DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1215–AB64

Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization Is Interested, Form T–1

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The Employment Standards Administration (ESA) Office of Labor-Management Standards (OLMS) of the Department of Labor publishes this final rule to establish a form to be used by labor organizations to file trust annual financial reports (Form T–1) and to provide appropriate instructions and revise relevant portions of 29 CFR Part 43 relating to such reports. On March 4, 2008, the Department published a notice of proposed rulemaking setting forth the Department's Form T–1 proposal. Under the proposal, certain labor organizations would file annual reports about certain trusts to which they contributed money or otherwise provided financial assistance or over which they exercised managerial control. This document sets forth the Department's review of and response to comments on the proposal. This final rule requires that a labor organization with total annual receipts of $250,000 or more file a Form T–1 for each trust of the type defined by section 3(l) of the Labor-Management Reporting and Disclosure Act (LMRDA) and that meets one of the two following filing triggers: The labor organization, alone or with other labor organizations, either: Appoints or selects a majority of the members of the trust's governing board; or makes contributions to the trust that exceed 50 percent of the trust's receipts during the trust's fiscal year. This final rule provides five exemptions to the Form T–1 filing requirements: A political action committee (PAC) fund, if publicly available reports on the PAC fund are filed with federal or state agencies; any political organization for which reports are filed with the IRS under section 527 of the IRS code; trusts required to file a Form 5500 under the Employee Retirement Income Security Act (ERISA); federal employee health benefit plans that are subject to the provisions of the Federal Employees Health Benefits Act (FEHBA); and any trust for which an independent audit has been conducted, in accordance with the standards set forth in this final rule. This final rule will apply prospectively.

DATES: *Effective Date:* This rule will be effective on December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Denise Boucher, Director, Office of Policy, Reports, and Disclosure, Office of Labor-Management Standards (OLMS), U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC, (202) 693–1185 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

This final rule is issued pursuant to section 208 of the LMRDA, 29 U.S.C. 438. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions. Secretary's Order 4–2007, issued May 2, 2007, and published in the **Federal Register** on May 8, 2007 (72 FR 26159), contains the delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Assistant Secretary for Employment Standards and permits re-delegation of such authority. This rule implements section 201 of the LMRDA, which requires covered labor organizations to file annual, public reports with the Department, disclosing the labor organization's financial condition and operations during the reporting period. 29 U.S.C. 431(b). As administratively implemented, section 201 requires a labor organization to identify its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving $10,000 or more in aggregate from the labor organization, direct or indirect loans (in excess of $250 aggregate) to any officer, employee, or member, loans (of any amount) to any business enterprise, and other disbursements. The statute requires that such information shall be filed ''in such detail as may be necessary to disclose [a labor organization's] financial conditions and operations.'' *Id.*

Section 208 directs the Secretary to issue rules ''prescribing reports concerning trusts in which a labor organization is interested'' as she ''may find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements.'' 29 U.S.C. 438. Section 3(l) of the LMRDA provides:

> ''Trust in which a labor organization is interested'' means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

29 U.S.C. 402(l).

II. Background

A. Introduction

On March 4, 2008, the Department issued a notice of proposed rulemaking (73 FR 11754) proposing to establish a Form T–1 to capture financial information pertinent to ''trusts in which a labor organization is interested'' (section 3(l) trusts), information that has largely gone unreported despite the trusts' significant effect on labor organization financial operations and their members' own interests. As noted in the proposal, the establishment of the Form T–1 is part of the Department's continuing efforts to better effectuate the reporting requirements of the LMRDA, which are designed to empower labor organization members by providing them the means to maintain democratic control over their labor organizations and to ensure proper accounting of labor organization funds. Labor organization members are better able to monitor their labor organization's financial affairs and to make informed choices about the leadership of their labor organization and its direction when labor organizations provide financial information required by the LMRDA. By reviewing the reports, a member may ascertain the labor organization's priorities and whether they are in accord with the member's own priorities and those of fellow members. At the same time, this transparency promotes both the labor organization's own interests as a democratic institution and the interests of the public and the government. Furthermore, the LMRDA's reporting and disclosure provisions, together with the fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization's funds from depletion by improper or illegal means. Timely and complete reporting also helps deter labor organization officers or employees from embezzling or otherwise making improper use of such funds.

The proposal noted that the Form T–1 closes a reporting gap under the Department's former rule whereby labor organizations were only required to report on ''subsidiary organizations.'' As noted in the proposal, labor organizations use section 3(l) trusts,

which by definition have a primary purpose to provide benefits for the members of the labor organization or their beneficiaries, 29 U.S.C. 402(l), for a myriad of purposes. Common examples of section 3(l) trusts include credit unions, strike funds, development or investment groups, training funds, apprenticeship programs, pension and welfare plans, building funds, and educational funds. Such trusts may be administered by trustees appointed by a labor organization(s), either singly or jointly with other labor organizations, or jointly with an employer(s). As discussed below, trusts administered jointly by trustees appointed by labor organization(s) and employer(s) are known as Taft-Hartley trusts. By requiring that labor organizations file the Form T–1 for specific section 3(l) trusts, labor organization members and the public will receive some of the same benefit of transparency regarding the trust that they now receive under the Form LM–2, thereby preventing a labor organization from using the trust to circumvent or evade its reporting obligations.

This final rule takes into account the Department's earlier efforts in 2003 and 2006 to implement a Form T–1. In fashioning this final rule, and as discussed in greater detail in the proposed rule, the Department relies on guidance from the United States Court of Appeals for the District of Columbia Circuit in its review of the 2003 Form T–1 rule (68 FR 58374, Oct. 9, 2003), *American Federation of Labor and Congress of Industrial Organizations* v. *Chao*, 409 F.3d 377 (DC Cir. 2005) and the District Court for the District of Columbia in its review of the 2006 Form T–1 rule (71 FR 57716, Sept. 29, 2006), *American Federation of Labor and Congress of Industrial Organizations* v. *Chao*, 496 F. Supp. 2d 76 (D.DC 2007). *See* 73 FR 11757. Thus, this final rule limits the labor organization's reporting requirement to those trusts in which the labor organization has managerial control or financial dominance, as defined in this rule.

The Department initially provided for a 45 day comment period ending April 18, 2008. 73 FR at 11754. In response to a number of requests, the Department published a notice extending the comment period to May 5, 2008. 73 FR 16611. The Department received 556 comments on the Form T–1 proposed rule. Of these comments, approximately 88 were unique comments. The remaining comments were form letters endorsing the proposal. Comments were received from labor organizations, employer, trade and public interest groups, Taft-Hartley plans, accounting firms, a Member of Congress and labor organization members.

B. The LMRDA's Reporting and Other Requirements

In enacting the LMRDA in 1959, a bipartisan Congress made the legislative finding that in the labor and management fields ''there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.'' LMRDA, section 2(a), 29 U.S.C. 401(a). The statute creates a comprehensive scheme designed to empower labor organization members by providing them the means to maintain democratic control over their labor organizations and ensure a proper accounting of labor organization funds.

The legislation was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of labor organization racketeering and corruption; its findings of financial abuse, mismanagement of labor organization funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. *See generally*, Benjamin Aaron, The Labor-Management Reporting and Disclosure Act of 1959, 73 Harv. L. Rev. 851, 851–55 (1960). During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local labor organizations and employers (and labor consultants aligned with the employers) whose employees were represented by the labor organizations in question or might be organized by them. Similar arrangements also were found to exist between labor organization officials and the companies that handled matters relating to the administration of labor organization benefit funds. *See generally*, Interim Report of the Select Committee on Improper Activities in the Labor or Management Field, S. Rep. No. 85–1417 (1957); see also, William J. Isaacson, *Employee Welfare and Benefit Plans: Regulation and Protection of Employee Rights*, 59 Colum. L. Rev. 96 (1959).

The statute was designed to remedy these various ills through a set of integrated provisions aimed at labor organization governance and management. These include a ''bill of rights'' for labor organization members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for labor organization democracy, *see* LMRDA, sections 101–105, 29 U.S.C. 411–415; financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies, *see* LMRDA, sections 201–06, 211, 29 U.S.C. 431–36, 441; detailed procedural, substantive, and reporting requirements relating to labor organization trusteeships, *see* LMRDA, sections 301–06, 29 U.S.C. 461–66; detailed procedural requirements for the conduct of elections of labor organization officers, *see* LMRDA, sections 401–03, 29 U.S.C. 481–83; safeguards for labor organizations, including bonding requirements, the establishment of fiduciary responsibilities for labor organization officials and other representatives, criminal penalties for embezzlement from a labor organization, loans by a labor organization to officers or employees, employment by a labor organization of certain convicted felons, and payments to employees for prohibited purposes by an employer or labor relations consultant, *see* LMRDA, sections 501–05, 29 U.S.C. 501–05; and prohibitions against extortionate picketing and retaliation for exercising protected rights, *see* LMRDA, sections 601–11, 29 U.S.C. 521–31. As explained in the Department's 2002 proposal and 2003 rule (67 FR 79280, 79290; 68 FR at 58374), the reporting regimen had hardly changed in the more than 40 years since the Department issued its first reporting rule under the LMRDA. The original rule was published in 1960. *See* 25 FR 433, 434 (1960).

Section 201 of the LMRDA requires labor organizations to file annual, public reports with the Department, detailing the labor organization's financial condition and operations during the reporting period, and, as implemented, identifying its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving $10,000 or more in aggregate from the labor organization, direct or indirect loans (in excess of $250 aggregate) to any officer, employee, or member, any loans (of any amount) to any business enterprise, and other disbursements. 29 U.S.C. 431(b).

The statute requires that such information shall be filed ''in such detail as may be necessary to disclose [a labor organization's] financial conditions and operations.'' *Id.* This information is reported on the Form LM–2 by labor organizations that have $250,000 or more in total annual receipts.

Section 202 of the LMRDA requires all labor organization officials to annually disclose any income or interests, as there identified, they have received that pose an actual or potential conflict of interest. *See* 29 U.S.C. 432. A labor organization official must also identify any income paid to, or financial interests held by, the official's spouse or minor children, if such payment is from or interest is held in a business or company under circumstances that could give rise to a conflict of interest. *Id.* The section 202 information is reported on the Form LM–30. Section 203 of the Act also requires an employer, with certain exceptions, to annually file a report showing in detail, the date and amount of any payment, loan, promise, agreement or arrangement to any labor organization or representative of a labor organization and a full explanation of any such transaction. *See* 29 U.S.C. 433. The section 203 employer information is reported on the Form LM–10.

With regard to each of these reports, the LMRDA states that the Secretary of Labor shall ''prescribe the[ir] form and publication * * * and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as [it] finds necessary to prevent the circumvention or evasion of such reporting requirements.'' 29 U.S.C. 438. This final rule adopts the Form T–1 to require labor organizations to report on certain section 3(l) trusts so as to provide labor organization members with an accounting of how funds are invested or otherwise expended by the trust. The Form T–1 provides transparency of labor organization finances and effectuates the goals of the LMRDA.

C. Overview of the Form T–1 Final Rule and Reasons for the Rule

This final rule provides that the largest labor organizations, those with total annual receipts of $250,000 or more, must file a Form T–1 for those section 3(l) trusts in which the labor organization, either alone or in combination with other labor organizations, has management control or financial dominance. For purposes of this rule, a labor organization must file a Form T–1 for a trust if it alone or in combination with other labor organizations (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts during the annual reporting period; contributions made pursuant to a collective bargaining agreement shall be considered contributions by the labor organization.

The Form T–1 requires that the labor organization itemize major transactions of the trust during the annual reporting cycle on two schedules: Schedule 1, which would separately identify any individual or entity from which the trust received ''major receipts'' of $10,000 or more, individually or in the aggregate during the reporting period; and Schedule 2, which would separately identify any entity or individual that received ''major disbursements'' of $10,000 or more, individually or in the aggregate, from the trust during the reporting period. The final rule does not require itemization of receipts by a trust made pursuant to a collective bargaining agreement or disbursements made by the trust pursuant to a written agreement that specifies the detailed basis on which the payments are to be made by the trust. The Form T–1 includes a Schedule 3 that requires disclosure of the names of all officers of the trust, all employees of the trust who receive $10,000 or more during a reporting period, and all direct or indirect disbursements to each of these officers and employees.

The Form T–1 provides for a number of exemptions or alternative means of compliance with the reporting requirement. No Form T–1 is required for any trust that meets the statutory definition of a labor organization as such trust would already file a separate Form LM–2, LM–3 or LM–4. An exemption is provided for trusts that are established as a Political Action Committee (PAC) or as a political organization under section 527 of the Internal Revenue Code, 26 I.R.C. section 527, provided timely, complete and publicly available reports are filed with the appropriate federal or state agency. This final rule includes an exemption for trusts that constitute a federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), 5 U.S.C. 8901 *et seq.*, and for trusts where the plan administrator is required to file an annual report under ERISA (Form 5500 exemption). The requirements of the Form 5500 exemption are discussed more fully below. The final rule also includes an alternative means of compliance by filing an audit of the trust, provided the audit is prepared according to standards set forth in the Form T–1 instructions and the audit is filed with a Form T–1 with Items 1–15 and Items 26 and 27 completed.

This final rule will make it more difficult for a labor organization, its officials, or other parties with influence over the labor organization to avoid, simply by transferring money from the labor organization's books to the trust's books, the basic reporting obligation that would apply if the funds had been retained by the labor organization. Labor organization officials and trustees both owe a fiduciary duty to their labor organization and the trust, respectively, but the Department's case files reveal numerous examples of embezzlement of funds held by both labor organizations and their section 3(l) trusts.[1] The Form T–1, by disclosing information to labor organization members, among the true beneficiaries of such trusts, will increase the likelihood that wrongdoing is detected and may deter individuals who might otherwise be tempted to divert funds from the trusts. *See* Archibald Cox, *Internal Affairs of Labor Organizations Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 827 (1960) (''The official whose fingers itch for a 'fast buck' but who is not a criminal will be deterred by the fear of prosecution if he files no report and by fear of reprisal from the members if he does'').

Because the labor organization's obligation to submit a Form T–1 overlaps with the responsibility of labor organization officials to disclose payments received from the trust (*see* 29 U.S.C. 432), the prospect that one party may report the payment increases the likelihood that a failure by the other party to report the payment will be detected. Moreover, given the increased transparency that results from the Form T–1 reporting, in some instances the Form T–1 reporting may cause the parties to reconsider the primary conduct that would trigger the reporting requirement. As discussed above, the LMRDA's primary reporting obligation (Forms LM–2, LM–3, and LM–4) applies to labor organizations as institutions;

[1] The fiduciary duty owed by trustees and others to refrain from taking a proscribed action has never been thought to be sufficient by itself to protect the interests of a trust's beneficiaries or a principal. Although a fiduciary's own duty to a trust's beneficiaries, like the duty owed by an agent to a principal, include disclosure and accounting components (*See Restatement (Third) of Trusts* § 2; *Restatement (Third) of Agency* § 8.01 (T.D. No. 6, 2005) *et seq.*; *see also* 1 American Law Institute, *Principles of Corporate Governance* § 1.14 (1994)), public disclosure requirements, government regulation, and the availability of civil and criminal process, complement and help ensure a trustee's observance of his or her fiduciary duty.

other important reporting obligations under the LMRDA apply to officers and employees of labor organizations (Form LM–30), requiring them to report any conflicts between their personal financial interests and the duty they owe to the labor organization they serve, and to employers who must report payments to labor organizations and their representatives (Form LM–10). *See* 29 U.S.C. 432; 29 U.S.C. 433. Thus, requiring labor organizations to report the information requested by the Form T–1 rule provides an essential check for labor organization members and the Department to ensure that labor organizations, their officials, and employers are accurately and completely fulfilling their reporting duties under the Act, obligations that can easily be ignored without fear of detection if reports related to trusts are not required.

Both historical and recent examples demonstrate the vulnerability of trust funds to misuse and misappropriation by labor organization officials and others. The McClellan Committee, as discussed above, provided several examples of labor organization officials using funds held in trust for their own purposes rather than for their labor organization and its members. Additional examples of the misuse of labor organization benefit funds and trust funds for personal gain may be found in the 1956 report of the Senate's investigation of welfare and pension plans, completed as the McClellan Committee was beginning its investigation. *See Welfare and Pension Plans Investigation, Final Report of the Comm. of Labor and Public Welfare*, S. Rep. No. 1734 (1956); *see also Note: Protection of Beneficiaries Under Employee Benefit Plans*, 58 Colum. L. Rev. 78, 85–89, 96, 107–08 (1958). In the most comprehensive report concerning the influence of organized crime in some labor organizations, a presidential commission concluded that ''the plunder of labor organization resources remains an attractive end in itself. * * * The most successful devices are the payment of excessive salaries and benefits to organized crime-connected labor organization officials and the plunder of workers' health and pension funds.'' President's Commission on Organized Crime, *Report to the President and Attorney General, The Edge: Organized Crime, Business, and Labor Unions* 12 (1986).

The enactment, administration, and enforcement of ERISA has ameliorated much abuse, but many section 3(l) trusts are not covered by ERISA and the annual reporting under ERISA serves a different purpose than the reporting under the LMRDA. The Department has discovered numerous situations, as illustrated by the following examples, where funds held in section 3(l) trusts have been used in a manner that, if reported, would have been scrutinized by the members of the labor organization and this Department:

- A case in which no information was publicly disclosed about the disposition of tens of thousands of dollars (over $60,000 on average per month) by participating locals into a trust established to provide statewide strike benefits. No information was disclosed because the trust was established by a group of labor organization locals and not wholly controlled by any single labor organization.
- A case in which a credit union trust largely financed by a local labor organization had made large loans to labor organization officials but had not been required to report them because the trust was not wholly owned by any single local. (One local accounted for 97 percent of the credit union's funds on deposit). Membership in the credit union was limited to members of three locals; all of the credit union directors were local officials and employees. Four loan officers, three of whom were officers of the Local, received 61 percent of the credit union's loans.

Under the final rule, each labor organization in these examples would have been required to file a Form T–1 because each of these funds is a 3(l) trust. In each instance, the labor organization's contribution to the trust, including contributions made on behalf of the organization or its members, made alone or in combination with other labor organizations, represented greater than 50 percent of the trust's revenue in the one-year reporting period. The labor organizations would have been required to annually disclose for each trust the total value of its assets, liabilities, receipts, and disbursements. For each receipt or disbursement of $10,000 or more (whether singly or in the aggregate), the labor organization would have been required to provide the name and business address of the individual or entity involved in the transaction(s), the type of business or job classification of the individual or entity, the purpose of the receipt or disbursement, its date, and amount. Further, the labor organization would have been required to provide additional information concerning any trust losses or shortages, the acquisition or disposition of any goods or property other than by purchase or sale; the liquidation, reduction, or write off of any liabilities without full payment of principal and interest, and the extension of any loans or credit to any employee or officer of the labor organization at terms below market rates, and any disbursements to trust officers and to employees of the trust who received more than $10,000 from the trust.

The need for the Form T–1 is also demonstrated by additional examples of improper administration and diversion of funds from section 3(l) trusts. Labor organization officials in New York were convicted in a ''pension-fund fraud/kickback scheme'' where labor organization officials were bribed by members of organized crime to invest pension fund assets in corrupt investment vehicles. The majority of the funds were to be invested in legitimate securities, but millions of dollars were placed into a sham investment, which was to be used to fund kickbacks to the labor organization officers, while the return on investment from the majority of the legitimately invested assets would cover the amounts lost as kickbacks. *U.S.* v. *Reifler*, 446 F.3d 65 (2d Cir. 2006); *see The Final Report of the New York State Organized Crime Task Force: Corruption and Racketeering in the New York City Construction Industry* (1990) 27–29, 91–92 (describing devices typically used by labor organization officials and third parties to divert trust funds for their own enrichment).

In another case, nepotism and no-bid contracts depleted a labor organization's health and welfare funds of several million dollars. The problems associated with the fund included, among others, paying the son-in-law of a board member, a local labor organization official, a salary of $119,000 to manage a scholarship program that gave out $28,000 per year; paying a daughter of this board member $111,799 a year as a receptionist; and paying $123,000 for claims review work that required only a few hours of effort a week. *See* Steven Greenhouse, *Laborers' Union Tries to Oust Officials of Benefits Funds*, N.Y. Times, June 13, 2005, at B5. If the Department's proposed rule had been in place, the members of the affected labor organizations, aided by the information disclosed in the labor organizations' Form T–1s, would have been in a much better position to discover the improper use of the trust funds and thereby minimize the injury to their stake in the trust. Further, the fear of discovery might have deterred the wrongdoers from engaging in the offending conduct in the first place.

As the foregoing discussion makes clear, the Form T–1 rule, as set forth in this final rule, will add necessary safeguards to deter circumvention and evasion of the LMRDA's reporting

requirements. It will be more difficult for labor organizations and complicit trusts to avoid the disclosure required by the LMRDA. Labor organization members will be able to review financial information they may not otherwise have had, empowering them to better oversee their labor organization's officials and finances as contemplated by Congress.[2]

III. Comments on the Proposal and the Department's Response to the Comments

A. Determining Management Control and Financial Dominance

The final rule adopts a modified management control and financial dominance test for determining those trusts for which a labor organization is required to file the Form T–1.

The Department has clarified the test to better identify how to determine whether a labor organization's contributions to the section 3(l) trust during a reporting period trigger a reporting obligation. As a general rule, a labor organization must file a report only if it alone or in combination with other labor organizations (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts during the annual reporting period; contributions made pursuant to a collective bargaining agreement shall be considered contributions by the labor organization. The Department has also modified two terms used in the proposed rule in determining whether a labor organization must file a Form T–1 for a section 3(l) trust by:

- Substituting ''receipts'' in place of ''revenues,'' the term used in the proposal; the change addresses accounting concerns raised by some commenters; and
- Substituting the phrase ''contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions'' in place of ''contributions made on behalf of the labor organization or its members shall be considered the labor organization's contribution''; this change clarifies that only contributions by employers that are required under an agreement negotiated by labor organizations should be counted as labor organization contributions and that other contributions, including contributions made by employees themselves should not be counted as labor organization contributions.

The Department received numerous comments on the proposed management control and financial dominance test. Most commenters opposed the proposed test, focusing on its application to Taft-Hartley trusts.[3] Commenters asserted that the proposal was contrary to the decisions in court challenges to the Department's earlier efforts to establish a Form T–1: *AFL–CIO* v. *Chao*, 409 F.3d 377 (DC Cir. 2005) (2003 final rule); *AFL–CIO* v. *Chao*, 496 F. Supp. 2d 76, 90 (D.DC 2007) (2006 final rule); violated ERISA or at least created unnecessary burden for section 3(l) trusts subject to ERISA; ignored the legal status of trusts and the fiduciary duty that trust officials owe to the trust exclusively, not to the labor organizations or employers participating in the trust; and mistakenly characterized contributions by employers on behalf of employees to the trusts as contributions by or on behalf of the participating labor organizations. Some commenters expressed concern about practical difficulties associated with the proposal, including how to differentiate between labor organization members and others as beneficiaries under the trust and how to measure the trust's revenues during a reporting period to determine whether labor organization contributions constitute a majority of such revenues.

Whether the Management Control and Financial Dominance Test Is Justified and Consistent With Form T–1 Court Decisions

A Member of Congress expressed a concern—which is representative of several other comments—that the Department's proposal failed to heed the instructions provided by the court of appeals and the district court in the above cited cases. With respect to the 2006 rule, the same commenter stated:

> Without any explanation or justification * * * the 2006 final rule stated that in order to determine whether unions have financial domination over a trust, ''contributions by an employer on behalf of the union members as required by a collective bargaining agreement are considered to be contributions of the union as are any contributions otherwise made on the union's behalf.'' *Id.* at 57,746. By counting employers' contributions to trusts as union contributions, the rule continued to require disclosure from the vast majority of trusts in which unions are interested, since employers routinely make the majority of contributions to thousands of multi-employer Taft-Hartley funds that provide pension, health, and other benefits to union workers.

Another commenter asserted that the Department's proposal ''is based on a basic misunderstanding of collective bargaining.'' A third commenter described the Department's proposal as based on the mistaken basis that ''employers have no interest in how a trust invests and spends its money.'' The Department disagrees with the assertion that the determination that a labor organization has financial dominance based on employer contributions pursuant to a collective bargaining agreement is either unexplained or unjustified. The ''financial dominance'' test was developed in response to the DC Circuit's opinion in *AFL–CIO* v. *Chao*. In that case, the court vacated the Department's 2003 Form T–1 final rule (68 FR at 58374) on the ground that the Department exceeded its authority by ''requiring general trust reporting.'' *Id.* at 378–79, 391. As explained in the NPRM, the court held that ''absent circumstances involving dominant control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues, a report on the trust's financial condition and operations would not reflect on the related union's financial condition and operations.'' 73 FR 11757.

The NPRM further explained:

> [T]he court focused its inquiry on the extent of the labor organizations' relationship

[2] The instructions to the Form LM–2 were published as part of the 2003 final rule. The instructions contain some information relating to the Form T–1. The Department will revise the relevant portions of the Form LM–2 instructions to conform with today's final rule.

