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January 21, 2005

Brad C. Deutsch
Assistant General Counsel
Federal Election Commission
999 E St., NW
Washington, DC 20463

Re: Notice of Proposed Rulemaking, "Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund," 69 Fed. Reg. 76628 (Dec. 22, 2004)

Dear Mr. Deutsch:

I write on behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), the national labor federation whose affiliates include 59 national and international unions, 50 state labor federations, and hundreds of area and local central labor bodies, and which represents over 13 million working men and women throughout the United States. The AFL-CIO appreciates the opportunity to comment on this notice of proposed rulemaking ("NPRM").

The proposal would end a longstanding regulatory prohibition on the use by corporations of payroll deduction and check-off systems to facilitate contributions by their restricted class members to the separate segregated funds of a trade association to which the corporation belongs. See 11 C.F.R. § 114.8(e)(3). The proposal would permit such arrangements, subject to the statutory requirement of a single annual corporate approval of a particular trade association as a solicitor of the corporation's restricted class, see 2 U.S.C. § 441b(b)(4)(D), and subject to the statutory requirement that a corporation that so utilizes its payroll system make the same services available to any labor organization that represents any members working for the corporation. See 2 U.S.C. § 441b(b)(6).

The AFL-CIO does not oppose this proposal because we agree that FECA does not preclude such payroll deduction and check-off arrangements and because employee access to

such methods of contribution further the purposes of the Act. However, it remains necessary that any final rule be applied consistently with the single trade association limitation, and that it explicitly provide that a corporation must make the same services available to an incumbent labor organization representative in the same manner as is currently provided in 11 C.F.R. § 114.5(k)(1). But, as drafted, proposed 11 C.F.R. § 114.8(e)(4) inexplicably differs from that longstanding regulation and could be read to be more restrictive of the rights of labor organizations, an impermissible consequence given the explicit requirements of the Act.

The Commission explains that requiring corporations that make payroll services available for trade associations to provide the same services to incumbent labor organizations is "necessary to prevent circumvention of provisions of the Act and Commission regulations that seek to prevent corporate SSFs from gaining an unfair fundraising advantage over labor organization SSFs," citing 2 U.S.C. § 441b(b)(6) and 11 C.F.R. § 114.5(k)(1), particularly where the corporation has no SSF of its own and utilizes the trade association SSF as a "proxy SSF." See 69 Fed. Reg. at 76631. In fact, this is not really an issue of preventing circumvention but of requiring compliance with the plain text of the Act. Section 441b(b)(6) does not condition the equal-treatment obligation on a corporation's use of a method of soliciting or facilitating voluntary contributions to its *own* SSF; neither does § 114.5(k)(1). Rather, the statute already allows for the possibility that a corporation would make a contribution method available for another recipient committee as to which it may lawfully do so. Accordingly, § 441b(b)(6) expressly requires that a corporation taking advantage of the revised regulation provide equal treatment for any incumbent labor organization.

In so providing, then, the regulation must also track the language in the statute and current regulation by specifying that it applies not just to "[a]ny corporation" but to "[a]ny corporation, including its subsidiaries, branches, divisions and affiliates." The proposed regulation inexplicably omits mention of these integrally related entities, and the Commission's analysis fails to address this omission. Inasmuch as the proposal is expressly intended to - -and must - - track this aspect of current law in the new context of trade association solicitations and collections from the restricted classes of member corporations, the language in the new regulation should be identical to the statute and the current regulation. That will ensure fealty to the Act, preclude an improperly constricted application of the new regulation by corporations and trade associations, and avoid the inevitable confusion and mischief that would ensue from differently worded regulations addressing the same subject.

The AFL-CIO requests the opportunity to testify if the Commission conducts a hearing on this matter. Thank you for your consideration of the AFL-CIO's views.

Sincerely,

Laurence E. Gold
Associate General Counsel