

December 14, 2020

Re: RIN 1245-AA10

To Whom It May Concern:

On behalf of the labor organizations we serve, and our partners and staff, we are respectfully submitting comments in response to the proposed rulemaking to revise the current Form LM-2 and to establish a Form LM-2 Long Form (LF).

Legacy Professionals LLP is a CPA firm with over 100 employees serving over 150 labor organizations in the Midwest region and throughout the United States, ranging from small local unions to large international labor organizations.

As a long-time service provider to labor organizations, we support the Department's overarching goal of ensuring a proper accounting of labor organization funds. At the same time, as a service provider whose partners and staff have been assisting its labor union clients in preparing their LM-2 forms each year since the form's creation under the Labor-Management Reporting and Disclosure Act of 1959, we feel that we are in a unique position to communicate the value as well as burdens related to revisions of the form.

#### Comments on Specific Items

Strike Funds: You have requested comments on how you can ascertain proper and transparent use of union funds, including strike funds.

- As noted within the proposed rule, strike funds are meant to help meet the basic needs of striking workers but may lead to unfavorable contract negotiations once these funds are specifically identified. Based on current rules as identified in Part VIII of the Form LM-2, all funds of the labor organization, including any special purpose funds or accounts, such as strike funds, vacation funds and scholarship funds are already required to be reported even if they are not part of the labor organization's general treasury. We believe that specifically identifying strike funds may ultimately benefit the employers, but that members would not see any meaningful benefits.

Foreign Transactions: You have requested comments on whether to establish a Schedule 32 - Foreign Transactions on the Form LM-2 LF if the labor union engages in a transaction with a foreign entity or a foreign individual.

- We respectfully submit that the continued reporting of transactions of \$5,000 or more within the functional category schedules would readily identify such an entity or individual.

Confidentiality Exemption: You have requested comments on whether to modify, narrow or eliminate the confidentiality exception in the Form LM-2 instructions.

- As noted within the proposed rule, we do believe that there are legitimate reasons why a union may wish to utilize the five categories of exemptions. We support not modifying, narrowing or eliminating the exemptions as the current LM-2 instructions already require a notation to describe the general types of information that were omitted from the schedule. We believe that altering any of the exemptions noted would be at the detriment of the labor organization and ultimately to the member of the organization as the purpose of the exemption is to protect the worker and labor organization. Under 29 U.S.C. CFR §403.8, members, upon request, have the right to review the undisclosed information. Disclosing the information would only be to the benefit of employers engaged in contract negotiations or for employers to combat organizing strategies of the labor organization.

Governance Questions: You have requested comment on whether to add an item asking, “Does the Organization have a written whistleblower policy?”

- As noted within the proposed rule, federal law prohibits tax-exempt organizations from retaliating against employees who expose wrongdoing with regard to their employer’s financial management and accounting practices, but does not require a specific written policy. We do not believe that including this question would result in changing the views of the members. Additionally, the response to this question and several other governance questions are already publicly available on the labor organization’s IRS Form 990.

Employer Identification Number: The Department has invited comment on whether to require the disclosure of the EIN for vendors that received payments that trigger itemized disclosure.

- While we appreciate the Department’s desire to provide robust information regarding the union’s disbursements, we are concerned about the administrative burden created by the need to collect this additional information. Moreover, many such vendors are taxable entities; as such, this information may otherwise not be available for public disclosure, and the vendor may even consider it to be confidential. For a large organization, the time and cost of collecting such information will be overly burdensome.

Threshold for Filing the Form LM-2: We are in agreement with the Department’s proposal to raise the threshold for filing the Form LM-2 to \$300,000. Current reporting burdens, coupled with the proposed changes, are costly for organizations that do not have adequate means.

### Other Comments

Item 13: Although comments were not specifically requested, for the proposed change to the wording in Item 13 from “discover” to “experience and/or discover”, we believe that the change in wording is significant enough for comment. Although the rationale behind the change within the proposed rule is sound, a situation could arise in which an organization has performed its due diligence to identify shortages, remain unaware, but yet have experienced a loss or shortage. In this case responding “no” would appear to be the proper response although incorrect. Changing the wording to item 13 to note whether the labor organization was aware of and/or discover any losses or shortages would be more appropriate.

Schedule 3 - Sale of Investments & Schedule 5 - Purchase of Investments: We agree with the separation of the investment and fixed asset schedules and note that this change would greatly assist in reconciling the beginning and ending balances. However, we believe that the Department is not fully taking into account the potential excessive burden to labor organizations of reporting the sales and purchases of investments at the level of detail proposed. Under proposed guidance, investments would no longer be able to be reported based on type of security and would have to be listed individually. For labor organizations that maintain an actively managed investment portfolio, this could create hundreds of lines that would be reportable based on the date of each transaction. Additionally, the requested information would not necessarily increase transparency regarding the fair market value since the member would not have information regarding the number of units sold/purchased, which would be needed to compare purchase and sale prices to published unit values. Furthermore, the likelihood of a marketable security being purchased or sold outside of established marketplaces, which are highly regulated, is relatively low. The Department may better achieve its goals of transparency and deterrence by requiring the labor organization to report in total, broken down by security type, the purchases and sales for those securities that were transacted at unadjusted quoted prices in active markets, and only require more detailed reporting for those investments that are considered to be nonreadily marketable investments, with prices or valuations that require inputs that are unobservable, using a reporting threshold such as 5% of the union’s investments. Lastly, we remind the Department that members can request the data that is used to support the information that is reportable on the LM filing.