[3] Labor organizations hold financial interests in various types of section 3(l) trusts, some of which they jointly administer with employers and others that are wholly administered by labor organizations or a trustee or trustees selected by labor organizations. Although the Department received numerous comments about its proposal, none suggested that the test was inappropriate for trusts other than those operated jointly with employers. The comments instead focused on the application of the test to ''Taft-Hartley'' trusts, *i.e.*, joint labor organization and employer trusts established pursuant to section 302 of the Taft-Hartley Act. 29 U.S.C. 186(c)

It deserves emphasis that the managerial control test will not trigger a Form T–1 filing requirement for Taft-Hartley funds because they have boards whose directors are divided equally between employers and labor organizations. (The managerial control test requires labor organizations to appoint a majority of the board.) Thus, only where the labor organization or a combination of labor organizations are responsible for a majority of the receipts of the trust (financial dominance test) will a Form T–1 be required for the trust, and, as discussed later in the text of this preamble, this will apply in the relatively small number of instances where a Taft-Hartley fund does not fall within the exemption for entities filing the Form 5500. Although many commenters asserted, in effect, that labor organizations should not have to file a Form T–1 for any Taft-Hartley trust, they fail to acknowledge, as further discussed in the text of the preamble, that the DC Circuit recognized the Department's ability to fashion a reporting obligation based *either* on managerial control or financial dominance.

with section 3(l) trusts and indicia of their management control or financial domination of the trusts. *Id.* at 388–89. * * * [T]he appeals court found that the Secretary had not demonstrated how a labor organization's contribution of $10,000, an amount that could be infinitesimal given the trust's other contributions, could be indicative of the labor organization's ability to exercise any effective control over the trust.

* * *

Under this proposal, management domination or financial control is determined by looking at the involvement of all labor organizations contributing to or managing the trust. As discussed above, the Department's experience, as noted by the DC Circuit in its 2005 opinion, demonstrates that participating labor organizations may ''retain a controlling management role, [even though] no individual union wholly owns or dominates the trust.'' 409 F.3d at 389. This occurs, for example, where a trust is created from the participation of several labor organizations with common affiliation, industry, or location, but none alone holds predominant management control over or financial stake in the trust. Absent the Form T–1, the contributing labor organizations, if so inclined, would be able to use the trust as a vehicle to expend pooled labor organization funds without the disclosure required by Form LM–2 and the members of these labor organizations would continue to be denied information vital to their interests. If a single labor organization may circumvent its reporting obligations when it retains a controlling management role or financially dominates a trust, then a group of labor organizations may also be capable of doing so. A rule directed to preventing a single labor organization from circumventing the law must, in all logic, be similarly directed to preventing multiple labor organizations from also evading their legal obligations.

73 FR at 11761. The NPRM also explained:

[T]ypically the establishment of such trusts and their funding is set through collective bargaining. Such payments comprise a portion of the employer's labor expenses, along with salaries, wages, and employer administered benefits. Thus, the money paid into the trusts reflects payments that otherwise could be made directly to employees as wages, benefits, or both, but for their assignment to the trusts.

Id.

With respect to the Department's current proposal, a Member of Congress expressed the following opinion:

The Department * * * does not explain how an employer's contributions to an employee benefit fund (which is jointly administered by labor and management trustees) on behalf of its employees could cause a union to exercise such financial domination. The Department's failure to explain the legal and empirical justifications for this controversial policy [has] deprive[d] interested parties of the opportunity to provide meaningful comments on the proposal and test the Department's analysis. In addition, because the District Court noted that the question of whether an employer's trust contributions cause union financial domination of trusts is an ''empirical'' question, the Department's failure to present any empirical information makes it very likely that the District Court will vacate the rule for a third time.

Another commenter stated that the Department relied heavily on a presumption that employer contributions to jointly-trusteed funds are tantamount to union contributions for the purposes of establishing ''union domination'' of the trusts, adding that unions cannot unilaterally compel employers to make contributions.

The NPRM explained the Department's rationale for establishing employer contributions as indicia of financial control over a trust by labor organizations. The NPRM sketched the contemporary and historical instances of the diversion of trust funds to labor organization officials and third parties working with them, including instances of trusts funded with employer contributions and theoretically subject to the control of trustees appointed by labor organizations and employers and subject to strict fiduciary duties. Trusts that are set up pursuant to collective bargaining agreements between a labor organization and the employer, the terms of which, and level of contributions to, are established in those agreements are subject to considerable influence by the labor organization.[4] At the same time, the Department fully recognizes that labor organizations do not have a free hand in setting contribution amounts. As several commenters recognized, the amount of an employer's contributions to such a trust is part of the employer's total labor costs. How the employer's ''labor outlay'' is allocated is of relatively greater concern to the labor organization than the employer, a factor that directly affects the amount of a trust's funding, especially to the extent that money is allocated on some basis, such as training, that does not serve equally each particular individual's interests, such as where there is an across the board increase in health benefits or in the hourly rate of pay. As such, contributions paid into the trust by employers provide an effective gauge of the labor organizations influence over a trust's financial operations.

In order to prevent circumvention or evasion for purposes of reporting, it is necessary to equate employer payments to the trust on behalf of employees as contributions by the labor organization, not in the sense that the contributions are the property of the labor organization, but rather that the amount of those contributions serves as a proxy for measuring the labor organization's influence over the trust. As the D.C. Circuit explained, notwithstanding a trust's funding by an employer, such trusts are properly regulated by the Department under 29 U.S.C. 208, because ''[f]or such trusts, the union has used its bargaining power to establish the trust, to define the purposes for which funds may be used, to appoint union representatives to the governing board * * * and to obligate the employer to direct funds to the trust's account.'' *AFL–CIO* v. *Chao*, 409 F.3d 387. Under the proposed and final rule, in contrast to the 2003 rule, a labor organization is required to file a Form T–1 only where the labor organization has predominant managerial control over the trust or the trust's revenues are ''dominated by union member funds,'' *i.e.*, funds contributed on their behalf by an employer. *See* 403 F.3d at 391.

Inasmuch as Taft-Hartley trusts by definition are funded by employer payments under these agreements, the commenters' assertion, in essence, is reduced to the proposition that Taft-Hartley trusts cannot be subject to the Form T–1 reporting obligation given the source of their funding. This position, however, ignores the D.C. Circuit's rejection of this theory. 409 F.3d at 387 (''[Section 3(l)'s] terms do not dictate a narrow conception of union financial operations such that as the AFL–CIO maintains, Taft Hartley * * * plans funded by employer rather than union contributions * * * would be beyond the reach of [the Department's] authority under section 208''). Moreover, this position also lacks support under the district court's decision in *AFL–CIO* v. *Chao*, 496 F. Supp. 2d 76 (D.D.C. 2007) (vacating the 2006 Form T–1 Final Rule on procedural grounds). That decision simply noted that the AFL–CIO had asserted that the Department's determination to include employer contributions as part of a labor organization's financial stake in a trust lacked an ''empirical basis.'' *See* 496 F.

[4] In its proposal, the Department noted that in other contexts, effective, de facto, or practical control is an appropriate measure of control, explaining that such a standard would also be consistent with the DC Circuit's opinion. In the proposal, the Department observed that some legal commenters had expressed the view that practical control over many Taft-Hartley trusts had been ceded to labor organizations. 73 FR at 11762. The Department invited comment on whether this observation was accurate and, if so, for this reason or other independent reasons, whether the Department should establish a reporting threshold that is based on less than predominant labor organization control over a section 3(l) trust. No commenter supports this observation as accurate and several stated that it was contrary to their experience. As such the Department has retained the filing thresholds contained in the NPRM instead of adopting lower thresholds.

Supp. 2d at 90. The court did not suggest that it agreed with the assertion. *Id*. This result is consistent with D.C. Circuit's recognition of the Department's authority to require labor organizations to report on the financial operations of Taft-Hartley trusts and the Court's acknowledgment of the Department's finding that a joint training fund (Taft-Hartley trust) could be required to file a Form T–1. *See* 409 F.3d at 387. As observed by the district court, ''[t]he DC Circuit's 2005 decision * * * left the Secretary ample discretion in fashioning a new rule'' and that ''included within the bounds of that discretion * * * was the decision to equate employer contributions made pursuant to a collective bargaining agreement with contributions from the unions themselves.'' 496 F. Supp. 2d at 87. Additionally, as discussed above, the Department's position fully recognizes that the funding of section 3(l) trusts is dependent upon collective bargaining. Because the amount of the contributions to a trust is tied directly to the collective bargaining agreement, it is entirely appropriate to use the payments made by an employer pursuant to that agreement as a proxy for measuring the influence of the labor organization over the trust. Where those contributions comprise a majority of the trust's receipts, it is also entirely appropriate to require labor organizations to file a Form T–1.

Under the final rule, management control or financial dominance is determined by looking at the involvement of all the labor organizations contributing to or managing the trust. As noted by the D.C. Circuit, the Department's experience demonstrates that participating labor organizations may ''retain a controlling management role, [even though] no individual union wholly owns or dominates the trust.'' 409 F.3d at 389. This occurs, for example, where several labor organizations with common affiliation, industry, or location, participate in a trust, but none alone holds predominant management control over or dominates the trust financially. Absent the Form T–1, the contributing labor organizations, if so inclined, would be able to use the trust as a vehicle to expend pooled labor organization funds without the disclosure required by Form LM–2, thereby denying members of the participating labor organizations information vital to their interests. If a single labor organization may circumvent its reporting obligations when it retains a controlling management role or financially dominates a trust, then a group of labor organizations may also be capable of doing so.

Whether the Management Control and Financial Dominance Test Is Necessary in Light of, and Can Be Reconciled With, Other Regulatory Regimes

Commenters asserted that the proposal exceeds the Department's authority under the LMRDA and ignored ERISA's effectively exclusive regulation of Taft-Hartley trusts.

Some commenters stated that Congress did not intend the Department to regulate employee benefit trusts under the LMRDA, and instead sought to regulate these trusts, mandate disclosure, and prevent misconduct through ERISA and the Welfare and Pension Plans Disclosure Act of 1958 (WPPDA), the pension law that preceded ERISA.[5] Accordingly, the commenters assert that the Department should withdraw its proposed financial dominance test, which has the primary effect of imposing LMRDA reporting requirements on ERISA plans.

Most of the commenters objected to the financial dominance test on the ground that the trustees of a Taft-Hartley trust owe an absolute duty of loyalty to the trust—to the exclusion of any duties to either the labor organization or the employer. They explained that the funding of the trust by agreement between the labor organization and the employer does not evince labor organization (or management) control over the trust.

There is no merit to the claim that ERISA was intended to supplant the LMRDA insofar as requiring labor organizations to report on the financial interests of trusts in which they hold management control or financial dominance. Section 514(d) of ERISA states: ''Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States [with exceptions not here pertinent] or any rule or regulation issued under any such law.'' 29 U.S.C. 1144(d). The WPPDA contained a similar provision, casting doubt on the assertion that these Acts constrain the Department's authority under the LMRDA. *See* WPPDA section 10(b) (72 Stat. at 1003 (1958) (WPPDA does not exempt any person from any duty under any present or future federal law affecting the administration of employee welfare or pension benefit plans)). In the Department's view, the LMRDA and ERISA serve complementary purposes. There also is an evident similarity between the duty labor organizations officials owe to their labor organization and the duty trust officials owe to their trust.

Contrary to an implicit premise underlying many of the comments that ERISA and the LMRDA are co-extensive insofar as labor organization-related trusts are concerned, ERISA applies to only a subset of the section 3(l) trusts. Some section 3(l) trusts are not covered at all by ERISA. Title I of ERISA covers only pension and ''employee welfare benefit plans'' established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or (3) both. 29 U.S.C. 1003(a). While there is considerable overlap between section 3(l) trusts and ERISA ''employee welfare benefit plans,'' some funds in which labor organizations participate fall outside ERISA coverage, including strike funds, recreation plans, hiring hall arrangements, and unfunded scholarship programs. 29 CFR 2510.3–1. Other section 3(l) trusts that are subject to ERISA are not required to file the Form 5500 or file only abbreviated annual reports. *See, e.g.*, 29 CFR 2520.104–20 (welfare plans with fewer than 100 participants); 29 CFR 2520.104–26 (unfunded dues financed welfare plans); 29 CFR 2520.104–27 (unfunded dues financed pension plans). *See also* Reporting and Disclosure Guide for Employee Benefit Plans, U.S. Department of Labor (2004 ed.), *available at http://www.dol.gov/ebsa/pdf/rdguide.pdf*.

Several commenters stated that section 302 of the Labor Management Relations Act (Taft-Hartley Act) contains structural requirements designed to avoid any possibility of labor organization dominance, including a requirement that payments must be held in trust for the sole and exclusive benefit of employees and their dependents, and a requirement of an annual audit. They assert that section 302 was enacted precisely ''to ensure that the funds in such a trust are not used as a labor organization 'war chest'.'' *NLRB* v. *Amax Coal Co.*, 453

[5] A commenter asserted, without elaboration, that the Department's proposal violates section 302(c) of the LMRA. The Department disagrees with this statement. As evinced by section 208 of the LMRDA, Congress expressly recognized the Department's authority to require labor organizations to report on the financial interests of section 3(1) trusts. Moreover, there is a clear distinction between the reporting requirements of the LMRDA and the substantive requirements of section 302(c); that section strictly limits payments by employers to trusts in which labor organization have an interest without indicating that these requirements would ''preempt'' reporting requirements of the LMRDA or ERISA.

U.S. 322 (1981). By definition, therefore, they argue that trusts that are subject to section 302 cannot be subject to labor organization dominance and therefore pose no risk of ''circumvention or evasion'' of the LMRDA's reporting requirements. In the NPRM, the Department explicitly recognized the fiduciary duties that apply to trustees under ERISA. Nothing in the proposal suggested that trustees routinely ignore these duties and put the interests of their labor organizations or their own interests ahead of their obligation to the trust. The Department recognizes that most trustees faithfully observe their duties. Nonetheless, it cannot be doubted that there are also instances where those duties are ignored with the attendant loss of funds held in trust for the labor organization and its members.

This rule is prophylactic; as such, of necessity it must require reporting even where trustees faithfully observe their duties. At the same time, its reach is necessary to empower labor organization members to determine whether transactions between the trust and other individuals and entities are proper. In many instances, the rule also allows labor organization members and this Department to determine whether transactions by or with the trust created a reciprocal reporting obligation on labor organization officials and employers who have separate reporting obligations under the LMRDA. As stated in the NPRM, ''[b]ecause a labor organization's obligation to submit a Form T–1 overlaps with the responsibility of the labor organization officials [pursuant to 29 U.S.C. 432] to disclose payments received from the trust, the prospect that one party may report the payment increases the likelihood that a failure by the other party to report the payment will be detected.''

As an additional benefit, the transparency provided by the rule may have the salutary benefit of deterring individuals from engaging in improper or illegal transactions. Neither as proposed nor modified in this final rule does the reporting obligation interfere with ERISA. Indeed, given that labor organizations now have no obligation to file Form T–1 for many if not most trusts subject to ERISA, the arguments against the proposal on this basis lose much of their force.

Where trusts are not subject to ERISA or not required to file the annual reports required of most ERISA-regulated trusts, the Form T–1 reporting obligation provides labor organization members their first opportunity, in most instances, to receive an annual report on the financial operations of their labor organization's section 3(l) trusts.

Whether the Management Control and Financial Dominance Test Creates Unwarranted Compliance Difficulties

Some commenters expressed concern about the practical difficulty of determining whether a trust beneficiary was a labor organization member or not. Some commenters noted that although the trusts have records distinguishing between contributions submitted pursuant to collective bargaining agreements—as distinct from contributions submitted on behalf of non-bargaining unit groups, the trusts do not have records permitting them to differentiate employer contributions made on behalf of labor organization members from contributions made on behalf of non-labor organization employees. These commenters stated that in order to provide such data labor organizations would be required to ask participating employers to take on an additional reporting obligation to the plans. A commenter explained that in order to determine whether the 50% revenue threshold was met, the trust and the labor organization would have to exchange records to identify trust participants who are members of the labor organization, a task that would require significant time.

These concerns are based upon a simple misunderstanding of the proposal and are easily resolved. As discussed in the NPRM, 73 FR 11758–61, the labor organization exercises effective control over a trust if it directly contributes the trust's funds or if it negotiates with an employer for employer funding of the trust. Whether the individuals on whose behalf contributions are made pursuant to a collective bargaining agreement are themselves members of the labor organization is irrelevant. Thus, it is not necessary to determine how many beneficiaries of the trust are members or non-members of the labor organization to determine whether the threshold has been met; instead the relevant factor for making this determination is the amount of receipts contributed pursuant to the collective bargaining agreement, whether made on behalf of members or non-members.

Contributions made pursuant to a collective bargaining agreement by an employer will be considered contributions of the labor organization (as, of course, would contributions by the labor organization itself). The instructions and regulation have been revised accordingly. Consequently, the phrase ''contributions made on behalf of the labor organization or its members shall be considered the labor organization's contribution'' has been revised to read ''contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions.''

Contributions received by the trust on behalf of persons represented by the labor organization but who are not members of the labor organization (such as agency fee payers) would thus be included within the definition of ''receipts.'' The test is whether the contributions are made pursuant to a collective bargaining agreement. The test is not whether the beneficiaries of the trust are labor organization members.

Whether Financial Dominance Should Be Measured by ''Receipts'' or by ''Revenue''

Several commenters asked the Department to clarify how to determine whether the labor organization's contributions comprised a majority of the trust's revenues during the reporting period. In the NPRM, the Department, as noted above, framed its financial dominance test in terms of a labor organization's contributions (more than 50%) of the trust's *revenues* during the annual reporting period. The term ''revenue'' was used by the D.C. Circuit in discussing how the Department could properly fashion a reporting obligation where a labor organization or labor organizations financially dominated a trust. *See AFL–CIO* v. *Chao*, 409 F.3d at 390. The court did not define this term, nor suggest that its usage was to limit the Department to an approach constrained by the technical meaning ascribed to the term by accountants.

Some commenters noted that the term ''revenue'' has a different meaning than ''receipts.'' One commenter, noting that accounting professionals use slightly different interpretations of what constitutes ''revenue,'' proposed the following as included within its reach—contributions, interest and liquidated damages charged for delinquent contributions, all investment income, realized gains, grants, rents, reimbursements and other income, grants and employee elective deferrals to 401(k) and cafeteria plans. Some commenters asserted that if ''revenue'' is defined in such a way as to include income such as capital gains, interest, dividends and the like, then many trusts will fall in and out of Form T–1 coverage depending on market returns. They explained that this could result in a lack of disclosure in good financial years, and conversely, could require reporting in poor financial years. The resulting shifting reporting requirements

would lead to a lack of consistent reporting on these trusts and create confusion for labor organization members. Thus, for example, if ''revenue'' includes all amounts received from the sale of securities, even when promptly reinvested or ''rolled over,'' the amount of ''revenue'' attributable to the trust could easily dwarf any other source of income or receipts, reducing the number of Form T–1 reports filed.

The Department agrees that the rule should be clarified. To address these concerns, the Department has adopted for this purpose the ''receipts'' test used in the Form LM–2. Thus, the instructions to the Form T–1 now provide that ''receipts'' means anything actually received by the labor organization within that fiscal year, with the one exception being sales of investments that are promptly reinvested. In that situation, only the capital gain is counted toward the gross receipts figure.

For purposes of the Form T–1, the term ''receipts'' will include cash, interest, dividends, realized short and long term capital gains, rent, royalties and other receipts of any kind.

It will exclude investment proceeds that are promptly reinvested. Generally, ''promptly reinvested'' means reinvesting (or ''rolling over'') the funds in a week or less without using the funds for any other purpose during the period between the sale of the investment and the reinvestment. This change lessens the likelihood that market fluctuations will move the trust in and out of coverage in a given fiscal year. Market performance volatility will be less likely to affect reporting requirements because receipts will not be registered until gains from the sale of securities are realized.

A commenter pointed out that labor organization members have an interest in the governance of the trusts that extends beyond the fiscal year in which particular contributions were made, suggesting that the financial dominance test should look to a multi-year period to determine Form T–1 coverage. While the Department believes there is some merit to the suggestion, the Department believes that a multi-year approach is unworkable. The key factor to showing financial dominance is the position of the labor organization as an entity that bargains with employers and is thus in a position to exert control over the contributions to the trust. If there are no contributions made in a particular fiscal year it is difficult to show that a labor organization is in a position to financially dominate these trusts. Furthermore, outside the Taft-Hartley trust context, a labor organization is more likely to be required to file a Form T–1 because it has managerial control over a trust and not because of financial dominance.

Two commenters stated that the Department's test would require reports from single employer trusts (whose contributions are not established pursuant to a collective bargaining agreement) that have equal (labor organization and employer) representation on their governing boards. One of these commenters also stated that some single employer plans, established pursuant to a collective bargaining agreement, are administered without any labor organization involvement. The Department has determined that these plans, and other such trusts that are employer created and employer administered, do not fall within the scope of section 3(l).

Whether Elective Deferrals Are Considered in Determining Financial Dominance

One commenter, a 401(k) plan multiemployer defined contribution pension plan, receives payments from employees who have the option to defer a portion of their wages to the plan. Employees have the opportunity, in addition, to control how their funds are invested. The commenter expressed uncertainty over whether these elective deferrals made by the employees themselves are considered labor organization-derived payments that establish financial dominance, arguing that they should not be so treated. The Department agrees that employee-directed payments to the trust should not be treated as labor organization contributions.

Managerial Control and Taft-Hartley Funds

The Department received few comments on the managerial control test it proposed. These comments were in the context of trustees appointed to the board of directors of a Taft-Hartley fund. The boards of these funds are allocated half to employer representatives and half to labor organization representatives. As such no Taft-Hartley fund would ever meet the managerial control trigger for filing the Form T–1 as the trigger requires the labor organization to appoint or select a majority of the board before filing is required. However, as discussed above, Taft-Hartley funds could be subject to the financial dominance test.

B. Applicability of the Form T–1 Reporting Requirement to Smaller Labor Organizations

The Department proposed a reporting threshold based solely on the size of the labor organization; labor organizations with total annual receipts of at least $250,000 must file a Form T–1 for a section 3(l) trust, if the labor organization alone or with other labor organizations exercises management control or financial dominance over the trust. The Department received no comments regarding this aspect of its proposal. This final rule maintains this reporting threshold and the Form T–1 reporting requirement only applies to those labor organizations with total annual receipts of at least $250,000. The Department believes that limiting the Form T–1 reporting requirement to the largest labor organizations responds to concerns that the Form T–1 would impose a substantial burden on smaller labor organizations. By requiring a Form T–1 to be filed only by a labor organization with annual receipts of at least $250,000, the proposed rule is consistent with the reporting threshold for Form LM–2. The $250,000 reporting threshold ensures that labor organizations required to file Form T–1 will be better prepared to meet the recordkeeping burden, having already had experience with the recordkeeping and reporting software utilized for the filing of Form LM–2.

C. Elimination of Threshold Requirements in Prior Rules

In addition to limiting reporting to labor organizations with at least $250,000 in annual receipts, the 2003 and 2006 final rules conditioned reporting on a two-part threshold ($10,000 or greater contribution threshold for the reporting labor organization and a $250,000 or greater receipts threshold for the trust). In the NPRM, the Department proposed eliminating these thresholds and this final rule does not include a contribution threshold for the reporting labor organization or a receipt threshold requirement for the trust.

Several commenters objected to the removal of the $10,000 contribution threshold for reporting labor organizations and stated that the threshold should be maintained. Commenters stated that the $10,000 contribution threshold represented a reasonable determination by the Secretary of the appropriate balance of benefit and burden, i.e. the burden of filing the Form T–1 on labor organizations contributing less than $10,000 outweighed the marginal

increase in transparency. Commenters asserted that it would be hugely disproportionate to impose the burdensome cost of Form T–1 compliance when a small amount of labor organization funds are at stake. A commenter questioned whether the management control and financial dominance requirements for filing a Form T–1 would alleviate the difficulty in obtaining information from the trusts. Two commenters asserted that the proposed rule did not offer a reasoned basis for the removal of the $10,000 labor organization contribution threshold. The commenters further noted that there has been no evidence of changed facts or circumstances that would warrant the departure from the threshold requirements of previous proposed Form T–1 rules.

As noted in the NPRM the $10,000 contribution threshold was included in the 2003 and 2006 final rules in response to concerns about a labor organization's ability to obtain the required information from trusts in which they did not have a substantial stake. The Department believes that limiting the trust reporting requirement to trusts in which a labor organization exercises management control or financial dominance, as discussed above in section A, addresses this concern. Moreover, the Department believes that under the LMRDA labor organization members have an interest in financial transparency related to trusts to which their labor organizations contribute regardless of the amount of the contribution.

The recordkeeping and reporting burdens correspond to the size of the trust. Smaller trusts have smaller burdens in these areas than do large trusts. A member's interest in knowing the details of financial dealings is not diminished simply because the trust is smaller. Even in smaller trusts, members are likely to be interested in the nature and purpose of the trust, the spending decisions of the trust, the money directed to the trust as compared to the wages or wealth of the members, and the extent of the labor organization's control and domination of the trust. The Department's proposal to require reporting by labor organizations with annual receipts of at least $250,000 tracks the mandatory filing threshold for the Form LM–2. Requiring the filing of a Form T–1 on the same basis as the filing of the Form LM–2 ensures that labor organizations required to file Form T–1 will be better prepared to meet the recordkeeping burden having had experience with the recordkeeping and reporting software utilized for filing the Form LM–2.

