or less of scale. A Brotherhood where organized breaks have been negotiated away and where representation of the membership is non-existent. The Steward and supervisor positions often are rewards for representing the contractor and union hall, rather than the membership. When Stewards do attempt to represent the members, they run up against a brick wall and find themselves replaced. It is a Brotherhood where contractors can hire and fire at will for no reason. A Brotherhood that refuses to honor picket lines and dispatches its members to replace striking and locked out workers. A Brotherhood based on an incestuous relationship.
We have asked hundreds of UBC members across the country, " What kind of union do you have when you fear your own leadership and you have no voice"? The answer is always the same;" there is no union, it is gone". That disillusionment is the norm in the UBC, but it is not spoken in union meetings or in front of leadership where retaliation is certain and out on the jobsites, it is spoken cautiously. That fear became a reality for John Reimman, a

California carpenter involved in a wildcat strike involving Tutor- Saliba and in opposition to a contract members were refused the right to vote on. Reimman was ultimately expelled from the UBC in spite of the fact the strike forced another vote and thousands of union members joined the protest.
McCarron has boasted the hiring of600 organizers and bringing in thousands of new members, but even there smoke and mirrors prevails. From our experience locally and those we have contacted nationally, the thrust of organizing has consisted of swaying employees of non-union contractors to join the UBC without bringing in the contractor. The result has been to divide up what little work we have among members and often the new members are worked ahead of long-term members to keep them interested. Ultimately, many of them go back non-union to earn a living.
The UBC controls the information and Carpenter magazine is nothing more than the voice of McCarron, who has little credibility in or out of the UBC. When you do the math, the cost of 600organizers versus the figures on new members, the cost is prohibitive. In a letter to the entire membership, McCarron denied he was building UBC Inc., a wall-to-wall agency that mirrors non-union shops, but experience indicates that is the direction of the UBC.
A few bright spots have developed where members have shown the courage to fight back, in spite of overwhelming odds. CDUI {Carpenters for a Democratic Union International} has formed as national caucus and a few locals have fought back against illegal trusteeships. In Boston, a Business Agent fired for supporting the right to elect leadership, is now the Secretary Treasurer of the District Council. In Atlanta, members who elected a rank and file leadership in opposition to McCarron have successfully fought back against the illegal trusteeship imposed by McCarron.
CDUI national organizer, Ken Little, of Seattle, has felt the wrath of the UBC. While touring the country building support for one member one vote, Little stopped off at the Carpenter's hall in St Louis Mo. He was ordered to stop giving flyers to fellow members and when he stood for his rights, the local BA called the police and had him escorted from the hall. Members and delegates to the last convention fared no better. When they arrived at the convention, they were met by dozens of Chicago police. Though eventually allowed into the convention, they were refused the right to pass out literature supporting the right to vote and "Goons" were assigned to follow caucus members. Controlling the UBC membership is such a high priority of the current dictatorship, members rights have been obliterated.
Strangely enough, what was once one of America's biggest unions, solidarity, democracy, and representation have been destroyed. Nearly all of the actions of current leadership mirror our corporate enemies and can only be viewed as anti-union. We can only hope the AFL-CIO leadership will recognize the futility of giving into McCarron's demands and show the testicle fortitude it takes to put the house of labor in order. In the UBC, it is the responsibility of the members to take their union back and replace all their top leadership.

Mike Griffin
Decatur, IL

APPENDIX Q – SUBMITTED FOR THE RECORD, STATEMENTOF JACKIE FITZGERALD, MEMBER, UTU

Subj: **LMRDA**
Date: 7/1/02 11:31:14 PM Pacific Daylight Time
From: jackie.fitzgerald@verizon.net (Jackie Fitzgerald)

I have worked for the railroad for 4 years, and I have never been able to vote for officials. Railroading is a 24/7 type business, and you can only elect officials when you attend meetings. The meetings have been held during times that are only accessible to older workers, thus creating an imbalance of power which favors the older worker.