Schedule 11 - All Officers and Disbursements to Officers & Schedule 12 - Disbursements to Employees: We agree with the Department’s decision to eliminate functional reporting of union officers and employees from these schedules. As noted, providing a successful manner in which to audit this information is nearly impossible and causes the form to be less transparent since the salaries and disbursements are then allocated to the functional categories. However, we encourage the Department not to remove the reporting exception for travel-related expenses paid directly to the provider or through a credit arrangement, as we believe that this additional level of reporting would not provide a more accurate picture of the total disbursements received by the labor organization officer or employee. We believe that eliminating this exception would actually make it less transparent as to the disbursements that the officer/employee would have received during the year, inflating disbursements beyond the actual disbursements made to or on behalf of the officer/employee. The airline and hotel expenses are currently

included with all other disbursements, and subject to itemization. Under the proposed rule, members would likely have no better or clearer information as to the level of accommodations for the related travel. Schedule 13 - Membership Status: With respect to the proposal to require the reporting of retired members, we support the current Schedule 13 instructions that require the labor organization to report all membership individuals that the organization keeps track of. However, by requiring the labor organizations to begin to report on specific categories, the Department is imposing a reporting burden on some organizations that may not readily have the capability to add new categories of members to their existing software. Additionally, this data may already be publicly available through EBSA required reporting for the union pension and annuity plans. Therefore, the costs of accumulating this additional report may outweigh any potential benefit to members.

Schedule 15 - Representational Activities: In relation to dividing these schedules into negotiating and organizing schedules, we believe that the separation of the schedules could miss the mark on providing transparency of the overall success or failure of organizing activities. Additionally, we disagree that organizing benefits are attenuated to already organized members. These activities are closely related since larger organized units would have larger negotiating power for the members. We note that separating organizing activities along with modification of the current confidentiality exception may result in weakening of organized labor, which may negatively impact union members.

Schedule 16 - Political Activities and Lobbying: We do not believe that the additional segregated reporting between political activities and lobbying will achieve the Department's goal of transparency to members. The Department's reasoning for separating political and lobbying expenses is that combining these expenses masks the total spent on lobbying. We respectfully submit that lobbying expenses, if directly made to a service provider or vendor, are already subject to itemization. Moreover, while many large labor organizations retain employees or have officers who engage in lobbying activities, the proposed rule is eliminating the reporting of officer/employee time by functional category, thereby creating less transparency around such activity.

New Schedules: Adding detailed receipt schedules for (1) Dues and Agency Fees; (2) Per Capita Tax; (3) Fees, Fines, Assessments, and Work Permits; (4) Receipts on Behalf of Affiliates for Transmittal to Them and (5) Receipts from Members for Disbursement on Their Behalf may provide an undue reporting burden to the labor organization. Regarding the itemized schedules for (1), (2) and (3), the Department offered an example of a union treasurer embezzling dues checks submitted by employers and suggests that an itemized schedule of dues by employer would make this type of embezzlement harder to hide. Many unions have arrangements with their members that allow for membership dues (and assessments and/or per capita taxes) to be paid through "check-off", whereby the dues are deducted, by the employer, from the member's wages and subsequently remitted to the union. The check-off system was created to ease administrative burdens for both the union and the member; however, not all unions utilize a check-off system. It appears that the Department may be imposing a reporting burden on certain organizations to reduce a risk that does not exist for those organizations. Furthermore, because the union maintains its dues records by member and not necessarily by employer, the requirement to itemize dues information by employer would create a burden for those organizations that do not currently have this capability in their software. Lastly, the union's receipts under these categories are not technically from the employers, who

are only acting as an agent on behalf of members. Membership dues (and assessments and/or per capita taxes) are receipts from individual members and are reported as such on the union's internal reports, IRS filings, and financial statements. Characterizing such receipts as "from employers" may be misleading. We believe that, because membership dues are paid at rates set by the union and approved by the general membership, the member and the Department would be able to analyze the expected amount of receipts based on membership data and established rates.

Threshold Increases: The Department proposes to increase the itemization threshold for several schedules from \$5,000 to \$7,500. The Department believes that the 50% increase in the threshold would reduce the reporting burden. For the smallest organization required to file a Form LM-2 LF (with \$8,000,000 in receipts), the \$5,000 threshold would necessitate an itemized reporting of transactions that represent 0.06% of its operations; the increased \$7,500 threshold would require an itemized reporting of transactions that represent 0.09% of its operations. Understandably, we fail to see any meaningful reduction in reporting burden and respectfully request that the Department develop a more reasonable itemization threshold, especially for larger organizations.

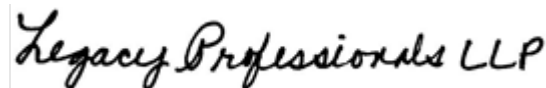
Effective Date: The Department proposes that its rule take effect 30 days after publication and apply prospectively to labor organizations' fiscal years beginning on or after the effective date. We would ask the Department to allow labor organizations additional time to evaluate and understand the final rule and update their systems accordingly to accumulate the necessary information for reporting.

In conclusion, while we support certain of the proposed revisions to Form LM-2, many do not appear to be properly designed to achieve the goal of increased transparency in a meaningful way without imposing significant additional administrative burdens on the reporting organizations.

We understand that the proposed revisions were developed from input from field offices and are designed to combat union and management corruption. We appreciate and support the Department's goals. However, we believe that further research is needed to assess the actual impact of LM-2 reporting on union members with respect to the Department's transparency goals, or on union officials with respect to compliance with Department regulations.

We appreciate your consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Legacy Professionals LLP". The signature is written in a cursive, flowing style.

Legacy Professionals LLP