The Department was persuaded to change to a filing requirement based on the size of the labor organization rather than amount of contribution to a trust by comments in connection with the 2002 NPRM. Many commenters during the 2002 rulemaking expressed the view that the relative size of a labor organization, as measured by its overall finances, would affect its ability to comply with the proposed Form T–1 reporting requirements.

In proposing to eliminate the $250,000 receipts threshold for trusts, the NPRM noted that the Department's review of section 3(l) trusts revealed that a number of trusts do not have substantial annual receipts yet still hold large amounts of labor organization derived money. One building trust held $802,323 in assets, yet had less than $200 in receipts. Another trust reported $434,501 in assets, only $45,285 in receipts, and rental expenses of $75,483 resulting in net receipts of −$29,198. Removing the $250,000 annual receipts threshold provides for the disclosure of significant financial information. As noted in the NPRM, by not including a receipts threshold for trusts labor organization, members will have greater transparency and access to information relating to trusts that hold large amounts of labor organization derived money yet do not receive a significant amount of annual receipts.

Commenters objected to the removal of the $250,000 receipts threshold for trusts because they argued that it may result in Form T–1 reporting of trusts with insubstantial receipts or assets and result in a burden that may outweigh the benefit of disclosure. Commenters also stated that the proposed rule did not offer enough evidence or a reasoned basis for the removal of the $250,000 threshold. Specifically, a commenter questioned the Department's examples of building trusts that have significant labor organization derived assets but do not receive significant receipts. A commenter further noted that there has been no evidence of changed facts or circumstances that would warrant the departure from the threshold requirements of previous proposed Form T–1 rules. A labor organization commented that the $250,000 receipts threshold limited Form T–1 reporting to significant trusts. The commenter asserted that the occurrence of a trust with significant assets but no significant receipts was rare and that the benefits of including such trusts were outweighed by the burden of filing reports on trusts that are insignificant.

After considering the comments in opposition, the Department has concluded that the final rule will not include the $250,000 receipts threshold for trusts. Eliminating the $250,000 in annual receipts threshold for the trust operates to provide information about trusts to labor organization members whose labor organizations have a substantial investment in a trust notwithstanding the absence of significant annual receipts by the trust during the reporting period. The two examples of such trusts provided in the NPRM are illustrative of the problem and were not intended to be an exhaustive list. Like all the examples in the NPRM, they point to the need for disclosure.

The removal of the reporting thresholds will substantially increase labor organization financial transparency and decrease the evasion and circumvention of the LMRDA requirements. Due to the application of the management control and financial dominance thresholds set forth in this rulemaking, the Department believes that the $10,000 contribution threshold and the $250,000 annual receipts threshold are unnecessary.

The Department also sought comments on whether it would be appropriate to establish a threshold based on the amount of assets held by a trust, and if so, what amount would be appropriate. Only one comment responded to the Department's question. A labor organization proposed creating such a threshold and setting the threshold at no less than $250,000 for trust assets, in order to minimize the burden on small trusts. In the absence of significant comment on this point and the Department's further consideration of this alternative proposal, the Department believes the better approach is to continue without an asset threshold. The Department believes that a member's interest in the details of the labor organization's financial dealings is not diminished by the amount of trust assets. A member's interest is more likely to be based on the nature and purpose of the trust, the spending decisions of the trust, the money directed to the trust as compared to the wages or wealth of the members, and the extent of the labor organization's control and domination of the trust. Based on these factors, in this final rule the Department has not established a reporting threshold based on assets held by a trust.

D. Itemization of Receipts and Disbursements

The Department proposed that the Form T–1 include two itemized schedules for ''major'' transactions: Schedule 1, which would separately identify any individual or entity from

which the trust received ''major receipts'' of $10,000 or more, individually or in the aggregate, during the reporting period; and Schedule 2, which would separately identify any entity or individual that received ''major disbursements'' of $10,000 or more, individually or in the aggregate, from the trust during the reporting period. The final rule retains the itemization and aggregation requirements, but no longer requires the itemization of receipts by a trust made pursuant to a collective bargaining agreement or benefit payments made by the trust pursuant to a written agreement specifying the detailed basis on which such payments are to be made. By exempting labor organizations from filing a Form T–1 for those trusts required to file the Form 5500, as discussed below, the Department has substantially reduced the burden associated with this aspect of the rule. Additionally, the Department has clarified some particular reporting requirements, as suggested by commenters.

As stated in the NPRM:

> Itemization is an essential component of Form LM–2 and also is integral to Form T–1 as a means to prevent circumvention or evasion of the reporting obligations imposed on labor organizations and labor organization officials. Itemization not only provides members with information pertinent to the trusts, but allows them to better monitor the other reporting obligations of their labor organization and its officials under the LMRDA and to detect and thereby help prevent circumvention or evasion of the LMRDA's reporting requirements. Among other requirements under this proposal, Form T–1 requires a labor organization to identify:
>
> • The names of all the trust's officers and all employees making more than $10,000 in salary and allowances and all direct and indirect disbursements to them;
>
> • Disbursements to any individual or entity that aggregate to $10,000 or more during a reporting period and provide for each individual or entity their name, business address, type of business or job classification, and the purpose and date of each individual disbursement of $10,000 or more; and
>
> • Any loans made at favorable terms by the trust to the labor organization's officers or employees, the amount of the loan, and the terms of repayment.

73 FR 11763. Where certain payments from a business that buys, sells or otherwise deals with a trust in which a labor organization is interested are made to a labor organization officer or employee or his or her spouse, or minor child, the LMRDA imposes on the labor organization officer or employee a separate obligation to report such payments (Form LM–30, as required by 29 U.S.C. 432). Thus, the Form T–1 operates to deter a labor organization official from evading this reporting obligation.

The proposed $10,000 figure is an outgrowth of the earlier rulemaking efforts and is shaped by the concerns there expressed and the Department's accommodation to those concerns. This amount is a higher amount than the itemization threshold provided for the Form LM–2 ($5,000). The Department will continue to monitor this threshold, as well as all other thresholds established by this rule, in order to ensure that the information reported is meaningful. *See* 68 FR at 58389.

The Form T–1 will identify the trust's significant vendors and service providers, i.e., those who make or receive payments of $10,000 or greater during the one-year reporting period. Labor organization members will be able to utilize the advantages of computer technology to review Form T–1s (and other documents required to be filed under the LMRDA). Electronic filing permits the reviewer to use a search engine to guide the inquiry, allowing review of a potentially large number of itemization reports with relative ease compared to review of the same documents in hard copy. Among other uses, a labor organization member who is aware that a labor organization official has a financial relationship with one or more of these businesses will be able to determine whether the business and the labor organization official have filed the required reports (concerning their relationship as required by sections 202 and 203 of the LMRDA, 29 U.S.C. 432 and 433).

The Department proposed that the itemization threshold for major receipts and disbursements be set at $10,000 in the aggregate. No exceptions were proposed; however, a special procedure was provided for reporting sensitive information. Therefore, filers would report all trust receipts from any source that aggregate to $10,000 or more, as well as any disbursements from the trust to any source that aggregate to $10,000 or more during the trust's fiscal year. One commenter urged the Department to increase the threshold for larger employee benefit plans, and instead base it upon a percentage of assets at the beginning of the year. This commenter also urged the entire elimination of itemization of disbursements for benefit payments, because of the many participants who receive in excess of $10,000. This commenter also questioned the value of requiring the reporting of disbursements to service providers and payments to parties-in-interest, which are both reported on the Form 5500. Others opposed the proposed threshold as being too high, and instead would lower it to $5,000, which, in their view, would increase transparency and align the Form T–1 with the Form LM–2.

The Department adopts the $10,000 threshold requirement for itemization in Schedules 1 and 2. This amount, in the Department's view, represents a substantial transaction that would be of interest to labor organization members. For that same reason, a percentage threshold would be inappropriate, as it would deny information about substantial transactions to members of labor organizations with considerable assets, information about transactions that might have a significant impact on the labor organization's finances. A percentage-based threshold that is subject to annual fluctuation would lack predictability and complicate a year-to-year comparison of reports. If a percentage test was used based upon a percentage of assets at the beginning of the year, information concerning large trusts would be disclosed in much higher dollar amounts and information from smaller trusts would be reported in smaller amounts. For example, if there are two trusts, one with $100,000 in assets at the beginning of its fiscal year and the other with $10,000,000 at the beginning of its fiscal year and the itemization threshold was 1 percent, then the first trust would report any receipts and disbursements that aggregate to $1,000 or more while the second trust would only report receipts and disbursements that aggregate to $100,000 or more.

Because knowledge about significant transactions by the trust is an essential element of transparency, the size of the trust should not affect the members' ability to obtain this information. Therefore, the Department adopts a flat dollar threshold of $10,000 for itemization purposes in order to ensure a uniform level of disclosure regardless of the size of the trust. Additionally, in the Department's view, the difference between the reporting threshold for itemized transactions under the Form LM–2 ($5,000) and the threshold under Form T–1 ($10,000) is appropriate because it reduces the reporting burden and because the finances of a trust are less likely to directly impact labor organization members than the expenditures by the labor organization itself. Finally, as the Department said in the NPRM (*See* 73 FR at 11763–64), the Department will continue to monitor this threshold and may make future adjustments based on experience and economic conditions.

For itemization and reporting purposes, the Department proposed that

a labor organization aggregate the trust's receipts from, or disbursements to, a particular entity or individual during the reporting period. The Department explained that aggregation provides a more accurate picture of a trust's receipts and disbursements because it focuses on the total amount of money received from or paid to an entity or individual, rather than only on individual receipts or disbursements. The Department further explained its view that insofar as such payments are of interest to a labor organization member, there is no difference between a single $10,000 (or more) receipt or disbursement from one source and several receipts or disbursements from one source totaling $10,000 or more. Furthermore, aggregation reduces the incentive to break up a ''major'' disbursement to a single entity or individual in order to avoid itemizing the payment and thereby circumvent the Form T–1 reporting requirements.

Several commenters objected to the aggregation requirement. One commenter suggested that the Department remove this requirement because it requires labor organizations and trusts to tally relatively small amounts with no additional benefit. After considering the comments, the Department has decided to retain the ''aggregation'' standard for itemization on Schedules 1 and 2. The Department believes that multiple payments to or from the same individual or entity that, combined, surpass $10,000 in any single reporting year, require separate identification as much as one payment of such amount. The benefit of such ''aggregation'' is that the labor organization member or other viewer of the Form T–1 will receive a more accurate picture of the financial activity of the trust. The additional burden imposed on the trust and labor organization in tracking these multiple payments is offset by the increased transparency that enables members to know that the trust has made ''major'' disbursements or has received ''major'' receipts, whether in the aggregate or in a single instance.

Several commenters opposed the itemization of a trust's *receipts*. They asserted that it imposed unnecessary administrative burden on the trust without corresponding benefit of disclosure to the labor organization members and the public. Others expressed concerns over potential business competition problems caused by labor organization reporting individual employer contributions to trusts, such as disclosure of detailed manpower information and other business information. Some commenters opposed itemization of certain kinds of transactions such as receipts of pension funds or the sale of investments because they provided no information of value to members, plan participants, or the public.

Several commenters opposed itemization of *disbursements* by trusts. They asserted that it imposed unnecessary administrative burden on the trust without corresponding benefit of the disclosure to the labor organization members and the public. Several commenters also opposed itemization of particular types of transactions, as they argued that this reporting would offer nothing of value to members and the public. In their view, the Department should exclude, among other items, the purchase of investments and benefit payments, particularly pension benefits from Internal Revenue Service (IRS) tax qualified plans.

After carefully considering the comments, the Department continues to believe that Form T–1 should separately identify major receipts and disbursements of the trust. Based on the comments received, however, the Department has made a number of changes to the rule that should ameliorate, if not eliminate altogether, many of the concerns identified by the commenters.

First, the Department agrees with those commenters who questioned the advantages of reporting customary, bona fide contributions to and payments from pension funds and other benefit plans to participants and their beneficiaries. Thus, the Department has changed the instructions to except such contributions and payments from itemization, if made pursuant to a collective bargaining agreement or pursuant to a written agreement specifying the detailed basis on which such payments are to be made, as explained in more detail below. The Department believes that information about these transactions that are constrained by basic governing documents of the trust—collective bargaining agreements and written agreements specifying the detailed basis on which such payments are to be made—is unnecessary for members to monitor the operation of the trust. As a result, labor organizations are only required to report such plan contributions made pursuant to a collective bargaining agreement and beneficiary payments made pursuant to a written agreement specifying the detailed basis on which such payments are made in the aggregate as part of Items 23 and 24.

Second, the Department has made several other changes that it believes will reduce the burden of reporting itemized receipts and disbursements: the reinstatement of a modified Form 5500 exemption; the clarification that investments that are promptly reinvested are not receipts and disbursements for itemization purposes; the explicit recognition that payments related to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) are confidential information not to be reported; and the explanation that filers do not have to itemize benefit payments made to officers and employees of the trust on Schedule 3 of the Form T–1. These changes are discussed in more detail below.

Several commenters opposed the itemization of the sale of investments as a burden on the trust and filer. The Department concludes that excluding proceeds from the sale of investments that are promptly reinvested from individually identified receipts will alleviate much of this burden. The clarification regarding the reporting of ''rolled over'' investments will reduce many of these receipts below the $10,000 threshold. This will reduce burden on the trust and the labor organization.

The reinstatement of the Form 5500 exemption has significantly reduced the number of section 3(l) trusts that will file the Form T–1. As discussed in section G(3) of this preamble, labor organizations are not required to file a Form T–1 for their section 3(l) trusts that are required to file the Form 5500. The remaining trusts for which a Form T–1 must be filed, *i.e.*, those trusts that are not required to file a Form 5500, will primarily consist of building trusts, strike funds, and apprenticeship and training funds. Unlike pension and health plans, many of these trusts will have comparatively fewer disbursements, receipts, officers, and employees. For example, strike funds are likely to have few, if any, disbursements unless the labor organization's members are on strike.

The Department believes that there is significant benefit to disclosure to labor organization members of the receipts and disbursements remaining within the scope of the itemization requirement. Specifically, information related to the nature and purpose of transactions in which a trust engages will enable members to actively participate in the governance of their labor organization. Without itemization, members would be denied information critical to monitoring the trust's finances. For example, without itemization, members

would be unable to know the value of the final sale and initial purchase of investments by the trust, as well as the service providers it hires to perform functions of the trust. This separately identified information is important to labor organization members, in part, because they elect the officers who run their labor organization, who in turn will affect the labor organization's funding and operations of the trust over which the labor organization has management control or financial dominance. The financing of these trusts can be used to circumvent or evade the labor organization's reporting requirement and this specified information will empower members to monitor whether or not the trusts are properly investing their money and fulfilling their goals.

Trusts are already tracking most receipts, disbursements, and payments to officials and employees in the regular course of business. However, they may not be currently tracking the information in the detail or structure required by Form T–1 reporting. Therefore, covered section 3(l) trusts may opt to make changes to their accounting systems to track the relevant information in a format that can be provided to the interested labor organization(s) to complete the Form T–1. The Department is not requiring trusts to establish a particular accounting or other system to accomplish this goal. As indicated elsewhere in the document, the labor organization may need to request access to the trust's books and records in order to obtain the information necessary to report information on the Form T–1 in the required detail and structure. Further, as also indicated elsewhere in this document, the Department's Employee Benefits Security Administration (EBSA) advised that it would not consider a plan fiduciary to have violated ERISA's fiduciary duty or prohibited transaction provisions by providing officials of a sponsoring labor organization with financial and other information from the plan's books and records as needed to complete the Form T–1, provided the plan is reimbursed for any material costs incurred in collecting and providing the information to the labor organization officials. Consistent with that conclusion, EBSA further advised that fiduciaries may be able to prudently conclude that it is more efficient and less disruptive of normal plan operations to make adjustments to the plan's information management or accounting software so that the plan can provide information contained in its books and records at a particular level of detail or in a particular structure, provided the labor organization reimburses the plan for any material costs incurred in making such adjustments. Although some section 3(l) trusts may need to contact their third party recordkeepers to collect information requested by labor organizations for the schedules, this burden should be ameliorated as much of required information will already be kept in the normal course of their businesses. And, for labor organizations whose section 3(l) trusts are required to file the Form 5500, there is no Form T–1 to be filed and therefore no LMRDA reporting burden whatsoever.

E. Disbursements to Officers and Employees

The Department proposed that labor organizations would disclose on Schedule 3 of the Form T–1 the names and titles of all officers of the trust and report all direct and indirect disbursements to them as well as to all employees of the trust who received $10,000 or more during the reporting period. The Department adopts Schedule 3 as proposed with clarifications discussed below.

Commenters asked the Department to clarify the meaning of the terms ''trust officer'' and ''trust employee,'' including whether the trustees are considered ''officers'' of the trust, and how the terms will be applied to the trust administrator and individuals working under his or her control who might be employed by an entity other than the trust.

The Department has added clarifications to the definitions of ''trust officer'' and ''trust employee'' on the Form T–1 Instructions for Schedule 3. The definition of trust officer is adapted from the LMRDA's definition of ''officer.'' Section 3(n) of the LMRDA states in pertinent part: '' 'Officer' means any constitutional officer [of and], any person authorized to perform the * * * executive functions * * * of a labor organization, and any member of its executive board or similar governing body.'' 29 U.S.C. 402(n). The instructions to the Form T–1 now provide that for Form T–1 purposes, a ''trust officer'' means ''any person designated as an officer in the trust's governing documents, any person authorized to perform the * * * executive functions * * * of the trust, and any member of its executive board or similar governing body.'' The language is purposefully broad so that it will include the officials of each trust's governing board, and any other individuals conferred with executive authority under the trust's governing documents. Typically, this will include the trustees of each trust, and, depending upon the particular trust, may include the trust administrator and other individuals.

Similarly, the definition of a ''trust employee'' is adapted from the LMRDA's definition of this term. Section 3(f) states that '' '[e]mployee' means any individual employed by an employer.'' 29 U.S.C. 402(f). Thus, for Form T–1 purposes, an ''employee'' means ''any individual employed by an employer'' that constitutes a section 3(l) trust. These definitions will require a fact-specific inquiry by filers to determine whether trustees, the trust administrator, and other individuals performing service to the trust under its control or the trust's administrator's control are officers or employees of the trust. In most instances, the determination will be resolved without any significant difficulty. Where such individuals are trust officers, or trust employees who received more than $10,000 from the trust during the reporting period, payments to them, unless otherwise exempted, are required to be reported in the aggregate in Item 24 and by their names in Schedule 3. Where such individuals are not officers or employees, payments to them, unless otherwise exempted, must be reported in the aggregate in Item 24 and separately itemized in Schedule 2 if they aggregate to $10,000 or more.

Two commenters expressed concern over the heavy burden of reporting disbursements to their trusts' officers and employees. Commenters said that this information is disclosed on the Form 5500. The Department notes that no Form T–1 will be required on behalf of trusts that are required to file a Form 5500. The Department acknowledges that this requirement may impose some increased burden on labor organizations and, where requested by the labor organization, on the remaining section 3(l) trusts, but the Department believes that modern developments in electronic recordkeeping (such as software that assists in tracking financial transactions rather than the costly and time-consuming paper records used in the past) have greatly reduced the burden on labor organizations and trusts in terms of overall reporting and disclosure, and that trusts already keep records on their officers and employees for purposes of reporting under other statutes and for internal purposes. Furthermore, labor organization members could benefit from this information to ensure that their labor organization is not, for example, providing undisclosed additional

compensation to labor organization officials.

Commenters also asked the Department to clarify how to report ''indirect'' disbursements to health care providers, such as hospital and surgery costs, on behalf of trust officers or employees.

The Department has amended the Instructions for Schedule 3, Column (E), Other Disbursements, as well as the definition of ''indirect disbursement,'' to clarify that benefits payments to the trust officers and employees are not of the type required to be reported in Schedule 3 if made pursuant to a written agreement specifying the detailed basis on which such payments are to be made. Rather, these payments should be reported in Item 24, and in Schedule 2 to the extent that all trust payments to a particular source, in the aggregate, must be separately identified. For example, if a trust makes, in the aggregate, $10,000 in payments to a particular health care provider on behalf of all of its officers and employees, then the filer would report this aggregate amount separately in Schedule 2 and include it within the disbursement total in Item 24. This clarification should eliminate any concerns related to the potential misleading nature of Column (E), particularly as it relates to protecting the confidentiality under HIPAA of health care provider payments.

F. Protection of Sensitive Information

In proposing this rule, the Department recognized the need to balance the legitimate privacy interests of individuals receiving payments from section 3(l) trusts and the right of labor organization members to transparency in the financial operations of such trusts. *See* 73 FR 11764. The Department was particularly concerned about protecting the identity of individuals receiving payments for medical-related and similar expenses of a highly personal nature. The final rule strengthens these protections by eliminating the need to itemize any payments—medical or otherwise—customarily made under and in accordance with the trust's governing documents. This point is addressed in the instructions to the Form T–1 and the regulatory text (revising 29 CFR 403.8). This reporting exclusion, coupled with the availability of the rule's reporting exemption for those trusts that are required to file the Form 5500 (which does not require such itemization), substantially reduces the disclosure of individual-specific information on the Form T–1.

Many commenters expressed concerns relating to the itemization of disbursements, most on privacy or security grounds, or both. Some expressed concern that the posting of such information on the Department's Web site would be intrusive and heighten the possibility of identity theft. They asserted that plan participants and beneficiaries have an ''expectation of privacy'' and that the trustees of benefit and pension plans are obliged to protect their privacy under ERISA and other state and federal laws. Several commenters referred to the regulations issued by the Department of Health and Human Services (45 CFR 160–164) pursuant to HIPAA, prohibiting the disclosure of ''Protected Health Information.'' Other commenters argued for an exemption of all payments made pursuant to the terms of an employee benefit plan. Another suggested that the Department include in the final rule an exception akin to that provided in the Department's Form LM–30 rule. The commenter noted that the Form LM–30 excepts from reporting benefit payments to officers and employees from a trust that are provided pursuant to a specific written agreement covering such payments. Others expressed doubt about the value of requiring the reporting of routine payments to or by section 3(l) trusts, especially given the voluminous number of such payments by large trusts, notwithstanding the $10,000 threshold for itemization. Some commenters expressed concern that reporting of employer contributions to trusts could reveal the extent of its business operations to competitors and unnecessarily affect its business interests.

The Department has carefully considered these comments. As noted, the Department crafted the proposed rule with an eye toward protecting the privacy interests of plan participants. The Department has been persuaded that additional protections are appropriate. As discussed in the preamble section relating to itemization, the Department has established a broad exemption for reporting customary payments to and by the trust made in accord with a collective bargaining agreement in the case of payments to the trust or the trust's governing documents in the case of benefits payments by the trust. Thus, for purposes of Schedule 1, Individually Identified Receipts, labor organizations are not required to separately identify any individual or entity from which the trust receives receipts of $10,000 or more, individually or in the aggregate, during the reporting period, if the receipts derived from pension, health, or other benefit contributions are provided pursuant to a collective bargaining agreement covering such contributions.

Similarly, for purposes of Schedule 2, Individually Identified Disbursements, the labor organization is not required to itemize benefit payments from the trust to an individual plan participant or beneficiary, if ''the detailed basis on which such payments are to be made is specified in a written agreement.'' *See* 29 U.S.C. 186(c). These exceptions apply to all section 3(l) trusts, whether jointly administered or not. This will ameliorate concerns about the adverse impact on an employer whose payments into a trust may reveal confidential business information. Where such payments to and by the trust are undertaken in conformance with governing documents, there is less opportunity for improper diversion of funds and evasion of the Act's reporting requirements than where the trust's discretion is less constrained such as approving the sale and purchase of investments, making payments to service providers, and arranging disbursements to parties-in-interest and other third parties. This is true of information regarding receipts as well, as there may be multiple employers who contribute to the trust pursuant to a collective bargaining agreement. Moreover, such information about transactions that are not made pursuant to a specific written agreement is not likely to pose the same danger of jeopardizing private and confidential information or violating laws designed to prevent such occurrence. As a result, labor organizations are only required to report such plan contributions made pursuant to a collective bargaining agreement and beneficiary payments pursuant to a written agreement specifying the detailed basis on which such payments are to be made, in the aggregate as part of Items 23 and 24.

The Department believes that the addition of an exception pertaining to beneficiary payments made pursuant to a written agreement specifying the detailed basis on which such payments are to be made will also reduce the administrative burden on trusts and reporting labor organizations. Trusts will not have to compile information pertaining to the potentially thousands of beneficiaries, nor will it have as many complications with existing privacy and other state and federal laws. While the burdens of contacting service providers for those transactions not governed by such an agreement and of reprogramming computer systems to capture this data will still exist, the Department believes that many trusts

already have this information as a result of their normal business practices.