Recently, after having read the LMRDA, I found my union was conducting elections illegally and were keeping the younger railroaders from voting. I had discovered the LMRDA on the internet, and so I challenged my union. I immediately began telling all of my coworkers about our rights as workers, and found that they were very unaware of their LMRDA rights. I was able to cite the law to the international and it forced my local to change the way they handle elections. Unfortunately, the way the elections have been handled had hurt the younger worker severely.

I also feel that union officials should have to be accountable for every day they lay off for union business. Too many officials take advantage of their positions for personal agendas.

I also feel that my labor union in particular (UTU) has gotten into the practice of bargaining for groups of workers and not the whole. We will never be democratic if our elected officials continue to bargain on behalf of one group, while leaving out the other. This had truly divided railroaders against one another, thus leaving more power to the carriers. As a rank and file member of the UTU, I truly feel that they have lost their cause. We should be able to bring charges against our unions for lack of representation. I also feel that an employer should be able to ask a labor union to divide it's workforce. It is discrimination based on age.

If you want more inputs, I could go on forever. The struggle I have been through with my union has encouraged me to persue a law degree in labor. Workers have rights, and we need more lawyers on the workers side.

Jackie Fitzgerald

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APPENDIX R – SUBMITTED FOR THE RECORD, STATEMENT OF JAMES LYNCH, UNITED BROTHERHOOD OF CARPENTERS, DOCKBUILDERS LOCAL 1456, NEW YORK, NY

James Lynch
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I have been a member of Dockbuilders Local 1456 NYC, NY (United Brotherhood of Carpenters) for 29 years. I am currently retired.

In New York, Union Carpenters (as in the rest of the United States and Canada) face many problems. In the past 11 years we have had a court appointed monitor, a court appointed Investigation and Review Officer, a Trusteeship by our International Union, and an introduction to the Brave New World of Corporate Unionism.

The monitor was a New York lawyer charged with identifying and rooting out corruption. In three plus years he and his staff billed our District Council several million dollars, removed one business agent for corruption, and failed to preserve the promised anonymity of complaining members.

The IRO was a retired Federal judge, appointed as part of a Consent Decree which settled a RICO suit. He and his staff were paid over $1,000,000 a year of members money. He served 63 months of what was to be a 30 month tenure, and he also managed to remove one business agent.

The Trusteeship---which under the LMRDA must last no longer than 18 months---lasted 43 months. It began when a NONUNION security firm was paid several million dollars to seize our Council at gunpoint and maintain a one week siege. During the Trusteeship money Managers were hired and paid exorbitant fees, while managing little more than break even during the best stock market and economic boom in the nations history, members were virtually stripped of effective democratic rights, and our leaders became accountable to the UBC and not the members.

Under the Trusteeship, the Welfare Fund Trustees (headed by General President Douglas McCarron) declared that our Welfare Fund was nearing insolvency and retired members must now pay part of their health Benefit costs. These benefits had been unofficially guaranteed to retirees and were traditionally considered part of their retirement package.

A group called MACOUT (a retirees advocacy group, of which I am an Executive Committee member) was and instituted a lawsuit to regain free health benefits for retirees.

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During the course of the suit it was revealed that the Fund was more than adequately funded. It was also discovered that the actuaries had "mistakenly" undervalued the fund by $7,000,000.

Although they denied the lawsuit had anything do with their decision, the Trustees restored free medical coverage to all retirees.

This is what our Union has become; an undemocratic, corporate philosophy minded entity, led by people totally out of touch with working members; whose members are forced to sue their own Union to gain what is rightfully theirs.

As long as human beings run unions, the temptation to abuse power will exist. What Union members need are strong labor laws guaranteeing democracy. What any proposed change to the LMRDA needs is a focus on the democratic rights of the rank and file.

However, laws without enforcement are meaningless. Stronger enforcement, along with the budget and manpower to make it viable are urgently needed. The Labor Department is woefully understaffed and underfunded. To effect meaningful change, this issue must be addressed. Thank you.

Respectfully.

James Lynch
Local 1456
NY, NY

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