As an additional protection, the Department has clarified the rule to ensure that information maintained by the trusts relating to HIPAA-protected payments, subject to a non-disclosure provision in a settlement agreement, specifically protected against disclosure by state or federal law, or that potentially endangers the health or safety of an individual is not available to labor organization members under the LMRDA's ''just cause provision.'' *See* ; . Notwithstanding these exceptions, as explained in the instructions, the labor organization is required to describe generally the nature of any payments that have not been itemized, *e.g.*, ''disbursement of payments on insurance claims,'' in Item 25 of the Form T–1 (Additional Information) and to include the payments in the total amount reported in Item 23 (Receipts) or Item 24 (Disbursements) of the form.

In the NPRM, the Department proposed to provide labor organizations the same reporting option available under the Form LM–2 for reporting certain major transactions in situations where a labor organization, acting in good faith and on reasonable grounds, believes that reporting the details of the transaction would divulge information relating to the labor organization's prospective organizing strategy, the identification of individuals working as ''salts,'' or its prospective negotiation strategy. The Department further sought comments on whether the confidentiality exception from the itemized reporting requirement should be narrowed, clarified, or removed from the Form T–1. Under the proposed special procedures, the labor organization could choose not to report the information in itemized form provided the filer identified in Item 25 (Additional Information) the general types of information excluded. The Department outlined this procedure in the Form T–1 Instructions for Schedules 1 and 2.

As under the LM–2 instructions, the proposal in the NPRM recognized that a labor organization member has a statutory right ''to examine any books, records, and accounts necessary to verify'' the labor organization's financial report if the member can establish ''just cause'' for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8. Aggregation of transactions by a labor organization under the Special Procedures for Confidential Information constitutes a *per se* demonstration of ''just cause for access to the information'' and thus the information must be available to a member for inspection. 73 FR 11764. The Department invited comments on whether to narrow, clarify or remove this confidentiality exemption from the Form T–1 instructions.

Several commenters specifically addressed the Special Procedure for Reporting Confidential Information, as set forth in the proposed rule and instruction. Two commenters opposed these procedures, arguing that agents (*i.e.*, the labor organization and trust officials) cannot withhold ''secret records'' or engage in ''secret transactions,'' but rather the principals (*i.e.*, the labor organization members) have a right to see this information. These commenters argued that the proposed procedure allowed labor organizations greater leeway in withholding information than is permitted under the discovery rules of federal civil procedure or the National Labor Relations Board (NLRB)'s application of those rules. One commenter raised concerns over the reporting of job targeting/market recovery fund disbursements, identifying instances where, in its view, unions were improperly using the special procedure to shield from disclosure *any* itemized disbursements relating to their job targeting program, not merely those that arguably would be covered by the special procedure. One commenter supported the confidential information exception because it protects organizing strategies.

The Department's review of Form LM–2 data has indicated that the confidentiality exception is not used by the majority of Form LM–2 filers. However, the Department has found that in some cases where the confidentiality exception is used, large portions of the labor organizations' disbursements are not itemized. For example, one labor organization treated $360,308.00 in disbursements as confidential information and entered this amount on line 5 of Schedule 17. The $360,308.00 accounted for 45% of the labor organization's total disbursements. A midsized local labor organization treated $1,011,863.00 as confidential. This accounted for 49% of the labor organization's total disbursements. Finally, a large local labor organization treated $5,931,513.00 as confidential. This accounted for 46% of the labor organization's total disbursements. Thus, an undisciplined use of the special procedures in many cases could result in the non-itemization of disbursements of millions of dollars.

The Department understands that labor organizations have an interest in maintaining confidentiality in situations where disclosure would expose an ongoing or planned organizing or representational campaign. However, this interest must be balanced with the LMRDA's general reporting requirements. Depriving members of information about almost half of their labor organization's disbursements does not promote transparency.

In the 2003 final rule promulgating the Form T–1, the Department recognized that the commenters believed that a confidentiality exemption was needed to protect information on certain transactions from immediate public disclosure. Thus the Department provided an exemption from the normal itemization requirement for reporting of information that would harm an organizing drive or contract negotiation and also provided that, absent unusual circumstances, this exemption should not be applied to information related to transactions for past organizing campaigns or negotiations. The Department in this final rule is not changing the decision that a labor organization should not be required to disclose information that would harm the organization's *prospective* organizing campaigns or negotiations, by disclosing strategy that would otherwise be confidential. However, the Department reiterates that labor organizations may not shield such information from full disclosure after the organizing or negotiations have concluded. Thus, the final instructions for the Form LM–2, and the instructions for the Form T–1, provide that ''[a]bsent unusual circumstances information about past organizing drives should not be treated as confidential.''

For the reasons discussed, the Department adopts the Special Procedures for Reporting Confidential Information as presented in the NPRM, but reiterates that the procedures require itemized reporting of transactions related to organizing campaigns and negotiations after the confidentiality interest giving rise to the exemption from itemized reporting in these categories has ended. Labor organizations will continue to be able to use the confidentiality procedures to withhold itemized information ''that would expose the reporting union's prospective organizing strategy.'' If the strategy becomes public, the confidentiality privilege no longer applies to the information. Once the organizing campaign or negotiations have concluded, the confidentiality privilege is lifted absent unusual circumstances where disclosure of itemized information would harm an ongoing or prospective organizing campaign or negotiations. As provided, in part, in the Form LM–2 instructions,

under the proposal, labor organizations are permitted to withhold from itemization information that would ''expose the reporting union's prospective organizing strategy'' or would ''provide a tactical advantage to parties with whom the reporting union or an affiliate union is engaged or will be engaged in contract negotiations.'' The instructions direct that information should be disclosed unless the labor organization could demonstrate that its disclosure would cause harm to the organizing drive or contract negotiations; the instructions also advise that absent unusual circumstances information about past organizing drives or contract negotiations should not be treated as confidential.

The Department has considered the suggestion by some commenters that the proposed procedure should be eliminated because of its perceived misuse by some Form LM–2 filers. The commenter's examples indicate that some labor organizations may have used, or will be tempted to use, the special procedure to hide disbursements that—either at the time they occurred or at the time that the Form LM–2 was filed—posed no danger to the labor organization's organizing or negotiating strategies.

The Department believes that there is reason to be concerned that the procedures may be misused by some labor organizations. Thus, although, the Department is retaining the Special Procedure for Reporting Confidential Information, the Department reemphasizes that this procedure is to be used sparingly and only in the limited circumstances for which it is provided. The Department will continue to review and monitor the use of the Special Procedures for Reporting Confidential Information. Because of the substantial interest in financial transparency that is compromised if certain information that should be disclosed is kept confidential, the Department will give priority in investigations of violations of the trust reporting rules to those reports in which the exemption is claimed. This will be done to insure that the exemption is not abused. The Department will continue to examine the use of the Special Procedure and, if evidence and experience indicate that it is being abused, may propose to eliminate or narrow it. The Department further notes that the provision of a confidentiality exemption for the Form T–1 does not affect other reporting duties under the LMRDA or other laws.

G. Exemptions and Alternative Means of Compliance

The Department proposed an exemption from the Form T–1 reporting requirement for a trust established as a political action committee (PAC) or an organization established pursuant to Internal Revenue Code section 527 provided that the trust files timely, complete and publicly available reports with federal or state agencies, as required by federal or state law. The Department also proposed a partial exemption where an independent audit of the trust has been conducted in accordance with proposed standards discussed below and the audit is filed with the Department along with a fully completed page 1 of Form T–1. Each of these alternative methods for meeting the labor organization's Form T–1 obligation provides significant, timely financial information about the trust that is updated on a regular basis (for PAC and section 527 reports, typically more frequently than the Form T–1) and requires the itemization of receipts and expenditures. The proposed rule did not include an exemption for trusts that filed timely and complete Form 5500 reports under ERISA; the Department explained that the information reported on the Form 5500 was not designed to capture information for LMRDA purposes and that many section 3(l) trusts were not subject to ERISA or its reporting requirements.

This final rule, like the proposal, includes the exemptions for trusts that constitute a PAC or a section 527 organization provided that the trusts file timely, complete and publicly available reports as required by federal and state law and includes the partial exemption for those trusts where an independent audit has been conducted as set forth in the instructions. This final rule, unlike the proposal, contains an exemption for those trusts required to file a Form 5500 report, as defined in this rule.

1. Exemption for PAC and 527 Funds

In proposing to exempt labor organizations from filing a Form T–1 for trusts that constitute a PAC or a section 527 organization, the Department explained that the purpose of limiting the filing requirements in this way was to minimize any overlapping obligations that apply to such entities where other statutes required the filing of publicly available reports that contain information roughly comparable to that required by the Form T–1. The Department received no comments on the proposed exemption for a trust established as a PAC or established under section 527 of the Internal Revenue Code. Thus, the final rule retains the exemption for a trust established as a PAC or an organization exempt under Internal Revenue Code section 527, provided that the trust files timely, complete and publicly available reports with federal or state agencies, as required by federal or state law.

2. Audit Exemption

Under this final rule, a labor organization may use the audit exemption provided the audit meets the requirements described in the Form T–1 Instructions. The audit requirement in this exemption is modeled after section 103 of ERISA, 29 U.S.C. 1023 and 29 CFR 2520.103–1 (relating to annual reports and financial statements required to be filed under ERISA). As noted in the NPRM, the Department recognizes that the audit option may not provide the same level of detail required by the Form T–1. The Department nonetheless believes that this approach is an acceptable trade-off for reducing the overall reporting burden on the labor organization and the section 3(l) trust. Under the audit alternative, a labor organization need only complete the first page of the Form T–1 (Items 1–15 and the signatures of the organizations' officers) and submit a copy of an audit of the trust that meets all the following standards:

- The audit is performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles or Other Comprehensive Basis of Accounting.
- The audit includes notes to the financial statements that disclose:
  - Losses, shortages, or other discrepancies in the trust's finances;
  - The acquisition or disposition of assets, other than by purchase or sale;
  - Liabilities and loans liquidated, reduced, or written off without the disbursement of cash;
  - Loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and
  - Loans made to officers and employees that were liquidated, reduced, or written off.
- The audit is accompanied by schedules that disclose:
  - A statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in

comparative form for the end of the previous fiscal year of the trust; and

■ A statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in $10,000 or more of commerce and the total of the transactions with each party.

The Department invited comments on the utility and workability of the proposed audit exemption. As with many other aspects of the proposed rule, most of the comments on this issue came from Taft-Hartley trusts. These commenters generally opposed the 90-day filing deadline for the audit exemption because the deadline in most instances would expire before they completed the audits that they are required to perform in order to satisfy their ERISA reporting requirements to file a Form 5500. Under ERISA the annual reports are generally not due until at least 210 days after the close of the ERISA plan year. One commenter stated that because of the complexity of any audit required of trust funds, only in the rarest of instances would an auditor be able to timely satisfy the requirements of the proposed alternative to file the Form T–1. Commenters also stated that the proposal failed to reduce the overall reporting and recordkeeping burden because the Form T–1 itemization requirements are not normally part of audits prepared for these funds.

The Department has partially resolved these concerns by exempting labor organizations from any Form T–1 responsibilities for trusts that are required to file an annual report under ERISA, as discussed below. The availability of this exemption means that most of the commenters will not be obliged to provide information necessary to complete the Form T–1 and thus will be unaffected by the audit requirements that otherwise would remain a concern. For those trusts that are not required to file the Form 5500, the Department has decided to retain this filing exemption as an alternative means of compliance with the rule. The remaining types of entities that will be required to file a Form T–1 under this rule are typically less complex than the trusts required to file a Form 5500 and will have fewer transactions to itemize. Further, the concerns about the itemization burden are addressed because this final rule excepts from the itemization requirement any receipts by a trust made pursuant to a collective bargaining agreement and any benefit payments where a written agreement specifies the detailed basis on which such payments are to be made. As such, the Department anticipates that the burden imposed by using this filing exemption, while similar to that required for filing the full Form T–1, will nonetheless provide a less burdensome alternative for some filers. This audit exemption is not meant to be the primary means of compliance with the final rule, but rather, is meant as an alternative for those entities that have an audit performed that meets the standards set forth in this final rule. For these reasons, the Department's final rule adopts without change the audit exemption as proposed.

3. ERISA Covered Plans Required To File a Form 5500

Under the 2003 and 2006 Form T–1 final rules, a labor organization was not required to file a Form T–1 for a section 3(l) trust if the trust was an employee benefit plan that filed a complete and timely annual report pursuant to ERISA. These rules also stated that ''a notice filed with the Secretary of Labor pursuant to an exemption from reporting and disclosure does not constitute a complete annual financial report.''

The Department proposed to remove this exemption in the NPRM. The proposal noted that the focus of the financial reporting required on the Form T–1 and the Form 5500 are not identical and therefore the Form 5500 was an unsatisfactory substitute for the reporting required under the LMRDA. The NPRM noted that not all section 3(l) trusts are subject to ERISA and thus, under the exemption as provided in the 2003 and 2006 final rules, labor organizations, the public and OLMS investigators would have to spend considerable time and resources to determine whether a section 3(l) trust complied and timely filed the Form 5500. 73 FR 11765. The Department also cited the difference in who was required to sign the Form T–1 and the Form 5500 and the difference in the timing for filing as reason to omit the exemption. 73 FR 11766. The NPRM invited comments on a number of questions related to the removal of the Form 5500 exemption.

The Department received a significant number of comments concerning the Form 5500 and whether the Department should allow an exemption where a section 3(l) trust files a Form 5500. Several commenters asserted that the Form T–1 is duplicative of information already available to labor organization members on the Form 5500.

After consideration of the comments, the Department has decided to include a Form 5500 exemption in the final rule. The Department recognizes that the Form 5500 may not provide certain details required by the Form T–1. In an effort to respond to concerns of commenters and to meet the objectives of the LMRDA, the Department has fashioned an exemption that differs in some respects from the exemption set forth in the 2003 and 2006 rules. The ERISA annual reporting requirements for a section 3(l) trust that is an ERISA-covered plan are generally satisfied where the section 3(l) trust files the Form 5500 Annual Return/Report of Employee Benefit Plan and any required attachments.[6] Under this final rule, labor organizations will not file a Form T–1 for any section 3(l) trust that is required under ERISA and applicable Departmental regulations to file a Form 5500.

For purposes of this Form T–1 exemption only, a trust is ''required to file a Form 5500'' if a plan administrator is required to file an annual report on behalf of the trust under 29 U.S.C. sections 1021 and 1024. The Form T–1 exemption, however, does not apply where an ERISA covered section 3(l) trust is eligible for an exemption from filing a Form 5500 or Form 5500–SF under Department of Labor regulations. This includes those section 3(l) trusts that may file a notice or statement with the Secretary of Labor in lieu of an annual report pursuant to an exemption from, or as an alternative method of complying with, the annual reporting obligation, even if it does file a Form 5500 or Form 5500–SF. The following sections of title 29 of the Code of Federal Regulations identify the types of ERISA plans that under this final rule would be treated as not *required* to file a Form 5500 for purposes of the Form T–1 filing requirement: § 2520.104–20 (small unfunded, insured, or combination welfare plans), § 2520.104–22 (apprenticeship and training plans), § 2520.104–23 (unfunded or insured management and highly compensated employee pension plans), § 2520.104–24 (unfunded or insured management and highly compensated employee welfare plans), § 2520.104–25 (day care center plans), § 2520.104–26 (unfunded dues financed welfare plans maintained by employee organizations), § 2520.104–27 (unfunded dues financed pension plans maintained by employee organizations), § 2520.104–43 (certain small welfare plans participating in group insurance arrangements), and § 2520.104–44 (large

[6] The Form 5500 and governing regulations applicable beginning with plan years beginning in 2009 were modified on November 16, 2007. 72 FR 64710 (final rule); 72 FR 64731 (notice of adoption of revisions to annual return/report forms). The final rule adopted changes to the Form 5500 and created the Form 5500–SF.

unfunded, insured, or combination welfare plans; certain fully insured pension plans). Therefore, a labor organization must file a Form T–1 for any ERISA-covered section 3(l) trusts that are eligible under these regulations.

All the labor organization and trust commenters objected to the Department's decision to depart from the position it had taken in earlier Form T–1 rulemakings whereby a labor organization was not required to file a Form T–1 for a trust that filed a timely and complete Form 5500. The commenters raised the following points in support of their position: (1) Title II of the LMRDA is not intended to regulate employee benefit plans covered by ERISA; (2) information reported on the Form T–1 is already available on the Form 5500; (3) the benefit of Form T–1 reporting does not exceed the burden it places on labor organizations and trusts; and (4) the Department has failed to show how entities that file the Form 5500 have used these trusts to circumvent LMRDA reporting. A number of the commenters offered alternatives to the complete exclusion of the Form 5500 exemption.

Commenters reviewed the history of legislation governing employee benefit plans, stating their view that Congress never intended to apply the LMRDA's reporting and disclosure requirements to employee benefit plans. They cited section 302 of the LMRA in support of their contention that employee benefit plans are insulated from labor organization control. As related by these commenters, section 302 permits employer payments to an employee benefit plan only if: (1) Such payments are made to a separate trust fund established for the purpose of providing medical or hospital care, pension or retirement benefits, insurance, or for other enumerated purposes; (2) such payments are held in trust for the sole and exclusive benefit of employees; (3) the detailed basis for such payments is set forth in a written agreement with the employer; (4) management and labor are equally represented in the trust's administration; and (5) an annual audit of the fund's assets is conducted by an independent auditor.

Commenters also noted that Congress saw no need to include the transactional details that the proposed Form T–1 requires because it did not include them in the recent Pension Protection Act of 2006 which substantially amended ERISA. A number of commenters suggested that the Department drop the Form T–1 and work with the IRS and the Employee Benefits Security Administration (EBSA) to revise the Form 5500 as necessary to address any concerns.

The Department has reviewed and considered the concerns expressed about the relationship between the LMRDA reporting requirements and ERISA. By adopting an exemption for section 3(l) trusts that are required to file a Form 5500 the Department has recognized that ERISA is the primary statute for regulating section 3(l) trusts that are covered under that statute. The Form 5500 helps ensure that employee benefit plans are operated and managed in accordance with certain prescribed standards and that participants and beneficiaries, as well as regulators, have sufficient information to protect the rights and benefits of participants and beneficiaries. While not identical in purpose to the Form T–1, the Form 5500 provides information on assets, liabilities, losses or shortages of funds or other property, acquisition or disposal of goods or property in a manner other than purchase or sale, liquidations, reductions, and write-offs.[7] More importantly, the general ERISA regulatory and enforcement regime, through its civil and criminal provisions, reduces (although it does not eliminate the risk entirely) the ability of labor organizations to use employee welfare or pension plans to circumvent their LMRDA reporting obligations.

This is a change from the 2003 and 2006 Form T–1 final rules which allowed for an exemption so long as the trust had filed a complete and timely annual report pursuant to ERISA. However, framing the exemption as was done in 2003 and 2006 puts the burden on OLMS to determine whether the Form 5500 is complete and timely in order to determine whether the labor organization has complied with the Form T–1 requirement.

The Department has not extended the Form 5500 exemption to all trusts that are required to file an annual report under ERISA. Rather, the Form T–1 5500 filing exemption will be available to only those section 3(l) trusts that are required to file the Form 5500. Thus, where ERISA or Department of Labor regulations exempt or allow the plan administrator to take an exemption from filing a Form 5500 or 5500–SF, the labor organization would need to file a Form T–1 for that trust. A Form T–1 would be required even if the plan administrator of such a fund does not take advantage of the opportunity to obtain an exemption, and does, in fact, file a Form 5500 or Form 5500–SF.

The Department believes that the Form 5500 exemption as set forth in this final rule balances the concerns of commenters about burden and duplication between the Form 5500 and the Form T–1 with the Department's concerns regarding the enforcement difficulties associated with the Form 5500 exemption as set forth in the 2003 and 2006 Form T–1 final rules. An exemption that is available to trusts that can choose, year-by-year, whether to file a Form 5500 creates significant enforcement burdens for the Department. Because of differing deadlines for filing the forms, it may be difficult for the Department to determine whether a trust that is not required to file a Form 5500 has, in fact, determined that it will file one for the relevant time period. Moreover, the Department would be required not only to determine whether the relevant trust may be exempt from the Form 5500 requirement, but also would be required to determine whether such trust, in fact, filed anyway before determining whether the labor organization was required to file a Form T–1. In contrast, an exemption that covers only trusts that are required to file a Form 5500 is relatively easy to enforce. The obligation to file a Form 5500 depends on the characteristics of the trust, which can be objectively determined. As such, it is a relatively easy matter to determine whether a trust is required to file a Form 5500. Both OLMS and EBSA would have an interest in correctly identifying trusts required to file a Form 5500, and EBSA has considerable expertise in this area.

In contrast, a trust that may elect to exempt itself from the Form 5500 filing requirements creates an entirely different problem. Only the trust will know whether it will file a Form 5500. Until it files a notice that it is taking the Form 5500 exemption, or its time for

[7] The Department does not agree that the Form T–1 is entirely duplicative of the information available on the Form 5500. While both forms seek financial information about trusts, among other differences, a Form 5500 does not include the itemization of disbursements or receipts required by the Form T–1 and the persons requires to sign the Form T–1 and Form 5500 are not identical. Under the Form T–1, the form must be signed by the president and treasurer, or corresponding principal officers, of the labor organization. By comparison, the Form 5500 filed by a section 3(1) trust is signed by the plan's ''administrator,'' as defined in section 3(16) of ERISA. By requiring the labor organization's principal officers to certify the accuracy of the financial report, individuals who may be in a position to use the trust to circumvent their union's reporting requirements will be required to vouch under penalty of perjury to the accuracy of the trust report. The officers' incentive to use the trust to circumvent the LMRDA filing requirements is thereby reduced. Notwithstanding these differences, however, the Department, for the reasons discussed in the text, has determined that the Form 5500 exemption as set forth in the final rule is appropriate.

doing so has expired, there are no objective measurements to determine whether a Form 5500 will be filed. As an enforcement matter, therefore, OLMS will regularly be unable to predict by objectively determinable measures whether such a trust will be reported on a Form T–1 or not. This creates difficulty in providing compliance assistance to labor organizations and trusts, and, more significantly, responding to questions and requests from labor organization members about trust reporting. Similarly, labor organizations will not be faced with uncertainty about those trusts for which they must file the Form T–1. The labor organizations' reporting obligation will not be contingent on the choice a plan administrator makes about filing a Form 5500. Under the Form 5500 exemption as adopted by the Department in this final rule, a labor organization will be able at the beginning of its fiscal year to know with certainty whether it should prepare to file the Form T–1 for a particular trust.

The Form T–1 filing exemption for filers who are required to file a Form 5500 responds to concerns about duplication of effort, redundant filing requirements, increased burden, and the discrete roles of the LMRDA and ERISA. The Form 5500 filing exemption adopted in this final rule comports with ERISA, properly takes into account the complimentary roles served by each statute, and reduces reporting burden while providing labor organization members and the public with core information that will help to prevent the circumvention or evasion of the LMRDA's reporting requirements.

H. Public Sector Funded Trusts

As discussed above this final rule requires Form T–1 reports to be filed by labor organizations with receipts of at least $250,000 that have an interest in a section 3(l) trust, and alone, or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts during the annual reporting period; contributions made pursuant to a collective bargaining agreement shall be considered contributions by the labor organization. The Department's NPRM provided no exemption from this reporting requirement for any specific type of section 3(l) trust, other than for political action committees and section 527 trusts that file timely and complete reports with appropriate government agencies. As a result, the rule as detailed in the NPRM required that Form T–1 be filed by LMRDA-covered labor organizations with an interest in a section 3(l) trust that provides a benefit plan for the labor organizations' members employed in the public sector, and which, in some cases, is also made available for wider participation by public sector employees who can join the labor organization and enroll in its benefit plan as a result of their public sector employment. Based on comments received in response to the proposed coverage of such plans, the Department has decided, for the reasons that follow, to provide a specific exemption to the Form T–1 reporting requirements for those labor organizations with a reportable interest in a section 3(l) trust that is covered by the FEHBA. However, as explained below, this exemption applies only to FEHBA-covered trusts, and does not extend to labor organization-sponsored benefit plans not otherwise regulated by the federal government in which state, county, special district or municipal employees may participate.

Two commenters addressed the NPRM's coverage of trusts established to provide employee benefits to public sector employees. The first comment is from a national labor organization representing primarily federal sector postal employees, which sponsors a health benefit plan that is established, administered, funded and maintained by contract between the labor organization and the federal government's Office of Personnel Management (OPM) pursuant to FEHBA. Under FEHBA, the federal government makes an employer contribution to cover the majority of the premium costs of the plan, 5 U.S.C. 8906, and the remainder is paid by employee contributions. The FEHBA health benefits plans offer hospital, medical, surgical and other health benefits to enrollees and their covered dependants. In accordance with FEHBA, only members of a labor organization may enroll in that labor organization's health benefits plan. Therefore, the plan's enrollees are federal employees who are members of the labor organization or associate members who have become members of the labor organization in order to enroll in the health benefit plan sponsored by the labor organization.

The labor organization with a FEHBA-governed plan argues that an exception to coverage under this rule is warranted because FEHBA plans are already subject to significant federal oversight and reporting requirements. In particular, the commenter argues, the oversight is equivalent to, and perhaps more than, the federal reporting requirements, oversight, and government regulations than are applicable to other entities, such as political action committees or section 527 organizations, that were specifically exempt from compliance in the proposed rule. According to the commenter, FEHBA plans are subject to stringent requirements contained in the contracts with OPM, which are reviewed and approval on an annual basis. In addition, FEHBA plans must file detailed financial reports with OPM on a quarterly and annual basis, and are subject to annual auditing requirements as well as periodic audits by OPM and the OPM Office of the Inspector General in order to ensure the plan's compliance with contract requirements and federal law.

The Department finds persuasive these reasons offered by the first commenter for an exception to compliance with this rule for FEHBA-covered plans. The Department concludes that the interest of members of labor organizations in having access to meaningful information regarding the trusts in which their labor organization has an interest is served by the rigorous federal oversight already in place under FEHBA, without need for additional compliance with this rule. So long as the interests of labor organization members who want to be familiar with the investments and expenditures of their labor organization's trust is satisfied, the Department may reduce the potentially overlapping regulatory burden to covered entities by creating this exception for FEHBA-covered plans. The exception is noted both in the instructions for filing the Form T–1 and the regulatory text (revising 29 CFR 403.8).

The second comment received on this subject was from a local labor organization that represents municipal employees employed by the City of New York. This labor organization sponsors several supplemental employee benefits plans, which were established over the course of several decades pursuant to collective bargaining agreements with the municipal employers. Although the commenting labor organization represents a small number of employees employed in the private sector, the participants of the labor organization's employee benefits funds are only employees of the municipal employers.

Like the first commenter, the local labor organization indicates that its employee benefit funds in which New York City municipal employees participate are already subject to extensive government oversight and control by the Comptroller of the City of New York. Also like the first commenter, this local labor organization

argues that this existing oversight scheme established under local law, including annual audits of which a condensed version is transmitted to the membership of the funds, is sufficient to accommodate any party interested in gathering financial information about the labor organization's employee benefits trusts. However, the Department notes that the information required by local law appears only to be required to be distributed to plan participants, and not labor organization members who belong to the labor organization sponsoring the plans and whose interests are at the heart of this rule. In addition, although the commenter's benefit plans are clearly subject to some governmental oversight, it is infeasible for the Department to examine every state or local oversight scheme to determine whether it requires the reporting and distribution of information sufficient to satisfy the Department's purpose in protecting the members of labor organizations sponsoring such plans. Because each state or municipality may establish differing oversight schemes with differing reporting requirements, which are subject to periodic revision by those state and local governments, it is impracticable for the Department to review this patchwork of regulation to assure the continued protection of the interests of labor organization members. For these reasons, the Department declines to create a broader exception to this rule, beyond the exception noted above for FEHBA plans, for employee benefit plans sponsored by labor organizations for the benefit of public sector employees.

I. Applicability to Multiple Labor Organizations Participating in a Single Section 3(l) Trust

The Department proposed that each labor organization meeting the reporting threshold will have to submit a Form T–1 to the Department, even though the labor organization's interest in the trust may represent only a relatively small portion of the total contributions made to the trust by labor organizations. The Department received no comments on this aspect of the rule, which is set forth in this final rule without change.

In the NPRM, the Department explained that it had received comments on its 2002 proposal to establish a Form T–1 relating to the participation by multiple labor organizations in a single trust. In response to the 2002 proposal, an international labor organization explained that it was not uncommon for several locals to participate in an apprenticeship and training fund that would be funded by payments from employers pursuant to negotiated agreements providing for ''a-cents-per-hour'' contribution for hours worked by each of their employees. As an example, the labor organization discussed a fund with annual contributions over $300,000 in which seven locals participated. The contributions from, or on behalf of, each local ranged from about $10,000 to about $100,000. The fund had four employer and four labor trustees; three from different locals contributing to the trust and a fourth from the labor organizations' parent organization.

The labor organization also explained that it was common for local labor organizations in different crafts (affiliated with different parent bodies) to participate in a fund. It explained that in these instances, it would be unusual for a single craft or local to represent a majority of the labor organization trustees. It stated that in such circumstances it is unrealistic to suggest that any single labor organization or craft controls the trust. It has also been the Department's experience that is not uncommon for multiple labor organizations to participate in a section 3(l) trust without any single labor organization contributing a majority of the trust's revenues. In some trusts, such as strike funds, labor organizations may be the sole contributors to the fund; in others, such as Taft-Hartley trusts, the trust will be funded by employers, but such funds are established through collective bargaining agreements, and the employer contributions are made for the benefit of the employees working within the bargaining units represented by the participating labor organizations or the employees' beneficiaries. Working from this understanding, the Department crafted its 2003 and 2006 Form T–1 final rules and the proposal set forth in the NPRM to require each labor organization participating in the trust (*i.e.*, those meeting the reporting thresholds) to submit a report on the trust's financial operations.

As noted, the contributions to trusts in which several labor organizations participate typically will consist solely of funds that are contributed on behalf of their members. In other situations, the funds will be contributed by employers on behalf of employees working for these employers who are represented by the participating labor organizations. In many instances, none of the participating labor organizations, by themselves or by virtue of the employers' contributions pursuant to a collective bargaining agreement, contributes a majority of the trust's receipts during a reporting period. As the Department explained in the NPRM, unless a reporting obligation is imposed on one or more of the labor organizations on some basis other than majority contributions, no labor organization members would receive information on the trust's finances. In its 2002 proposal, the Department illustrated the need for reporting on section 3(l) trusts with four examples in which labor organizations had evaded their reporting obligations through their involvement with such trusts. One of these examples involved the improper diversion of money from a strike fund in which no single labor organization held a controlling interest. The absence of any reporting obligation facilitated the improper disposition of thousands of dollars (over $60,000 per month) from the strike fund. As this example also demonstrates, disbursements from a trust of pooled labor organization funds affects the contributing labor organizations' financial conditions and operations as clearly as disbursements from a trust funded by a single labor organization. A rule directed to preventing a single labor organization from circumventing or evading the law should not permit the same conduct when it is undertaken by more than one labor organization.

In fashioning this rule, the Department considered two alternatives: fixing the obligation on the labor organization with the greatest stake in the trust; or allowing one of the participating labor organizations to voluntarily take on this responsibility. Either of these approaches would create difficulties in enforcement. As the Department explained in the NPRM, determining which labor organization has the greatest stake in a trust is an uncertain inquiry. There are several ways that this could be calculated, such as percentage of contributions, gross amount of contributions over the life of the trust, number of members receiving benefits, etc. Further, a rule allowing one labor organization to volunteer to file the form (and thus the others to file nothing) would complicate the Department's ability to enforce the reporting requirement when no labor organization has filed a report. In addition, the reporting labor organization may not be the labor organization that is, in fact, using the trust to circumvent or evade its reporting requirement. Finally, this reporting gap could allow some labor organizations and individuals to evade their reporting obligations under the LMRDA.

For these reasons, the Department has determined that where multiple labor organizations appoint a majority of the

members of the trust's governing board, or their contributions constitute greater than 50 percent of the trust's annual receipts, each will be required to file a Form T–1. In making this determination, the Department recognizes that the section 3(l) trust, not the reporting labor organizations, will be the source of most of the necessary information and that this information, in large part, will be identical for each participating labor organization. This will allow for allocation of information collection costs among the labor organizations, as determined by the trust, and will keep all of the reporting labor organization's total costs only marginally higher than if a Form T–1 were required to be filed by only one of the participating labor organizations.

J. Labor Organization's Ability To Obtain Information From Trusts To File the Form T–1

Under this final rule, a labor organization is required to file a Form T–1 if it alone or in combination with other labor organizations (1) selects or appoints the majority of the members of the section 3(l) trust's governing board, or (2) contributes more than 50 percent of the section 3(l) trust's receipts during the annual reporting period.

A number of comments were received expressing concern that it would be difficult for labor organizations to obtain the information necessary to complete the Form T–1 from the section 3(l) trust. One commenter recommended that the Department include a safe harbor provision in the final rule providing that if a labor organization made a demand in writing to the trust for the Form T–1 information and the trust failed to provide the information this would relieve the labor organization of the obligation to file the Form T–1. The Department believes that limiting the Form T–1 reporting requirement to those trusts over which the labor organization has managerial control or financial dominance, as defined in this rule, makes it unlikely that any participating labor organization will have difficulty in obtaining from the trust the information needed to complete the Form T–1. As a result, the Department does not believe a general safe harbor provision is necessary.

However, to address those rare instances where a section 3(l) trust balks at providing the necessary information, which was expressed in many comments, the labor organization may request that the Department use its available investigatory authority to assist the reporting labor organization to obtain information necessary to complete the Form T–1.

The Department expects that labor organizations and labor organization officials will take timely, reasonable, and good faith actions to obtain the necessary information from section 3(l) trusts and, where they have done so, the Department will not assert a willful and knowing violation of the filing requirement against the labor organization, its president, or its treasurer.

Many section 3(l) trusts and labor organizations commented that providing the information required for labor organizations to complete the Form T–1 raised significant concerns regarding a breach of the trust's fiduciary duties owed to participants and beneficiaries, including concerns that individual privacy rights may be violated. With regard to privacy concerns, a pension fund commenter was particularly concerned about the required disclosure of individual benefit recipients by name and address and the subsequent listing of those individuals online. The commenter believed it would be inconsistent with ERISA section 404, 29 U.S.C. 1104, to provide this information to the labor organization so that the labor organization could forward it to the Department for posting on the Internet. A second commenter added concerns that this information could be used for identity theft. As noted above in section D, in this final rule the Department has modified the instructions to the Form T–1 so that itemization is no longer required for benefits disbursements made pursuant to a written agreement specifying the detailed basis for making the payments. The Department believes that this will alleviate the concerns about privacy and identity theft.

A labor organization commenter addressed the potential breach of the trust's fiduciary duties, stating that under ERISA section 404(a)(1)(A), 29 U.S.C. 1104(a)(1)(A), a fiduciary is required to discharge his duties with respect to an ERISA plan solely in the interest of the participants and beneficiaries and ''for the exclusive purpose of providing benefits to participants and their beneficiaries; and defraying reasonable expenses of administering the [ERISA] plan.'' The commenter indicated that having ERISA plans prepare information for labor organizations so that labor organizations can meet their reporting obligations raises concerns as to whether the fiduciary is using ERISA plan assets exclusively for the benefit of participants and whether preparing this information actually would interfere with the normal operations and administration of such ERISA plans.

In addition to the ERISA section 404 concerns, a number of comments also pointed out that ERISA section 406(b), 29 U.S.C. 1106(b), prohibits a fiduciary and a labor organization trustee who is a labor organization official from acting in an ERISA plan transaction, including providing services, involving his or her labor organization. Further, they noted that a labor organization participating in an ERISA trust fund is a party-in-interest to that plan under ERISA. The commenters agreed that ERISA plans may enter into certain transactions with a party-in-interest if the transaction is necessary for the operation or administration of the ERISA plan and does not involve fiduciary self-dealing. However, they believed it unlikely that most ERISA plan fiduciaries would conclude that gathering and furnishing the type of information necessary for a labor organization to complete a Form T–1 would be necessary to operate or administer the ERISA plan. Some commenters suggested that the prohibited transaction issue could be avoided by requiring the labor organization to reimburse the ERISA plan for all expenses connected with the gathering of Form T–1 information but commented that reimbursing the ERISA plan for the Form T–1 expenses would not eliminate the concerns relating to a violation of ERISA section 404.

As a means of resolving these concerns, the Department presents two safeguards. First, in this final rule the Department has included a Form 5500 exemption for those ERISA plans required to file a Form 5500 (Form 5500 T–1 exemption), as discussed in section G(2) above. The Department's inclusion of the Form 5500 T–1 exemption means that most of the commenters who raised concerns about sections 404 and 406 of ERISA will not be required to file a Form T–1, dramatically reducing the number of trusts from which labor organizations will need information. Second, EBSA has reviewed this rule and specifically advises that it would not consider a plan fiduciary to have violated ERISA's fiduciary duty or prohibited transaction provisions by providing officials of a sponsoring labor organization with financial and other information from the plan's books and records as needed to complete the Form T–1, provided the plan is reimbursed for any material costs incurred in collecting and providing the information to the labor organization officials. EBSA explained that the sharing of information in this manner is consistent with ERISA's text and purposes, and a contrary construction is disfavored because it would impede compliance

with the LMRDA and the achievement of its purposes. The Department expects that trusts will routinely and voluntarily comply in providing such information to reporting labor organizations.

K. Scope of LMRDA Section 3(l) in General

The Department received a few comments that requested a clarification of the scope of section 3(l) of the LMRDA. One commenter requested that the Department clarify that section 3(l) trusts must be limited to ''trusts that are established for the primary purpose of providing benefits to members of such labor organization or their beneficiaries (for example, strike funds, credit unions, building funds or trust funds established pursuant to a labor organization's constitution to provide death benefits to members).'' This comment suggested that a review of the documents that establish each trust would help to determine whether the trust was established to benefit the members of a labor organization or to benefit the employees. The comment requested that the Department exclude from the coverage of section 3(l) all trusts, even if funded pursuant to a collective bargaining agreement, that in the documents creating the trust, specifically note that the trust is created for the benefit of employees.

Section 3(l) provides that a ''trust in which a labor organization is interested'' is a trust:

> (1) Which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

29 U.S.C. 402(l). The Department agrees that trust documents are critical to making a determination regarding a trust's status as a section 3(l) trust. These documents must be considered along with the actual operation of the trust in determining whether they will give rise to a Form T–1 reporting obligation. Each labor organization must consider the particular circumstances of a trust in evaluating whether the trust satisfies the definition of a section 3(l) trust and then must determine whether the labor organization is required to file a Form T–1 pursuant to this rulemaking. Though the Department is prepared to offer compliance assistance to labor organizations, a thorough review by the Department of all documents that may create a section 3(l) trust is impracticable. Therefore, the Department declines to adopt this suggestion.

With regard to the commenter's implicit conclusion that a trust document stating that the trust is created for the benefit of employees would require the conclusion that the trust would not be a section 3(l) trust, it is the Department's view that such a statement alone would not resolve the question. Section 3(l) requires an inquiry as to whether ''*a* primary purpose * * * is to provide benefits for the members of [a] labor organization or their beneficiaries.'' Thus, a trust may have more than one primary purpose. The commenter's statement does not provide sufficient information to either determine whether the trust in question is a section 3(l) trust under the LMRDA or whether a trust created by the labor organization for the benefit of employees of an employer would fall outside the scope of section 3(l). Although the Department does not resolve this question, the statement that a trust is created for the benefit of employees by itself would not deny section 3(l) status to the entity in question. Therefore, the Department declines to adopt this suggestion.

A bank submitted comprehensive comments, arguing, in part, that (1) it does not come within the scope of section 3(l) because, in its view, section 3(l) is limited to ''health benefits, pension benefits, life-insurance benefits or other similar kinds of concrete and individual benefits, and * * * not to * * * intangible collective benefits,'' as it characterizes the benefits it provides to the labor organizations creating the bank; and (2) requiring labor organizations to submit a Form T–1 regarding the bank's financial operations would place an unfair burden on the bank relative to its competitors. The bank stated that it believes itself to be ''the last union owned commercial bank in the United States,'' explaining that it was established by a labor organization and that almost 60% of the voting common shares of the bank are owned by a national labor organization subject to the LMRDA. The bank markets itself as ''America's Labor Bank'' and provides a one percentage point discount on interest rates for loans to union members. It also explained that labor organizations are no longer permitted to own banks, but that its apparently unique status exists by virtue of a grandfather provision in the Bank Holding Act of 1956. *See* 12 U.S.C. 1843.

The Department is persuaded that the bank's status is indeed unique and, for the reasons that follow, will except labor organizations from submitting a Form T–1 about the bank's financial operations. The bank, apart from its status as a labor organization-created bank, differs in no material respect from other commercial, for profit banking institutions. Given the nature of its operations, it engages in a much larger number of potentially reportable transactions than all but a few, if any, section 3(l) trusts. Like other financial institutions, it is subject to strict state and federal regulation that tempers somewhat the need for reporting obligations. The bank's commercial lending business is predominantly conducted with non-labor organization entities, a result of the bank's competitive position in the marketplace. Similarly, the majority of the bank's customers are not labor organization members. Credit unions often serve a narrower customer base, which, in the section 3(l) trust context, may consist predominantly of members of the sponsoring labor organization. While the bank does share some characteristics with other section 3(l) trusts, especially credit unions, the bank's customer base is drawn from a broader market, and its investment portfolio is more varied and diverse than a typical credit union. For these reasons the bank's operations are subject to greater market scrutiny than typically would be the case for a labor organization-established credit union. Moreover, as an employer, the bank is subject to the LMRDA's reporting provision for employers, 29 U.S.C. 433, that require it to report any payments to labor organization officials other than those made in the regular course of business. Thus, the bank will be required to disclose on Form LM–10 the kinds of payments that would be of the greatest interest to labor organization members, notwithstanding that labor organizations participating in this trust are excepted from filing the Form T–1 about the bank's financial operations. In connection with this matter, two additional points must be noted. First, the Department is not persuaded by the bank's argument that it does not constitute a section 3(l) trust, however, the Department does not reach this question in excepting labor organizations from reporting on the bank's financial operations. Second, the bank stated in its comments that in addition to its regular banking commercial services, it ''also engages in a large institutional trust business providing custody and investment management services to Taft Hartley and other employee benefit plans.'' By not requiring labor organizations to file a Form T–1 about the bank's financial operations, the Department does not modify in any way the filing obligations

of any labor organizations with section 3(l) trusts that utilize the bank for services in administering such trusts.

L. Format of the Form T–1, Schedules, and Instructions and Electronic Submission of the Form

Form T–1, as proposed and adopted by this final rule, is shorter and requires less information than the Form LM–2, the annual financial report filed by labor organizations with at least $250,000 in annual receipts. It includes: 15 questions on page 1 (Items 1–15) that basically identify the trust; five yes/no questions (Items 16–20) covering issues such as whether any loss or shortage of funds was discovered during the reporting year (Item 16), the disposition of property by other than market sale (Item 17), the liquidation of debts (Item 18), and whether the trust made any loans to officers or employees of the labor organizations at terms below market rates (Item 19); and statements (Items 21–24) regarding the total amount of assets, liabilities, receipts and disbursements of the trust. Item 25 requires additional detail if a filer checks ''Yes'' to any of the yes/no questions in Items 16 through 20.

The Department proposed that filers submit the Form T–1 electronically to the Department using software provided by the Department and available on the OLMS Web site. As proposed, a Form T–1 filer will be able to file a report in paper format only if it applies for and is granted a continuing hardship exemption of up to one year, but a paper format copy may be submitted initially if the filer asserts a temporary hardship and files electronically within 10 days thereafter. The Department proposed a procedure in the Form T–1 Instructions for applying for a continuing hardship exemption, which was identical to that of the Form LM–2. The proposed procedure whereby forms must be submitted electronically with limited exceptions received no substantive comment and the Department adopts this procedure in this final rule.

The Department received no comments about several specific items on the proposed form, schedules, and instructions. Thus, except as noted below, the final form, schedules, and instructions contain no substantive change from those published in the NPRM. The comments received on particular aspects of the form, schedules, and instructions are identified below. Some of these comments have been addressed in more detail in other sections of the preamble.

In the NPRM, the Department specifically invited comments on whether the trust's employer identification number (EIN) should be reported on the first page of the Form T–1. The Department stated that the number could be used by members to cross-check the information on the Form T–1 with other reports submitted by the trust, such as its filings with the IRS. As discussed below, the Department has decided to require this information, which will be reported in Item 11. As proposed, Item 11 required filers to report the tax status of the trust; this information need not be reported under the final rule. The Department has concluded that disclosure of the tax status of the trust is of less utility to members than is the EIN and as such is requiring disclosure of the EIN in place of tax status.

Two commenters expressed support for requiring labor organizations to provide the trust's EIN. In their view, this information will ''facilitate better cross-referencing between reporting forms'' increasing the form's usefulness, and help ensure against fraud or mistake. One commenter opposed including the EIN, arguing that cross-referencing could lead to confusion if users were to compare Form T–1 submissions with reports filed under ERISA by the same trusts.

The Department adopts the requirement that the labor organization must supply the trust's EIN. Item 11 of the form and the corresponding instructions have been modified accordingly. This modification imposes no additional burden on the trust or labor organization beyond what the proposal required, and it does not violate any privacy or confidentiality of the parties, plan participants, or their beneficiaries. Without the disclosure of the EIN on the Form T–1, labor organization members and the public could encounter difficulty finding this information, leaving them unable to easily cross-reference the Form T–1 with other reporting and disclosure forms, thus reducing the form's utility. The Department believes that users will recognize that the Form T–1 and any other reports filed by the trust, such as reports under the Internal Revenue Code (Form 990) do not report identical information. The Department expects that any potential confusion will be minimal and, in any event, is outweighed by the utility of comparing the information reported on the various forms. The ability to cross-reference the Form T–1 with the Form 990 and other disclosure forms, and check for any anomalies, will help reduce the ability of labor organization officials to use a trust to circumvent other LMRDA reporting requirements.

Item 16 of the form requires a labor organization to report the trust's losses, shortages, or other discrepancies in the trust's finances. Three commenters opposed Item 16's requirement of reporting whether the trust discovered a loss or shortage of funds or other property during the reporting period. One expressed concern over reporting delinquent contributions from employers as well as overpayment of benefits, such as payments to ineligible dependants, individuals who have coverage through a spouse, or when the fund does not know of a participant's death. This commenter also argued that reporting a health fund's losses would violate the fund's privacy obligations under HIPAA, as well as require additional work by the fund's staff. Additionally, this comment stated that the definition of ''loss'' in the instructions is too vague to know what information to send to the labor organization. Finally, a commenter also questioned the lack of an adequate definition of ''loss'' or ''shortage'' in the instructions, which may lead to excessive and irrelevant reporting of transactions.

The Department has clarified Item 16, by defining ''a loss or shortage of funds or other property.'' The Department has defined the term to exclude delinquent contributions from employers, delinquent accounts receivable, losses from investment decisions, and overpayments of benefits. Financial transparency enables members to monitor the affairs of their labor organization and its officers, including the operations of a section 3(l) trust that is dominated by the labor organization. While a financial loss or shortage does not, by itself, indicate that the trust is mismanaged or that fraudulent activity is occurring, it provides useful information to members regarding the use of their labor organization's assets and the actions of its officers.

Item 17 of the form requires a labor organization to report the trust's acquisition or disposition of assets. One commenter suggested that it could require tracking ''thousands'' of such transactions annually, including all write-offs of all fixed assets (with the basis of those assets), all settlements or write-offs of employer contribution obligations (even when de minimis interest obligations are waived or reduced), and would require maintaining every invoice for furniture or equipment until disposed. Although the Department believes that this claim may be overstated, it has clarified the instructions in a way that will largely alleviate any burden. The instructions have been revised to apprise filers that

they may group similar acquired or disposed assets together, in a larger category, as well as grouping multiple assets acquired from or disposed of to the same source, which will reduce the ''expansive'' nature of this reporting requirement. For example, if a trust acquired various types of office equipment as a donation, these assets may be grouped together for purposes of the description in Item 25.

Item 19 of the form requires a labor organization to report loans to labor organizations officers or employees made below market rates. No commenters objected to this provision and it is adopted as proposed.

Items 23 and 24 of the form require a labor organization to report the trust's total receipts and disbursements, respectively. Recognizing that these terms call for reporting on a cash rather than an accrual basis, in contrast to the manner in which some ERISA-regulated trusts prepare their financial statements, one commenter expressed concern that the Department was effectively requiring trusts to establish a second recordkeeping system. The Department is not requiring section 3(l) trusts to establish a cash basis accounting system. As is the case with the Form LM–2, the Department permits filers the choice of how to maintain their recordkeeping system. If section 3(l) trusts for which a labor organization files a Form T–1 choose to prepare their financial statements on an accrual basis, however, labor organizations may need to request access to the trust's books and records in order to obtain the information necessary to report on the Form T–1 the amount of cash and liabilities on hand at the start and close of each reporting period. See 68 FR 58374, 58380–81 (2003) (preamble to Form LM–2 final rule). The Department believes that it is easier for labor organization members to understand the trust's finances if this basic information is provided for their labor organization's section 3(l) trusts. In this regard, the Department notes that most ERISA-regulated trusts will have no Form T–1 reporting obligation where they submit the annual disclosure statements required of them under ERISA.

One commenter sought clarification regarding the reporting of receipts and disbursements where employers submit contributions to related plans on a single check to one trust. The commenter explained that in such instances the trust typically acts as the depository and the contributions are promptly allocated to the other trusts based on each trust's contribution rate. The Department requires Form T–1 to include the total receipts and disbursements of the trust during its fiscal year. Therefore, Item 23, Receipts, includes all funds received by the trust from any employer or any other source. If a trust acts as a depository and promptly reallocates these receipts to other trusts, then such reallocation must be reported in Item 24 as a disbursement.

M. Effective Date and Reporting Deadlines

The Department proposed that the final rule would take effect no less than 30 days after its publication in the **Federal Register**. Thus, under the proposal no report would be due until 15 months after the rule's effective date.

Although the Department proposed that the rule could take effect on the 31st day after its publication, this final rule will take affect 90 days after its date of publication and it shall apply only to labor organizations whose fiscal years begin on or after January 1, 2009. The effect of this change is to provide a small amount of additional time over and above that provided under the proposal before the start of the fiscal year for which an initial report will be due. The Department believes that this lead time is sufficient for affected trusts and labor organizations to adapt to the proposed disclosure requirements and make any necessary adjustments to their recordkeeping and reporting systems.

As proposed and as adopted in this final rule, the Form T–1 must be filed within 90 days after the end of the labor organization's fiscal year and must cover the section 3(1) *trust's most recent completed fiscal year, i.e.*, the fiscal year ending on or before the closing date of the labor organization's own fiscal year. This requirement is mandated by the LMRDA's requirement that a labor organization file its financial reports within 90 days after the close of the labor organization's fiscal year. 29 U.S.C. 437(b). By permitting a labor organization to file the Form T–1 within 90 days after the labor organization's fiscal year ending date, rather than requiring it to be filed within 90 days after the trust's fiscal year ending date, the Department has eased the reporting burden for both the trust and the labor organization. The instructions to Form T–1 provide examples of when the Form T–1 must be filed.

Many labor organization expressed concern about their ability to file a Form T–1 within 90 days after the end of the labor organization's fiscal year in those instances where the trust and the reporting labor organization had the same fiscal year. The trust community and labor organizations also expressed concern about their ability to timely provide information and submit the reports, respectively, under those time constraints. Most of the concerns were contingent on the Department's proposal that only a relatively small number of section 3(l) trusts would be excluded from the reporting requirement. Other commenters expressed concern about the ability of multi-employer health and welfare plans to timely provide required information. They stated that insurance carriers and providers, not the trust, have the data needed for the Form T–1, which would complicate and delay the receipt of required information. Others stated that plans that have Medicare D coverage do not receive the Medicare reimbursement for 90 to 120 days from the date a request for reimbursement is filed. Further, some commenters asserted that compiling information for the Form T–1 would interfere with and delay the completion of their duties under other statutes.

The Department has carefully considered the comments, but it retains the view that the rule as proposed provides sufficient time for labor organizations to timely submit reports. The Department's position is based in substantial part on the significant changes to the proposal. As discussed in preceding sections of the preamble, the Department has adopted a reporting exemption that will affect most Taft-Hartley trusts. Where the trust is required to file a Form 5500 under ERISA, labor organizations participating in the trust are not required to file a Form T–1. Additionally, as discussed earlier in this preamble, the Department has established an exception to the itemization requirement for any payments to a trust pursuant to a collective bargaining agreement and any benefits payments made by the trust pursuant to a written agreement specifying the detailed basis on which such payments are made.

As a result of these changes, the number of trusts for which a Form T–1 must be filed has been substantially reduced as has the number of transactions for which itemization is required. Many of the largest trusts with potentially the greatest number of receipts and disbursement to itemize are unaffected by the Form T–1 requirements. Additionally, trusts that were concerned that they would be faced with twice the reporting obligation (Form 5500 and Form T–1) no longer face this dual obligation. A trust that is required to file a Form 5500 will seldom, if ever, be asked by a participating labor organization to

compile information for the submission of a Form T–1.[8]

A number of trusts (those with fiscal years that coincide with the labor organizations' fiscal years) that are *not* required to file a Form 5500 or are eligible for a Form 5500 exemption, are required to generate and deliver financial information to the labor organization(s) in sufficient time for the labor organization to prepare and file the Form T–1 within 90 days after the close of the fiscal year. These trusts will not be faced with the time-consuming task of filing a Form 5500 and will have more resources to devote to providing Form T–1 data. Thus, the filing deadline, even for this small subset of trusts (those not required to file the Form 5500 and that have fiscal years coinciding with the labor organization's), will be reasonable and will not interfere with the trust's compliance with other non-LMRDA statutory and regulatory requirements. Further, the Department notes that the most complex and large labor organizations are required to compile, and have proven themselves capable of compiling, financial data for reporting within 90 days after the close of the fiscal year. The Form T–1 requires less information and information of less complexity than required of a large labor organization in filing the Form LM–2.

Regulatory Procedures

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866. Based on an analysis of the data, the rule is not likely to: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or (4) raise novel legal or policy issues. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Executive Order. However, because of its importance to the public, the rule was treated as a significant regulatory action and was reviewed by the Office of Management and Budget.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a federal mandate that might result in increased expenditures by state, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year, adjusted by the rate of inflation between 1995 and 2008 ($130.38 million) per 2 U.S.C. 1532(a).

Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the proposed rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect on states or their relationship to the federal government, the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Analysis of Costs for Paperwork Reduction Act and Regulatory Flexibility Act

In order to meet the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, Executive Order 13272, and the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and the PRA's implementing regulations, 5 CFR Part 1320, the Department has undertaken an analysis of the financial burdens to covered labor organizations associated with complying with the requirements contained in this final rule. The focus of the RFA and Executive Order 13272 is to ensure that agencies ''review rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the [RFA].'' Executive Order 13272, Sec. 1. The more specific focus of the PRA is ''to reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government.'' 5 CFR 1320.1.

Compliance with the requirements of this rule involve essentially information recordkeeping and information reporting tasks, and the one-time, non-recurring expenses associated with modifying information systems to capture and report the required information. Therefore, the overall impact to covered labor organizations, and in particular, to small labor organizations that are the focus of the RFA, is essentially equivalent to the financial impact to labor organizations assessed for the purposes of the PRA. As a result, the Department's assessment of the compliance costs to covered labor organizations for the purposes of the PRA is used as a basis for the analysis of the impact of those compliance costs to small entities addressed by the RFA. The Department's analysis of PRA costs, and the quantitative methods employed to reach conclusions regarding costs, are presented here first. The conclusions regarding compliance costs in the PRA analysis are then employed to assess the impact on small entities for the purposes of the RFA analysis, which follows.

Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501. As discussed in the preamble, this rule implements an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on labor organizations that must provide the information, including small labor organizations; (4) the form, instructions, and explanatory information in the preamble are written in plain language that will be understandable by reporting labor organizations; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping

[8] The Department understands that plans that have Medicare D coverage will not receive the Medicare reimbursement until 90 to 120 days from the date a request for reimbursement is filed. Such trusts typically will not be asked to provide information to labor organizations because such are required to file a Form 5500, eliminating any Form T–1 reporting obligation by the labor organization. However, assuming for purposes of discussion that a trust had to compile information for this purpose, a filer would not have to delay the report for the receipt of the Medicare reimbursement because the Form T–1 requires the reporting of receipts and disbursement on a cash basis. Thus, it need report Medicare reimbursements received as of the close of the fiscal year.

practices of labor organizations that must comply with them; (6) this preamble informs labor organizations of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, the fact that reporting is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is ''appropriate to the purpose for which the information is to be collected''; and (9) the changes implemented by this rule make extensive, appropriate use of information technology ''to reduce burden and improve data quality, agency efficiency and responsiveness to the public.'' 5 CFR 1320.9; *see also* 44 U.S.C. 3506(c).

A. Issues Raised in Public Comments Related to the Department's Cost Estimates

As the Department has done with the final rule, the NPRM employed the cost conclusions derived in the PRA analysis in order to assess burdens to small labor organizations for the purposes of the RFA analysis. As a result, for the most part, the comments received by the Department on its costs analysis did not indicate whether they were specifically addressing the PRA analysis, the RFA, or both. Because of the interrelationship between the analyses, and because the RFA specifically requires the Department to address comments related to its burden analysis,[9] the Department has construed all comments received regarding its assessment of costs to the regulated community as comments related to both the PRA and the RFA analysis. Therefore, the introduction to the PRA analysis below is a complete recitation of the significant issues raised by the comments, the Department's response thereto, and changes made to both the PRA and RFA analyses as a result of those comments.

As noted above, the Department received a number of comments related to its analysis of the financial costs to covered labor organizations associated with compliance with this rule. The vast majority of these comments raised generalized concerns regarding the Department's conclusions relating to costs of compliance. Representative of these generalized comments is one from a representative of approximately 100 jointly sponsored Taft-Hartley trusts asserting that ''[t]he costs of compliance [stated in the NPRM] are grossly underestimated. Initially, review of the cost estimates is necessarily difficult due to the lack of sufficient detail regarding the reportable items. * * * The estimates * * * significantly under report the number of hours involved in these complex reporting obligations.'' In addition to general criticism regarding the Department's cost estimates, many comments on the subject of costs came from trusts asserting that the compliance costs will be borne by trusts rather than labor organizations, the entities with the legal obligation to file the Form T–1. Representative of these comments was a statement from a labor organization-sponsored multiemployer benefit fund, which noted its concern ''about the time and effort that would have to be put into preparing the information for the union's T–1 filing. [The trusts] would have to reprogram [their] computer systems, and additional staff time would be required to complete many of the details. The hours of time [the Department] suggest[s] would be needed to perform these tasks [is] significantly underestimate[d].'' A small number of cost-related comments challenged the rule based on an assessment of compliance costs as balanced against the benefits of the rule: ''Even a cursory review of the reporting requirements imposed by the Proposed Rule indicates that the compliance burden will be significantly greater. The Proposed Rule does not offer Fund participants and beneficiaries any increased value in terms of transparency or available information concerning the Funds beyond that which is already available to participants and beneficiaries.''

In response to these general comments, the Department notes that the final cost analysis undertaken in this rule presents a more refined methodology than was performed in the NPRM, as noted in the discussion below, which has significantly improved the Department's estimates of overall costs of compliance with this rule by covered labor organizations. In addition, in response to those comments that assert that the Department failed to account for costs borne by trusts in which a labor organization has a reporting obligation, the Department has indicated elsewhere in this rule that labor organizations must reimburse trusts for the trust's costs for implementation and maintenance of recordkeeping and for information transmission. Thus, the Department's analysis below expects that while some trusts may perform some of the recordkeeping and other tasks related to reporting required by the rule, those costs will ultimately be borne by labor organizations with the reporting obligations contained in this rule. Finally, in response to those comments that call for a more traditional cost-benefit analysis of this rule, the Department notes that neither the PRA nor the RFA compels such a study.

In addition to the general comments related to cost under-estimation and burdens on trusts, the Department received more specific comments containing alternate estimates suggested for inclusion in the Department's assessment of the costs of compliance. For instance, a number of commenters stated that it would not be uncommon for even a modest-sized local labor organization to have multiple T–1 Forms to file. In addition, comments from trusts and third-party administrators concurred that they would have to reprogram their reporting and recordkeeping systems to compile the necessary information for the Form T–1, and one administrator estimated that it would require approximately 300 hours to compile the necessary information. A national pension fund estimated that its programmers would spend 55 hours reprogramming the current system and staff would spend 120 hours compiling the necessary information. Two commenters estimated that it would cost, on average, anywhere from $15,000 to $18,147.81 per filer to comply with the Form T–1 reporting requirements. A third commenter concluded that compliance costs would fall in a range between $45,000 and $82,500. Most of the alternate calculations offered by commenters for various data points appeared to be approximations without much, or any, analysis to support the figures.

One comment was much more substantial, however. This commenter challenged the methodology used by the Department to arrive at its conclusions regarding costs, and also offered alternate methodology. The commenter's methodological objections were adopted by reference in several other comments. The commenter's critique identifies four separate but interrelated steps in the Department's analysis of compliance costs in the

[9] The RFA requires that an agency's final regulatory flexibility analysis include ''a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.'' 5 U.S.C. 604(a)(2).

NPRM, and argues that each step contains methodological errors that result in serious underestimations of costs. According to the commenter, the first step—the identification of tasks needed to complete a Form T–1 and the amount of time each task takes to complete—is flawed because the Department failed to capture in sufficient detail all tasks that the Form LM–2 filer and a trust must complete, failed to specify which person or job classification would complete the identified tasks, and failed to provide a clear methodology for how it arrived at the time values needed to accomplish the identified tasks. In challenging the Department's assumptions as to these data points, the commenter conducted an on-line survey of section 3(l) trusts, which was responded to by 40 multiemployer plans. Among other things, the survey asked whether any information required by Form T–1 was currently tracked by plans, and the approximate number of receipts, disbursements and payments to officers and employees that would be reported. A number of plans indicated that they were not capable of providing the required information on receipts, disbursements, and payments to officers and employees because they could not track the name, address, or purpose of the receipt or disbursement. Of those plans currently capable of reporting the required Form T–1 information, on average they estimated that in the first year it would take 54.5 hours to generate receipt information, 56.0 hours to generate disbursement information, and 26.1 hours to generate the required information on payments to officers and employees, for an overall total of 136.6 hours to compile required reportable information. This figure is almost twice (71.7 hours) the amount of time the Department allocated to costs of reporting and recordkeeping in the first year. *See* NPRM, 73 FR 11775, Table 3.

The commenter also found flaws with the Department's data in the second part of the cost analysis—estimating the number of Form LM–2 filers that have one or more trusts to report. Regarding this piece of the analysis, the commenter criticized the Department's estimates that 10% of Tier I filers, 25% of Tier II filers, and 100% of Tier III filers would have trusts to report, and instead relied on actual data contained in the Form LM–2 reports in the Department's e.LORS database.[10] Based on data contained in e.LORS databases from the 2006 Form LM–2 reports, the commenter claimed that 2,279 filers indicated that they had at least one reportable section 3(l) trust, whereas the Department's estimates regarding percentages of filers with at least one reportable trust resulted in a number of filers less than half of the commenter's figure.

The third step in the analysis—estimating the average number of Form T–1s that would be filed by Form LM–2 filers indicating an interest in at least one trust—the commenter argued is flawed because the Department makes ''undocumented assumptions'' about the number of trusts each Form LM–2 filer would need to report. The NPRM assumed that, on average, Tier I filers would need to file reports on one trust, Tier II filers would need to file reports on two trusts, and Tier III filers would file four reports. NPRM, 73 FR 11774. Rejecting those assumptions, the commenter instead randomly selected a subset of 118 Form LM–2 filers of the 2,279 filers he found that indicated an interest in at least one trust based on a search of e.LORS data with 2006 Form LM–2 filing information. Of these 118 randomly selected filers, the commenter calculated that, on average, Tier I filers actually reported an interest in two trusts, Tier II filers actually reported an interest in 3.5 trusts, and Tier III filers actually reported an interest in 5 trusts. Based on this sample, the commenter extrapolates the data to conclude that in 2006, 2,279 Form LM–2 filers had an interest in 7,486 trusts, which is over three times as many Form T–1 trusts as the Department's NPRM estimates. *See* NPRM, 73 FR 11774, Table 2.

Finally, the commenter asserted that the fourth part of the Department's analysis—estimating the total burden cost—is flawed for several reasons. First, in assigning a value to the hours undertaken to complete the Form T–1 filing, the Department used only hourly wage rates and did not employ total compensation figures, which include costs associated with health insurance, pension contributions and other non-wage compensation and which increase wage rates by 30% generally. Second, the commenter contended that the Department's analysis lacked specificity in stating which employees in which job categories would perform the tasks identified as necessary to file the Form T–1. Third, the commenter stated that the Department's estimates do not consider the costs of equipment or data transfer, or amounts that trusts may charge labor organizations for preparing and supplying information required by the Form T–1. Finally, the commenter argued that the wage rates employed in the NPRM lack credibility, and he asserted that he was unable to confirm them because the Department did not indicate which National Compensation Survey was used in the analysis.[11]

The Department thoroughly analyzed the commenter's critique of the methods used in the NPRM to assess costs associated with compliance with this rule. The commenter's analysis employed several improvements in the methods used by the Department in the NPRM, and the analysis provided the Department with insights about revisions that could be made to the quantitative analysis of compliance costs. However, because of some fundamental flaws in the commenter's analysis, the Department declines to adopt the commenter's methods in whole, and, as a result, declines to adopt the commenter's ultimate conclusions regarding costs of compliance with this rule. For instance, a sample size of 118 Form LM–2 filers is insufficient to make generalizations about a population of 2,279 filers. Nor can a portion of the 118 filers be used to make generalizations about the individual tiers without accepting a very low confidence level. Further, the commenter focused on section 3(l) trusts in general, not trusts for which labor organizations would be required to file the Form T–1. At least some of the listed section 3(l) trusts would not meet the financial dominance or control elements of the Form T–1. At best, the commenter's estimate can be seen as the maximum possible number of Form T–1s required to be filed by the 118 labor organizations studied. Therefore, the Department cannot rely on the commenter's analysis to determine the number of Form T–1s that will be filed each year. Similarly, while the online survey of trusts provides an interesting snapshot of multiemployer plans, no general assumptions can be drawn from 40 self-selected multiemployer plans. This survey, like all self-selecting surveys, is subject to self-selection bias. In this case, it is likely that the participants' decision to participate is correlated with a high number of hours needed to provide the information to complete the Form T–1, making the participants a non-representative sample. Further, no general assumptions

[10] As indicated in the NPRM, the Department's analysis segregated labor organizations into three ''tiers,'' based on size of annual receipts. Tier I labor organizations are those with annual receipts between $250,000 and $499,999; Tier II labor organizations are those with annual receipts between $500,000 and $6.5 million; and Tier III labor organizations are those with annual receipts over $6.5 million.

[11] The Department notes that it specifically cited the National Compensation Survey: Occupational Wages in the United States, June 2006 (BLS July 2007, p. 5) in the NPRM. *See* 73 FR 11776 n.17.

can be made about multiemployer plans or section 3(l) trusts from a sample size of 40 without accepting a very low confidence level. Finally, even if the sample size is accepted the information collected from multiemployer plans cannot be used to make general assumptions about all section 3(l) trusts. Multiemployer plans are one of the most complicated types of section 3(l) trusts. One plan can cover hundreds to thousands of employees working for two or more employers. Therefore, these trusts will have the greatest number of receipts, disbursements, and employees. The Department cannot rely on the commenter's analysis to calculate the estimated burden.

Based upon careful consideration of the commenter's cost estimates and the methods employed to arrive at cost estimates, the Department has made adjustments to its quantitative methods and therefore to its burden estimates. As reflected in the analysis that follows, the Department has, among other things:

- Relied on data reported from Form LM–2 filers in 2006 contained in the Department's e.LORS database to estimate more accurately the number of Form T–1s that a covered labor organization may file;
- Analyzed a randomly selected, statistically reliable sample of the 2,292 Form LM–2 filers in 2006 that indicated an interest in at least one trust in order to better estimate the number of trusts about which a labor organization may need to file Form T–1s;
- Disaggregated the tasks associated with completing the Form T–1 in a more detailed fashion so that the number of hours estimated as necessary to prepare the Form T–1 is more accurate; and
- Employed a total compensation figure to estimate the costs to a labor organization in preparation of the Form T–1.[12]

As a result of these improvements to the Department's methodological approach, the estimates of costs to labor organizations for compliance with this rule have been revised upward.[13] Those figures are reported in the analyses that follow.

Pursuant to the PRA, the information collection requirements contained in this final rule were submitted to OMB and received approval on September 29, 2008 under OMB control number (1215–0188). The approval will expire on September 30, 2011. The Form T–1 and its instructions, which are modified to reflect the new filing criteria, are published as an appendix to this final rule.

B. Summary of the Rule: Need and Economic Impact

This final rule implements the Form T–1 Trust Annual Report required to be filed by the largest labor organizations for trusts in which they are interested, under conditions prescribed by the Secretary of Labor. *See* 29 U.S.C. 402(l); 431(b); 438.

As discussed in the preamble, members have long been denied important information about labor organization funds that were being directed to other entities, presumably for the members' benefit, such as joint funds administered by a labor organization and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. The Form T–1 is necessary to close this gap, prevent certain trusts from being used to evade the Title II reporting requirements, and provide labor organization members with information about financial transactions. Trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a labor organization's financial condition and operations, including a full accounting to labor organization members whose work obtained the payments to the trust. It is also necessary to prevent circumvention and evasion of the reporting requirements imposed on officers and employees of labor organizations and on employers.

The form is designed to take advantage of technology that makes it possible to increase the detail of information that is required to be reported, while at the same time making it easier to file and publish the contents of the reports. Labor organization members thus will be able to obtain a more accurate and complete picture of their labor organization's financial condition and operations without imposing an unwarranted burden on respondents. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain, assemble, and produce such documentation in the event of an inquiry from a labor organization member or an audit by an OLMS investigator.

The Department's NPRM in this rulemaking contained an initial PRA analysis, which was also submitted to OMB. Based upon careful consideration of comments received regarding the Department's estimate of costs in the NPRM, the Department made methodological revisions which resulted in adjustments to its burden estimates in this final rule. The costs to the Department also were adjusted. Federal annualized costs are discussed after the burden on the reporting labor organizations is considered.

Based upon the analysis presented below, the Department estimates that the total first year burden to comply with Form T–1 will be 423,913.74 hours for all covered labor organizations. The total first year compliance costs associated with this burden is estimated to be $15.19 million for all covered labor organizations. Both the burden hours and the compliance costs associated with Form T–1 decline in subsequent years. The Department estimates that the total burden averaged over the first three years for all covered labor organizations to comply with the Form T–1 to be 345,736.92 hours per year. The total compliance costs associated with this burden averaged over the first three years are estimated to be $10.51 million for all covered labor organizations.[14]

C. Overview of Form T–1

The Form T–1 in this rule is identical to the form promulgated at 73 FR 11779, with the exception of the addition of an item requiring the reporting of the trust's EIN and the deletion of an item requiring the listing of the trust's tax status. However, as discussed in the preamble, the scope of the reporting requirement has been narrowed in order to conform the rule with the DC Circuit's decision in *AFL–CIO* v. *Chao*, 409 F.3d 377 (2005). This final rule provides that no Form T–1 will be required if the trust files a report pursuant to 26 U.S.C. 527, or is required to file a Form 5500 pursuant to the requirements of ERISA (if the trust can elect to exempt itself from filing a Form

[12] The NPRM indicated that the Department's initial PRA analysis employed wage rate data adjusted to reflect total compensation. 73 FR 11776. The use of total compensation figures is more apparent in this final cost analysis because, as noted in the discussion that follows, wage figures are adjusted upward by a factor of 30% to account for total compensation, and that upward adjustment is specifically shown in Table 4 below.

[13] This upward revision occurred despite the fact that this final rule reinstated the exemption for section 3(l) trusts that are required to file a Form 5500 under ERISA. That exemption realized a reduction in overall compliance costs for covered labor organizations, but the methodological improvements in the cost analysis offset those savings.

[14] The compliance costs for all covered labor organizations for the first year, and the compliance costs averaged over the first three years—$15.19 million and $10.51 million, respectively—are well below the $100,000,000 threshold that would make this rule economically significant under Executive Order 12866. Therefore, as noted earlier, the Department has determined that this rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866.

5500 then it must file a Form T–1 regardless of whether it takes the exemption or not), or if the organization files publicly available reports with a Federal or state agency as a PAC. Additionally, a labor organization may substitute an audit that meets the criteria set forth in the Form T–1 Instructions for the financial information otherwise reported on a Form T–1.

Form T–1 consists of 15 questions on page 1 that generally identify the labor organization and trust; five yes/no questions covering issues such as whether any loss or shortage of funds was discovered during the reporting year and whether the trust had made any loans to officers or employees of the labor organizations at terms below market rates; four summary numbers for total assets, liabilities, receipts, and disbursements; a schedule for itemizing all receipts of $10,000 or more, individually or in the aggregate, from any entity or individual; a schedule for itemizing all disbursements of $10,000 or more, individually or in the aggregate, to any entity or individual; and a schedule for listing all officers of the trust and payments to them and all employees of the trust who received more than $10,000 from the trust.[15]

Form T–1 and its instructions, which are modified to reflect the changes made to the proposal, are published as an appendix to this final rule. A more complete discussion of the form is set forth at section II.L. of the preamble.

D. Methodology for the Burden Estimates

As an initial matter, it should be noted, as was noted in the NPRM, that some of the numbers included in both this PRA analysis and the preceding regulatory flexibility analysis will not add perfectly due to rounding.

1. Number of Form T–1s Filed

The Department started by determining the population affected by the Form T–1. Form LM–2 Item 10 asks the reporting labor organization to indicate whether it created or participated in the administration of a trust or other fund or organization, as defined in the Form LM–2 instructions, which provides benefits for members or their beneficiaries. If the labor organization indicates that it did have one or more section 3(l) trusts, it must list the trusts, including name, address, and details about the trust, in Form LM–2 Item 69. The Department determined that 2,292 Form LM–2 filers indicated on their 2006 report that they had at least one section 3(l) trust.

In order to improve the estimates concerning the number of trusts about which covered labor organizations would be required to provide T–1 reports, the Department sampled a randomly selected subset of the 2,292 Form LM–2 2006 filers that indicated an interest in at least one trust. The Department first calculated the appropriate sample size. Consistent with commonly accepted statistical practices, the Department determined that a level of precision or sample error of 6%, a confidence interval of 90%, and a degree of variability of 50% (maximum variability) was acceptable for the Form T–1 final burden analysis. The Department concluded that it needed to examine Item 69 on the reports of 174 of the 2,292 labor organizations to determine the average number of section 3(l) trusts per Form LM–2 filers that answered Item 10 ''Yes,'' indicating that it had at least one section 3(l) trust. The sample size of 174 LM filers was then increased by 20% to 210, in order to ensure an appropriate sample size was maintained throughout the analysis.

To improve estimates of means, the Department used a proportionate stratified sample, which ensured that neither large nor small labor organizations were overrepresented in the sample and permitted the final cost figures to be reported without regard to ''tier'' or size, as was done with the NPRM. The population was arranged into three strata based on annual receipts:

- Strata I ($250,000–$499,999 receipts): 380 Form LM–2 filers with section 3(l) trusts
- Strata II ($500,000–$49.9 mil receipts): 1,863 Form LM–2 filers with section 3(l) trusts
- Strata III ($50 mil and higher receipts): 49 Form LM–2 filers with section 3(l) trusts

The proportion of each strata to the population was then determined:

- Strata I ($250,000–$499,999 receipts): 16.58%
- Strata II ($500,000–$49.9 mil receipts): 81.28%
- Strata III ($50 mil and higher receipts): 2.14%

Finally, the sample size from each strata was drawn proportionately to its representation in the population:

- Strata I ($250,000–$499,999 receipts): $210 \times 16.58\% = 35$
- Strata II ($500,000–$49.9 mil receipts): $210 \times 81.28\% = 171$
- Strata III ($50 mil and higher receipts): $210 \times 2.14\% = 4$

Each labor organization that answered Form LM–2 Item 10 affirmatively was assigned a random number. A random number generator was then used to select 35 labor organizations from strata I, 171 labor organizations from strata II, and 4 labor organizations from strata III. After a careful analysis of the Form LM–2 of each of those labor organizations, the Department determined that of the 210 labor organizations studied, five labor organizations (all from strata II) were non-responsive, i.e., either they did not list any trusts in Item 69 or the information provided in Item 69 did not accurately indicate the number of section 3(l) trusts. These five labor organizations were removed from the sample and the burden analysis proceeded based on the remaining 205 labor organizations.

Information on each trust listed in Item 69 in the sampled Form LM–2s, including name, address, EIN, and other information, was entered on a worksheet. The final worksheet listed 663 trusts, including welfare benefit plans, building trusts, strike funds, and pension plans. The information was uploaded and compared to the EBSA database to determine which of these 663 section 3(l) trusts filed a Form 5500 in either 2004 or 2005. It was determined that 383 or 57.77% filed a Form 5500 in either 2004 or 2005. A Form T–1 will not have to be filed for these entities because of the reinstated Form 5500 exemption. Therefore, the 383 trusts that filed Form 5500 were removed from the sample.

It should be noted that inconsistencies in the information reported in Item 69 in the sampled Form LM–2s made it difficult in some instances to determine whether a Form 5500 was filed by the trust. Many of the labor organizations did not include the trust's EIN number. Others did not provide the necessary detail, including incomplete or incorrect names, to determine whether or not a Form 5500 was filed by the trust. The Department surmises that at least some of the remaining 280 trusts filed a Form 5500 in 2006, but cannot calculate the magnitude of the overlap because of insufficient information on the Form LM–2s reviewed. Further, the Department cannot determine which of the section 3(l) trusts meet the financial dominance or managerial control test based on the limited information in the Form LM–2s. Therefore, a Form T–1 will not have to be filed for at least some of the remaining 280 section 3(l) trusts because they do not meet either of the above tests. As a result, the Form T–1 filing estimate calculated in this study

[15] The NPRM contained an inadvertent error stating that page 1 of the Form T–1 contained 14 questions and 6 yes/no questions. 73 FR 11773. These errors have been corrected here.

should be seen as a high estimate, if not a maximum.

The Department assumed that the 205 sampled labor organizations will be required to file a Form T–1 for the remaining 280 trusts. Therefore, based on the 2006 data, each labor organization that indicated it had a section 3(l) trust will file, on average, 1.37 Form T–1s each year after the implementation of this rule:

280 (number of trusts reported by sampled labor organizations)/205 (number of labor organizations in sample) = 1.37 average number of Form T–1s filed each year by all labor organizations

which, based on extrapolation of the 2006 data, results in the expectation that a total of 3,130.54 Form T–1s will be filed yearly by all labor organizations:

1.37 (average number of Form T–1s filed each year per labor organization) x 2,292 reporting labor organizations = 3,130.54 yearly Form T–1s.

2. Hours To Complete and File Form T–1: Recurring and Nonrecurring Reporting and Recordkeeping

The Department estimated burden hours for the nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three-year annual average for the additional nonrecurring and recurring burden hours associated with the final rule.[16]

a. Hours To Complete Page 1

The Department estimates that, on average, labor organizations will expend 1.83 reporting hours each year completing page 1 of the Form T–1, which is broken out as follows. To complete the first page of the Form T–1 the labor organization will have to train new staff on the reporting software, enter trust information, answer Items 9, 14, and 15, provide additional information (if necessary), and sign the report. Items 1, 2, and 4–8 will be automatically filled by the reporting software when the Form T–1 is downloaded. The remaining information provided on the first page of the Form T–1 is very similar to the information provided on the first page of the Form LM–3 (10 items that identify the labor organization and one yes/no question addressing whether or not the organization's records are kept at its mailing address). Experience with the Form LM–3 has indicated that Form LM–3 filers expend approximately 15 minutes each year training new staff on how to fill out the first page of the Form LM–3. Additionally, Form LM–3 filers spend approximately 5 minutes on each item on the Form LM–3. Therefore, the Department has determined that Form T–1 filers will spend 50 minutes filling out the trust information and 15 minutes answering the 3 yes/no questions on page 1. If additional information is required, the Department has determined that the labor organization should be able to fill out the address(es) where the records of the trust and labor organization are maintained in 10 minutes. Finally, the labor organization president and treasurer will be able to sign the Form T–1 in 20 minutes once they have reviewed the report. The president and treasurer will already have the electronic signature software available for signing the Form LM–2, so in most cases it will be a matter of a click on the signature field on Form T–1 to apply the signature.

There is no recordkeeping burden associated with the first page of the Form T–1, because the labor organization should already keep records on the labor organization and trusts in which it is interested to complete the Form LM–2, including the trust's name, address, purpose, and EIN. Further, neither the trust nor the labor organization will have to make any changes to their accounting systems to report the information required on page 1 of the Form T–1.

b. Hours To Complete Page 2

The Department estimates that, on average, labor organizations will expend 1.33 reporting hours each year completing page 2 of the Form T–1, broken out as follows. The labor organization will have to train new staff, answer five questions, enter the total assets, liabilities, receipts, and disbursements, and enter additional information as necessary. Like the first page of the Form T–1, the second page is relatively straightforward. The Department has determined that it will take, on average, 15 minutes for labor organizations to train staff to complete the second page of the Form T–1. The majority of the reporting burden is attributable to Items 16 through 20. Although rare, the types of losses and transactions captured by Items 16 through 20 are of significant importance to both labor organizations and trusts. Each of these losses or transactions should be tracked closely by the trust to ensure that the trust is properly managed and free from preferential insider transactions. Therefore, the trust should be able to easily identify and provide details on any loss or transaction that falls within Items 16 through 20. The Department has determined that the trust can provide the labor organization with answers to Items 16 through 20 in 25 minutes, 5 minutes per question. Further, the Department has determined that the labor organization will spend approximately 30 minutes entering the required details in Item 25 for the items that are answered affirmatively. Due to the rare nature of these transactions, the Departments estimates that, on average, trusts will have one transaction that must be described in Item 25. Finally, the Department has determined that it will take 10 minutes to find and enter the total receipts, disbursements, assets, and liabilities in Items 21, 22, 23, and 24.

There is no recordkeeping burden associated with the second page of the Form T–1. The answers to Items 16 through 20 are tracked by the trust along with receipts and disbursements. Therefore, the recordkeeping burden associated with Items 16 through 20 has been included in the recordkeeping burden for the receipts and disbursements schedules. Further, there is no recordkeeping burden associated with Items 21 through 24. Information provided in Items 21, total assets, and 22, total liabilities, are kept in the normal course of the trust's recordkeeping. Items 23, total receipts, and 24, total disbursements, are easily accessible from records maintained by the trust in the regular course of business. There is no recordkeeping burden associated with Items 23 and 24 as information about receipts and disbursements is already required for their individual schedules.

c. Hours To Revise Information Systems and Train Personnel To Collect Required Information

Working from information provided by the trusts labor organizations will be able to utilize information systems and personnel now used by labor organizations in fulfilling their Form LM–2 obligations. In 2003, Form LM–2 filers had to change their accounting systems to capture information very similar to the information reported on the Form T–1. Experience with the Form LM–2 indicates that, on average, Form T–1 respondents will expend 5.50 hours on each schedule or 16.51 total hours changing their accounting systems in the first year (non-recurring recordkeeping burden) and 4.25 hours

[16] As discussed previously, some labor organizations may request section 3(1) trusts to provide information needed by labor organizations to comply with their Form T–1 reporting olbligations. A labor organization must pay for any expenses incurred by the trust in providing information to the labor organization or in assisting with other tasks associated with the Form T–1 requirements.

on each schedule preparing the systems to report the information (non-recurring reporting burden), including developing, testing, and reviewing revisions to the accounting software; preparing the download methodology (converting data into a format for submission to the Department); and training personnel on each of the schedules.

d. Hours To Complete Receipts, Disbursements, and Officers and Employees Schedules

The reinstatement of the Form 5500 exemption has significantly reduced the variability of types of section 3(l) trusts for which the Form T–1 will need to be filed. A careful analysis of the non-exempt trusts, used in the analysis above, indicates that many if not most of the Form T–1s will be filed for building trusts, strike funds, and apprenticeship and training funds. Unlike pension and health plans, these trusts, on average, will have few disbursements, receipts, officers, and employees. For example, strike funds are likely to have no disbursements unless the labor organization is striking. Further, many of these trusts, including building trusts, are closely associated with the labor organization and function in a similar fashion. Therefore, the Department has estimated the number of disbursements, receipts, officers, and employees listed on the Form T–1 based on the 2006 Form LM–2 data.

The Department estimates that, on average, Form T–1 filers will expend 5.43 hours a year on recordkeeping to document the information necessary to complete the Form T–1 receipts schedule. Based on the sample outlined above, Form LM–2 filers, on average, itemize 11 receipts on Schedule 14 (other receipts). The remaining receipts are reported as aggregates in 12 separate categories: dues, per capita tax, fees, sales of supplies, interest, dividends, rents, sales of investment and fixed assets, loans, repayment of loans, receipts held on behalf of affiliates for transmission to them, and receipts from members for disbursement on their behalf. The average number of itemized receipts listed on Form LM–2 Schedule 14, 11 itemized receipts, was multiplied by 10 to capture all itemized receipts on the Form T–1. The Department did not increase the number of itemized receipts by 13 because it does not believe trusts will have receipts from per capita taxes nor will they hold money for members and affiliates. Therefore, on average, trusts will itemize 109.86 receipts each year. Experience with the Form LM–2 indicates that a labor organization can input all the necessary information on an itemized receipt in 3 minutes. The total number of itemized receipts, 109.86, was multiplied by 3 minutes to reach the yearly recordkeeping burden, 5.43 hours.

For the Form T–1 disbursement schedule the Department estimates that, on average, filers will expend 54.13 hours a year on recordkeeping. The Department estimated the number of itemized disbursements on the Form T–1 by looking at the Form LM–2 filers in the original sample. The sample indicated that the average Form LM–2 has 1,083 itemized disbursements. Like receipts, the Department estimates it will take 3 minutes to input all the necessary information on an itemized disbursement. The total number of itemized disbursements, 1,083, was multiplied by 3 minutes to reach the yearly recordkeeping burden, 54.13 hours. Like labor organizations, trusts are primarily established to provide benefits to members and beneficiaries. Therefore, it is not surprising that the number of disbursements greatly exceeds the number of receipts.

The Department estimates Form T–1 filers will expend 10.07 hours on recordkeeping to compile the information necessary to complete the officers and employees schedule (Schedule 3). The trust will not have to increase recordkeeping for officers and key employees. Trusts are already required to keep records on its officers and key employees for the IRS Form 990, including name, address, current position, salary, fees, bonuses, severance payments, deferred compensation, allowances, and taxable and nontaxable fringe benefits. The filers will have to begin keeping records on non-key employees. Based on the Form LM–2 sample, the Department determined that Form LM–2 filers have, on average, 21.57 employees. Trusts, as employers, keep wage records for each of their employees. However, it is likely that the trusts will not keep records on each employee's allowances, expenses for official business, and other disbursements attributed to the employee. The Form LM–2 sample indicated that most employees did not receive anything in allowances, disbursements for official business, or other disbursements. Those that did receive allowances, 33.30%, received, on average, $6,496.80. Those that did receive disbursements for official business, 71.89%, received, on average, $10,308.49. Finally, those that did receive disbursements other than those individually itemized, 5.17%, received, on average, $2,818.05. The Department determined that the trust would expend 3 minutes on each $10,000 disbursement to employees. The number of employees, 21.57, was multiplied by the average number of disbursements and the proportion of employees that listed each of the disbursements for a total of 10.07 recordkeeping hours.

e. Hours for Data Input

Finally, the Department estimated that Form T–1 filers will spend 3.75 hours on each schedule inputting the data. Inputting the information into the Form T–1 is very similar to inputting data into the Form LM–2. Experience with the Form LM–2 in previous rule makings indicates that labor organizations will spend 15 minutes a year training new staff, 60 minutes preparing the download, 90 minutes preparing and testing the data file, and 60 minutes editing, validating and importing the data.

f. Total Hours Spent on Recordkeeping and Reporting

As discussed above, and as reflected in the following tables, the Department estimates that, on average, labor organizations will expend 94.21 hours per Form T–1 filed on recordkeeping the first year and 69.70 hours per Form T–1 filed on recordkeeping each subsequent year on each Form T–1 filed. Additionally, on average, labor organizations will expend 41.20 hours per Form T–1 filed on reporting the first year and 28.28 hours per Form T–1 filed on reporting each subsequent year on each Form T–1 filed.

TABLE 1—NON-RECURRING BURDEN IN MINUTES PER FORM T–1 FILED

Schedule	Schedule or item description	Non-recurring burden per form T–1 filed							Total non-recurring burden
		Record-keeping burden	Reporting burden						
		Change acct. structure	Design report	Develop query	Test query	Mgmt. review	Document the query process	Train staff	
Page 1	General Trust Identifying Information	0	0	0	0	0	0	0	0
Page 2	Items 16 through 24	0	0	0	0	0	0	0	0
1	Individually Identified Receipts	330.27	60	60	45	30	45	15	585.27
2	Individually Identified Disbursements	330.27	60	60	45	30	45	15	585.27
3	Disbursements to Officers and Employees of the Trust.	330.27	60	60	45	30	45	15	585.27
Total Non-Recurring Burden per Form T–1 Filed		990.82	180	180	135	90	135	45	1,755.82
Total Non-Recurring Burden Hours per Form T–1 Filed		16.51	3.00	3.00	2.25	1.50	2.25	0.75	29.26

TABLE 2—RECURRING RECORDKEEPING BURDEN IN MINUTES PER FORM T–1 FILED

Schedule	Schedule or item description	Recurring record-keeping burden per Form T–1 filed
Page 1	General Trust Identifying Information	0
Page 2	Items 16 through 24	0
1	Individually Identified Receipts	329.57
2	Individually Identified Disbursements	3,247.93
3	Disbursements to Officers and Employees of the Trust	604.4285714
Total Recurring Burden per Form T–1 Filed		4,181.93
Total Recurring Burden Hours per Form T–1 Filed		69.70

TABLE 3—RECURRING REPORTING BURDEN IN MINUTES PER FORM T–1 FILED

Schedule	Schedule or item description	Recurring reporting burden per form T–1 filed									Total recurring reporting burden
		Train new staff	Prepare download	Preparation of test/data file	Edit/validate/import data file	Fill out trust/labor organization information	Answer questions	Fill in assets, liabilities, disbursements, and receipts	Additional information	Signature	
Page 1	General Trust Identifying Information	15	0	0	0	50	15	0	10	20	110
Page 2	Items 16 through 24	15	0	0	0	0	25	10	30	0	80
1	Individually Identified Receipts	15	60	90	60	0	0	0	0	0	225
2	Individually Identified Disbursements	15	60	90	60	0	0	0	0	0	225
3	Disbursements to Officers and Employees of the Trust.	15	60	90	60	0	0	0	0	0	225
Total Recurring Burden per Form T–1 Filed		75	180	270	180	50	40	10	40	20	865
Total Recurring Burden Hours per Form T–1 Filed		1.25	3.00	4.50	3.00	0.83	0.67	0.17	0.67	0.33	14.42

3. Cost of Personnel To Complete and File Form T–1

The Department assumes that, on average, the completion by a labor organization of Form T–1 will involve an accountant/auditor, computer software engineer, bookkeeper/clerk, labor organization president and labor organization treasurer. Based on the 2007 BLS wage data, accountants earn $30.37 per hour, computer engineers earn $41.18 per hour, and bookkeepers/clerks earn $15.76 per hour.[17] BLS has estimated that the total compensation cost is approximately 30.2% higher than wages. Therefore, the Department adjusted each of the BLS salaries to include the additional 30.2% attributed to benefits to estimate the total compensation cost for each of the individuals involved in completing the Form T–1.

[17] The wage and salary data is based on information contained in Bureau of Labor Statistics, Occupational Employment Statistics Survey, 2007.

The Department estimated the average annual salaries of labor organization officers needed to complete tasks for compliance with this rule—the president and treasurer—from responses to salary inquiries contained in the sample of 205 labor organizations that filed a Form LM–2 in 2006 and indicated an interest in at least one section 3(l) trust, as discussed above. *See, supra,* section D.1. These average annual salary figures were then adjusted to include the additional 30.2% attributed to benefits to reflect total

compensation cost for each officer, which the Department calculated as $35.66 per hour for labor organization president and $45.24 per hour for labor organization treasurer.[18]

TABLE 4—COMPENSATION COST TABLE

Title	Salary: hourly	Salary: yearly	Compensation cost: hourly
Accountants/Auditors	$30.37	$63,180.00	$43.51
Computer software engineers, applications	41.18	85,660.00	59.00
Bookkeepers/Clerks	15.76	32,780.00	22.58
President	24.89	51,770.35	35.66
Treasurer	31.58	65,680.48	45.24

Once the compensation costs were calculated, the Department applied those costs to each of the Form T–1 tasks computed in the previous section. Each task was evaluated separately to determine which individual from a particular job category would be needed to complete the task. For instance, as indicated above, the Department determined that trusts will expend 16.51 hours changing their accounting structure. As part of that total, an accountant will spend approximately 3.3 hours of the total 16.51 hours, or 20 percent of the time allotted for this task, updating and changing the accounting structure. The remaining 12.21 burden hours, 80 percent of the total time allotted for this task, will be completed by a computer software engineer. The computer software engineer will have to write the program to track and accept accounting entries specific to the reporting requirements of the Form T–1, *i.e.*, itemization of all receipts and disbursements over $10,000 including name, address, and purpose of receipt or disbursement.

As demonstrated by this example, all tasks identified by the Department above as necessary for compliance with the requirements of this rule were analyzed to determine which personnel would conduct those tasks. The following table presents this analysis of which personnel are needed to perform each task, and the hours that such personnel will spend completing each task.

TABLE 5—COST BY TASK

Burden type	Task	Individual(s) participating	Hourly cost	Hours to complete	Total cost
Non-Recurring Recordkeeping	Install/Setup Hardware	Computer Software Engineer	$59.00	8.00	$471.98
Non-Recurring Recordkeeping	Change Acct. Structure	Computer Software Engineer and Accountant.	55.90	16.51	923.11
Non-Recurring Reporting	Obtain Trust Number	Bookkeeper	22.58	0.17	3.76
Non-Recurring Reporting	Design Report	Computer Software Engineer and Accountant.	51.25	3.00	153.76
Non-Recurring Reporting	Develop Query	Computer Software Engineer and Accountant.	55.90	3.00	167.70
Non-Recurring Reporting	Test Query	Computer Software Engineer, Bookkeeper, and Accountant.	54.08	2.25	121.68
Non-Recurring Reporting	Mgmt. Review	Treasurer	45.24	1.50	67.86
Non-Recurring Reporting	Document the Query Process	Bookkeeper	22.58	2.25	50.80
Non-Recurring Reporting	Train Staff	Computer Software Engineer, Bookkeeper, and Accountant.	41.70	0.75	31.27
Recurring Recordkeeping	Input Records	Bookkeeper	22.58	69.70	1,573.72
Recurring Reporting	Train New Staff	Computer Software Engineer, Bookkeeper, and Accountant.	41.70	1.25	52.12
Recurring Reporting	Information on Form T–1 Provided to Trust.	Accountant	43.51	2.40	104.42
Recurring Reporting	Review Form T–1 and Instructions.	Computer Software Engineer and Accountant.	51.25	4.30	220.39
Recurring Reporting	Review by Trust	Accountant	43.51	2.00	87.02
Recurring Reporting	Form/Information Sent to Labor Organization.	Bookkeeper	22.58	1.00	22.58
Recurring Reporting	Obtain Pre-Filled Form T–1	Bookkeeper	22.58	0.17	3.76
Recurring Reporting	Prepare Download	Bookkeeper	22.58	3.00	67.74
Recurring Reporting	Preparation of Test/Data File	Accountant and Bookkeeper	26.77	4.50	120.44
Recurring Reporting	Edit/Validate/Import Data File	Accountant and Bookkeeper	26.77	3.00	80.30
Recurring Reporting	Fill Out Trust/Labor Organization Information.	Accountant	43.51	0.83	36.26
Recurring Reporting	Answer Questions	Accountant	43.51	0.67	29.01
Recurring Reporting	Fill In Assets and Liabilities	Accountant	43.51	0.17	7.25
Recurring Reporting	Fill Additional Information	Accountant	43.51	0.67	29.01
Recurring Reporting	Management Review	President and Treasurer	40.45	4.00	161.80

[18] The study determined that labor organization presidents make $24.89 an hour. The Department knows that 69.8% of compensation cost is attributed to salary and 30.2% of compensation cost is attributed to benefits. Salary = 69.8% (Compensation Cost) or Compensation Cost = Salary/69.8%. If we apply the preceding equation to the president's salary we come up with a compensation cost of $35.66 (35.66 = 24.89/.698). The same equation was used to calculate compensation cost for accountants, computer software engineers, bookkeepers, and treasurers.

TABLE 5—COST BY TASK—Continued

Burden type	Task	Individual(s) participating	Hourly cost	Hours to complete	Total cost
Recurring Reporting	Signature	President and Treasurer	40.45	0.33	13.48
Total Non-Recurring Recordkeeping and Reporting				37.43	1,991.92
Total Recurring Recordkeeping and Reporting Burden				97.98	2,609.29

4. Calculation of Total Costs to Labor Organizations Filing a Form T–1

Based on the analysis reflected in the table above, the average cost per Form T–1 filed is estimated at $4,851.20 in the first year and $2,609.29 in each subsequent year. The total cost for all Form T–1s filed is estimated at $15,186,874.46 in the first year and $8,168,474.74 in each subsequent year. The Department believes that most of the section 3(l) trusts covered by the Form T–1 will have the necessary hardware to compile the information required by the Form T–1 and provide it to the labor organization(s). However, some of the smallest plans might choose to upgrade their systems. Therefore, the Department has included in these final figures a one-time cost of $250 in the burden analysis to account for any hardware or software purchases. These results are reflected in the table below.

TABLE 6—REPORTING AND RECORDKEEPING BURDEN HOURS AND COSTS FOR T–1

Form	Number of form T–1s filed	Reporting hours per form T–1 filed	Total reporting hours	Recordkeeping hours per form T–1	Total recordkeeping hours	Total burden hours per form T–1 filed	Total burden hours	Average cost per form T–1 filed	Total cost
Form T–1:									
First Year	3,130.54	41.20	128,978.11	94.21	294,935.64	135.41	423,913.74	$4,851.20	$15,186,874.46
Second Year	3,130.54	28.28	88,542.01	69.70	218,194.92	97.98	306,736.92	2,609.29	8,168,474.74
Third Year	3,130.54	28.28	88,542.01	69.70	218,194.92	97.98	306,736.92	2,609.29	8,168,474.74
Three Year Average	3,130.54	32.59	102,020.71	77.87	243,775.16	110.46	345,795.86	3,356.59	10,507,941.31

Final Regulatory Flexibility Analysis

The Department's NPRM in this rulemaking contained initial Regulatory Flexibility Act and Paperwork Reduction Act analyses. As noted above in the introduction to the Department's PRA analysis, because of the overlapping nature of costs for the purposes of both the RFA and PRA analyses, the Department construed all comments received related to the Department's assessment of costs to the regulated community as comments addressing both the PRA and the RFA analyses. The Department's discussion of significant issues raised in comments related to cost estimates, the agency's response thereto, and adjustments made to the methodology as a result of comments is found in the PRA section of this preamble. *See, supra,* Paperwork Reduction Act, Sec. A. As explained in that section, based upon careful consideration of the comments, the Department made significant adjustments to the methodology employed to assess costs, and those adjustments resulted in modifications to conclusions on costs, which have been employed in the following final RFA analysis. Thus, the statutory requirement that the Department provide in its final RFA analysis ''a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments[,]'' 5 U.S.C. 604(a)(2), has been satisfied. Moreover, the Department received no comments addressing or challenging the specific conclusion in the NPRM that the rule does not have a significant economic impact on a substantial number of small entities.

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make initial analyses available for public comment. 5 U.S.C. 603, 604. If an agency determines that its rule will not have a significant economic impact on a substantial number of small entities, it must certify that conclusion to the Small Business Administration (SBA). 5 U.S.C. 605(b).

In the 2003 and 2006 Form T–1 rules, the Department undertook regulatory flexibility analyses, utilizing the SBA's ''small business'' standard for ''Labor Unions and Similar Labor Organizations.'' Specifically, the Department used the $5 million standard established in 2000 (as updated in 2005 to $6.5 million) for purposes of its regulatory flexibility analyses. *See* 65 FR 30836 (May 15, 2000); 70 FR 72577 (Dec. 6, 2005). This same standard has been used for the Department's regulatory flexibility analysis in this rule.

The Department recognizes that the SBA has not established fixed financial thresholds for ''organizations,'' as distinct from other entities. *See A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act*, Office of Advocacy, U.S. Small Business Administration at 12–13, available at *http://www.sba.gov*. The Department further recognizes that under SBA guidelines, the relationship of an entity to a larger entity with greater receipts is a factor to be considered in determining the necessity of conducting a regulatory flexibility analysis. In this regard, the affiliation between a local labor organization and a national or international labor organization, a widespread practice among labor organizations subject to the LMRDA, presents a unique circumstance in determining whether and, if so, how, receipts of labor organizations should be aggregated, if at all, in assessing whether a regulatory flexibility analysis is required and how it should be conducted. The Department has concluded, however, that it would be inappropriate, given the past rulemaking concerning the Form T–1 and the Form LM–2, to depart from the

$6.5 million receipts standard in preparing this regulatory flexibility analysis.

All numbers used in this analysis are based on 2006 data taken from the Office of Labor-Management Standards e.LORS database, which contains data from annual financial reports filed by labor organizations with the Department pursuant to the LMRDA, and BLS wage data.

1. Statement of the Need for, and Objectives of, the Rule

The following is a summary of the need for and objectives of the rule. A more complete discussion is found in the preamble.

The objective of this rule is to increase the transparency of labor organization financial reporting by creating a new form for labor organization trust reporting (Form T–1) to enable members to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the LMRDA by the Department. The Form T–1 is designed to close a reporting gap where labor organization finances in relation to LMRDA section 3(l) trusts were not disclosed to members, the public, or the Department.

One of the LMRDA's primary reporting obligations (Forms LM–2, LM–3, and LM–4) applies to labor organizations, as institutions; other important reporting obligations apply to officers and employees of labor organizations (Form LM–30), requiring them to report any conflicts or potential conflicts between their personal financial interests and the duty they owe to the labor organization they serve, and to employers who must report payments to labor organizations and their representatives (Form LM–10). *See* 29 U.S.C. 432, 433. Requiring labor organizations to report the information required by the Form T–1 provides an essential check for labor organization members and the Department to ensure that labor organizations, labor organization officials, and employers are accurately and completely fulfilling their reporting duties under the Act, obligations that can easily be ignored without fear of detection if reports relating to trusts are not required.

Under the Department's former LM–2 rule (superseded by the revised 2003 Form LM–2), a reporting obligation concerning section 3(l) trusts would arise only if the trust was a ''subsidiary'' of the reporting labor organization and met other requirements previously set by the Department. *See* Form LM–2 instructions in effect prior to the 2003 final rule; *see also* 68 FR 58413. Thus, the former LM–2 rule, which was crafted shortly after the Act's enactment, required reporting by only a portion of the labor organizations that contributed to section 3(l) trusts. During the intervening decades, the financial activities of individuals and organizations have increased exponentially in scope, complexity, and interdependence. 67 FR 79280–81. For example, many labor organizations manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. 67 FR 79280. The complexity of labor organization financial practices, including business relationships with outside firms and vendors, increases the likelihood that labor organization officers and employees may have interests in, or receive income from, these businesses. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for labor organization officers and employees who may operate, receive income from, or hold an interest in such businesses. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between labor organizations, labor organization officials, employers, and other entities, including section 3(l) trusts.

Such trusts ''pose the same transparency challenges as 'off-the-books' accounting procedures in the corporate setting: Large scale, potentially unattractive financial transactions can be shielded from public disclosure and accountability through artificial structures, classification and organizations.'' 67 FR 79282. The Department's former rule required labor organizations to report on only a subset of such trusts. This approach allowed a gap in the reporting of financial information concerning these trusts. The trust funds, if they had been retained by the labor organization, would have appeared on the labor organization's Form LM–2. Despite the close relationship between the labor organization and the trust and the purpose of the funds to benefit the members of the labor organization, transparency ended once the funds left the labor organization and thereby limited accountability. Thus, Form T–1 will essentially follow labor organization funds that remain in closely connected trusts, but which would otherwise go unreported. As a result of non-disclosure of these funds, members have long been denied important information about labor organization funds that were being directed to other entities, presumably for the members' benefit, such as joint trusts administered by a labor organization and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. *See* 67 FR 79285.

The Form T–1 is necessary to close this gap, and to prevent certain trusts from being used to evade the Title II reporting requirements. The Form T–1 will identify the trust's significant vendors and service providers. A labor organization member who is aware that a labor organization official has a financial relationship with one or more of these businesses will be able to determine whether the business and the labor organization official have made required reports. The purpose of the LMRDA disclosure requirements is to prevent financial malfeasance of labor organization money. 67 FR 79282–83. This purpose is demonstrably frustrated when existing reporting obligations fail to disclose, for example, opportunities for fraud. (Examples of situations where money in section 3(l) trusts was being used to circumvent or evade the reporting requirements can be found in the preamble and at 67 FR 79283.)

As explained in the preamble, additional trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a labor organization's financial condition and operations, including a full accounting to labor organization members from whose work the payments were earned. 67 FR 79282–83. This final rule will prevent circumvention and evasion of these reporting requirements by providing labor organization members with financial information concerning their labor organization's trusts when the labor organization, alone or in combination with other labor organizations, selects the majority of the directors or provides the majority of the trust's receipts.

2. Legal Basis for Rule

The legal authority for this final rule is section 208 of the LMRDA. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations

prescribing the form and publication of reports required to be filed under title II of the Act, including rules prescribing reports concerning trusts in which a labor organization is interested, and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. Section 3(l) of the Act, 29 U.S.C. 402(l), defines a ''trust in which a labor organization is interested.''

3. Number of Small Entities Covered Under the Rule

The e.LORS database shows that 4,452 labor organizations filed the Form LM–2 in 2006. Based on an analysis of annual receipts reported by Form LM–2 filers in 2006, the Department estimates that of the 4,452 labor organizations subject to this rule, 4,228 of these, or 94.96 percent of all Form LM–2 filers, have receipts less than $6.5 million, the SBA small business size standard for ''Labor Unions and Similar Labor Organizations.'' These labor organizations have annual average receipts of $1.3 million. Based on e.LORS data, the Department has determined that only 2,009 of these 4,228 labor organizations have an interest in a section 3(l) trust and will have to file Form T–1 reports. The Department estimates that these organizations will file approximately 2,752.33 reports annually (on average about 1.37 reports per labor organization). *See* PRA analysis, *supra*.

The affiliation among labor organizations may have an impact on the number of organizations that should be counted as ''small organizations'' under section 601(4) of the RFA, 5 U.S.C. 601(4). Section 601(4) provides in part: ''The term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' However, for purposes of analysis here and for ready comparison with the RFA analyses in its earlier Form T–1 rulemakings, the Department has used the $6.5 million receipts test for ''small businesses,'' rather than the ''independently owned and operated and not dominant'' test for ''small organizations.'' Application of the latter test likely would reduce the number of labor organizations that would be counted as small entities under the RFA.

4. Relevant Federal Requirements Duplicating, Overlapping or Conflicting With the Rule

To the extent that there are federal rules that duplicate, overlap, or conflict with this rule, some specific exemptions from the requirements of this rule have been provided. First, no Form T–1 need be filed for a trust that is required to file a Form 5500 with EBSA. In addition, no Form T–1 must be filed for a trust that is covered by the Federal Employees Health Benefits Act, 5 U.S.C. 8901 *et seq*. Finally, a labor organization is not required to report a Political Action Committee (PAC) fund, if publicly available reports on the PAC's funds are filed with federal or state agencies, nor must a labor organization file a Form T–1 for a political organization for which reports are filed with the IRS under 26 U.S.C. 527.

5. Differing Compliance or Reporting Requirements for Small Entities

Under the rule, the reporting, recordkeeping, and other compliance requirements apply equally to all labor organizations that are required to file a Form T–1 under the LMRDA.

6. Clarification, Consolidation and Simplification of Compliance and Reporting Requirements for Small Entities

OLMS has updated the e.LORS system to allow labor organizations to file Form T–1 as they file Form LM–2. Under the rule, labor organizations are directed to use an electronic reporting format to maintain financial information. This information can then be electronically compiled in the proper format for electronic filing.

OLMS will provide compliance assistance for any questions or difficulties that may arise from using the reporting software. A toll-free help desk is staffed during normal business hours and can be reached by telephone at 1–866–401–1109.

The use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables officer and employee information to be imported onto the form; makes it easier to enter information; and automatically performs calculations and checks for typographical and mathematical errors and other discrepancies, which reduces the likelihood of having to file an amended report. The error summaries provided by the software, combined with the speed and ease of electronic filing, will also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

7. The Use of Performance Rather Than Design Standards

The Department considered a number of alternatives to the rule that could minimize the impact on small entities. One alternative would be not to create a Form T–1. As stated above, this alternative was rejected because OLMS case files and experience demonstrate that the goals of the Act are not being met with regard to the finances of labor organizations held in section 3(l) trusts. As explained further in the preamble, labor organization members have no information on their labor organization's section 3(l) trusts. Labor organization members need this information to make informed decisions on labor organization governance.

Another alternative would be to limit the proposed reporting requirements to national and international parent labor organizations. However, the Department has concluded that such a limitation would eliminate the availability of meaningful information from local and intermediate labor organizations, which may have a far greater impact on and relevance to labor organization members, particularly since such lower levels of labor organizations generally set and collect dues and provide representational and other services for their members. Such a limitation would reduce the utility of the information to a significant number of labor organization members. Of the estimated 4,452 labor organizations subject to Form T–1 filing requirements under the proposal, just 101 are national and international labor organizations. Requiring only national and international organizations to file Form T–1 would not effectively increase labor organization transparency nor provide any deterrent to fraud and embezzlement by local and regional officials.

Another alternative would be to propose a phase-in of the effective date of the Form T–1, which would provide some labor organizations additional time to modify their recordkeeping systems in order to comply with the new reporting requirement. The Department has concluded, however, that the rule allows all Form T–1 filers sufficient time to adapt to the disclosure requirements and make any necessary adjustments to their recordkeeping and reporting systems. OLMS also plans to provide compliance assistance to any labor organization or section 3(l) trust that requests it. The Department believes it has minimized the economic impact of the form on small labor organizations to the extent possible while recognizing members' and the Department's need for information to protect the rights of labor organization members under the LMRDA.

8. Reporting, Recording and Other Compliance Requirements of the Rule [19]

This analysis only considers labor organizations with annual receipts between $250,000 and $6.5 million. Labor organizations with less than $250,000 in annual receipts are not required to file the Form T–1 and those with annual receipts greater than $6.5 million are outside the coverage of the Regulatory Flexibility Act. This rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary economic impact of the final rule will be the cost of obtaining and reporting required information.

Because the Form T–1 requires the provision of the same trust information regardless of the size of the reporting labor organization, the burden for completing and filing each Form T–1 is the same regardless of the size of the labor organization. In 2006, there were 380 labor organizations with annual receipts between $250,000 and $499,999 who indicated on their Form LM–2 that they were interested in at least one section 3(l) trust. As explained above, these labor organizations will spend, on average, $4,851.20 in the first year per Form T–1 filed, or, on average for all labor organizations in this group, 1.35% of its annual receipts. The cost per Form T–1 filed in each subsequent year will drop to $2,609.29 or, on average for all labor organizations in this group, 0.72% of its annual receipts.

The Department has determined that the impact on the 1,629 labor organizations with annual receipts between $500,000 and $6,500,000 that indicated that they were interested in at least one section 3(l) trust will be significantly smaller than the impact on labor organizations with between $250,000 and $499,999 in annual receipts. Like the smaller labor organizations, these labor organizations will spend, on average, $4,851.20 in the first year per Form T–1 filed and $2,609.29 each subsequent year. However, these costs will only require the labor organization to spend, on average for all labor organizations in this group, 0.28% of its annual receipts in the first year and, on average for all labor organizations in this group, 0.15% of its annual receipts in the second year.

TABLE 7—SUMMARY OF T–1 REGULATORY FLEXIBILITY ANALYSIS

For labor organizations that meet the SBA small entities standard	Total burden hours per respondent per T–1 filed	Total cost per respondent per T–1 filed
First Year Cost of Form T–1:		
For Labor Organizations with $250,000 to $499,999 in Annual Receipts	135.41	$4,851.20
Percent of Average Annual Receipts	n.a.	1.35%
Second Year Cost of Form T–1:		
For Labor Organizations with $250,000 to $499,999 in Annual Receipts	97.98	2,609.29
Percent of Average Annual Receipts	n.a.	0.72%
Percentage Reduction in Cost From Previous Year	n.a.	46.21%
First Year Cost of Form T–1:		
For Labor Organizations with $500,000 to $6,500,000 in Annual Receipts	135.41	4,851.20
Percent of Average Annual Receipts	n.a.	0.28%
Second Year Cost of Form T–1:		
For Labor Organizations with $500,000 to $6,500,000 in Annual Receipts	97.98	2,609.29
Percent of Average Annual Receipts	n.a.	0.15%
Percentage Reduction in Cost From Previous Year	n.a.	46.21%

9. Conclusion

The Regulatory Flexibility Act does not define either ''significant economic impact'' or ''substantial'' as it relates to the number of regulated entities. 5 U.S.C. 601. In the absence of specific definitions, ''what is 'significant' or 'substantial' will vary depending on the problem that needs to be addressed, the rule's requirements, and the preliminary assessment of the rule's impact.'' *A Guide for Government Agencies, supra*, at 17. As to economic impact, one important indicator is the cost of compliance in relation to revenue of the entity. *Id.*

In this case, as shown in the table above, the Department has determined that the costs of compliance with this rule in the first year will consist of between 0.28% and 1.35% of the revenue of all small labor organizations, those with annual receipts between $250,000 and $6.5 million. In the subsequent years, compliance costs for those labor organizations will be between 0.15% and 0.72% of their annual receipts. The Department concludes that this economic impact is not significant. As to the number of labor organizations affected by this rule, the Department has determined by examining e.LORS data that in 2006, the Department received 4,228 Form LM–2s from labor organizations with receipts between $250,000 and $6,500,000, or just 17.6% of the 24,065 labor organizations that must file any of the annual financial reports required under the LMRDA (Forms LM–2, LM–3, or LM–4). The Department concludes that the rule does not impact a substantial number of small entities. Therefore, under 5 U.S.C. 605, the Department concludes that the final rule will not have a significant economic impact on a substantial number of small entities.

Electronic Filing of Forms and Availability of Collected Data

Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The current forms can be downloaded from the OLMS Web site. OLMS has also implemented a system to require Form LM–2 and Form T–1 filers and permit Form LM–3 and Form LM–4 filers to submit forms electronically with digital signatures. Labor organizations are currently required to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form.

The OLMS Internet Disclosure site at *http://www.unionreports.gov* is available for public use. The site contains a copy of each labor

[19] The estimated burden on labor organizations is discussed in detail in the section concerning the Paperwork Reduction Act, *supra*. The figures discussed in the text are derived from the figures explained in that section.

organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database on the information in each report that is searchable through the Internet. Form T–1 filings will be available on the Web site.

OLMS includes e.LORS information in its outreach program, including compliance assistance information on the OLMS Web site, individual guidance provided through responses to e-mail, written, or telephone inquiries, and formal group sessions conducted for labor organization officials regarding compliance.

Information about this system can be obtained on the OLMS Web site at *http://www.olms.dol.gov*. Digital signatures ensure the authenticity of the reports.

List of Subjects in 29 CFR Part 403

Labor unions, Trusts, Reporting and recordkeeping requirements.

Text of Rule

■ Accordingly, the Department amends part 403 of 29 CFR Chapter IV as set forth below:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 1. The authority citation for part 403 is revised to read as follows:

Authority: Labor-Management Reporting and Disclosure Act Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4–2007, May 2, 2007, 72 FR 26159.

■ 2. In § 403.2, paragraph (d) is revised to read as follows:

§ 403.2 Annual financial report.

* * * * *

(d)(1) Every labor organization with annual receipts of $250,000 or more shall file a report on Form T–1 for each trust that meets the following conditions:

(i) The trust is of the type defined by section 3(l) of the LMRDA, i.e., the trust was created or established by the labor organization or the labor organization appoints or selects a member of the trust's governing board; and the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(1)); and the labor organization, alone or with other labor organizations, either:

(A) Appoints or selects a majority of the members of the trust's governing board; or

(B) Makes contributions to the trust that exceed 50 percent of the trust's receipts during the trust's fiscal year; and

(ii) None of the exemptions discussed in paragraph (d)(3) of this section apply.

(iii) For purposes of paragraph (d)(1)(i)(B), contributions by an employer pursuant to a collective bargaining agreement with a labor organization shall be considered contributions by the labor organization.

(2) A separate report shall be filed on Form T–1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization.

(3) No Form T–1 should be filed for any trust

(i) that meets the statutory definition of a labor organization and already files a Form LM–2, Form LM–3, or Form LM–4,

(ii) that the LMRDA exempts from reporting, such as an organization composed entirely of state or local government employees or a state or local central body,

(iii) established as a Political Action Committee (PAC) if timely, complete and publicly available reports on the PAC are filed with a Federal or state agency,

(iv) established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service,

(v) constituting a federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA)

(vi) required to file a Form 5500. For purposes of this section only, a trust is ''required to file a Form 5500'' if a plan administrator is required to file an annual report on behalf of the trust under 29 U.S.C. section 1021 and/or 1024. A trust on whose behalf such annual report is required to be filed that is eligible for an exemption from filing the annual report, the Form 5500, or the Form 5500–SF is not included within this exemption and is deemed for purposes of this section only not to be a trust ''required to file a Form 5500,'' even if a Form 5500 is filed on behalf of that trust. A trust eligible to file a notice or statement with the Secretary of Labor in lieu of an annual report pursuant to an exemption from, or as an alternative method of complying with, the annual reporting obligation is not included within this exemption, even if it does file a Form 5500 or Form 5500–SF.

(4) A labor organization may complete only Items 1 through 15 and Items 26 through 27 (Signatures) of Form T–1 if annual audits prepared according to standards set forth in the Form T–1 instructions and a copy of the audit is filed with the Form T–1.

(5) If such labor organization is in trusteeship on the date for filing the annual financial report, the labor organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in Sec. 408.5 of this chapter.

■ 3. Amend § 403.5 by revising paragraph (d) to read as follows:

§ 403.5. Terminal financial report.

* * * * *

(d) If a labor organization filed or was required to file a report on a trust pursuant to Sec. 403.2(d) and that trust loses its identity during its subsequent fiscal year through merger, consolidation, or otherwise, the labor organization shall, within 30 days after such loss, file a terminal report on Form T–1, with the Office of Labor-Management Standards, signed by the president and treasurer or corresponding principal officers of the labor organization. For purposes of the report required by this paragraph, the period covered thereby shall be the portion of the trust's fiscal year ending on the effective date of the loss of its reporting identity.

■ 4. In § 403.8, revise paragraph (c)(3) to read as follows:

§ 403.8 Dissemination and verification of reports.

* * * * *

(c) * * *

(3) This provision does not apply to disclosure that is otherwise prohibited by law or that would endanger the health or safety of an individual, or that would consist of individually identifiable health information the trust is required to protect under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Regulation.

* * * * *

Signed in Washington, DC, this 24th day of September 2008.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

Appendix

Note: This appendix, which will not appear in the Code of Federal Regulations, contains Form T–1 and instructions.

BILLING CODE 4510–86–P

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

FORM T-1 TRUST ANNUAL REPORT

Form Approved
Office of Management and Budget
No. xxxxxxx
Expires: xx-xx-xxxx

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.

For Official Use Only

1. FILE NUMBERS
UNION a) ___ - ___
TRUST b) T ___ - ___

2. PERIOD COVERED
From MO DAY YEAR
Through MO DAY YEAR

3. (a) AMENDED - If this is an amended report, check here: ☐
(b) HARDSHIP - If filing under the hardship procedures, check here: ☐
(c) TERMINAL - If this is a terminal report, check here: ☐

4. NAME OF UNION

5. DESIGNATION (Local, Lodge, etc.)

6. DESIGNATION NUMBER

7. UNIT NAME OF UNION (if any)

8. MAILING ADDRESS OF UNION (use capital letters)
First Name | Last Name
P.O. Box - Building and Room Number (if any)
Number and Street
City
State | Zip Code + 4

9. Are the union's records kept at its mailing address? (If "No," provide address in item 25.) Yes ☐ No ☐

10. NAME OF TRUST

11. TRUST EMPLOYER IDENTIFICATION NUMBER (EIN)

12. PURPOSE OF TRUST

13. MAILING ADDRESS OF TRUST (use capital letters)
First Name | Last Name
P.O. Box - Building and Room Number (if any)
Number and Street
City
State | Zip Code + 4

14. Are the trust's records kept at its mailing address? (If "No," provide address in item 25.) Yes ☐ No ☐

15. Will the labor organization be submitting an independent, certified audit in place of the remainder of Form T-1? Yes ☐ No ☐

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section V on penalties in the instructions.)

26. SIGNED: _____ PRESIDENT
on ___/___/___ (___) ___ - ___
Date | Telephone Number

27. SIGNED: _____ TREASURER
on ___/___/___ (___) ___ - ___
Date | Telephone Number

Form T-1 (2008)

Page 1 of 5

COMPLETE ITEMS 16 THROUGH 25

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T ___ - ___

16. During the reporting period did the trust discover any loss or shortage of funds or other property? *(Answer "Yes" even if there has been repayment or recovery.)* Yes ☐ No ☐

17. During the reporting period did the trust acquire or dispose of any goods or property in any manner other than by purchase or sale? Yes ☐ No ☐

18. During the reporting period did the trust liquidate, reduce or write-off any liabilities without full payment of principal and interest? Yes ☐ No ☐

19. Has the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates? Yes ☐ No ☐

20. During the reporting period did the trust liquidate, reduce or write-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest? Yes ☐ No ☐

If the answer to any of the above questions is "Yes," provide details in Item 25 (Additional Information) as explained in the instructions for each item.

21. Enter the total assets of the trust at the end of the reporting period. $

22. Enter the total liabilities (debts) of the trust at the end of the reporting period. $

23. Enter the total receipts of the trust during the reporting period. $

24. Enter the total disbursements of the trust during the reporting period. $

Please be sure to:
* Enter your labor organization's 6-digit file number and the trust's 7-digit file number in Item 1.
* Have your labor organization's president and treasurer sign the Form T-1 in Items 26 and 27.
* Complete Schedules 1 through 3

25. ADDITIONAL INFORMATION *(if more space is needed, attach additional pages properly identified.)*

Item Number	

SCHEDULE 1 - INDIVIDUALLY IDENTIFIED RECEIPTS

(List all entities from whom the trust received a total of $10,000 or more during the reporting period.)

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T ___ - ___

Initial Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Receipts Listed Above		
	(G) Total of All Receipts from Continuation Pages with this Payer		
	(H) Total of All Itemized Receipts with this Payer (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Receipts with this Payer		
	(J) **Total of All Receipts with this Payer** (Sum of (H) and (I))		

SCHEDULE 2 - INDIVIDUALLY IDENTIFIED DISBURSEMENTS

(List all entities that received $10,000 or more in total disbursements from the trust during the reporting period.)

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T ___ - ___

Initial Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of Disbursements Listed Above		
	(G) Total of All Disbursements from Continuation Pages with this Payee		
	(H) Total of All Itemized Disbursements to this Payee (Sum of (F) and (G))		
	(I) Total of All Non-Itemized Disbursements to this Payee		
	(J) **Total of All Disbursements to this Payee** (Sum of (H) and (I))		

SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T ___ - ___

Page 1 of ____

Full Name	(A) LAST, FIRST, MIDDLE INITIAL	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	(F) TOTAL
Title	Treasurer, Trustee, Attorney, etc.					
1. Full Name						
Title						
2. Full Name						
Title						
3. Full Name						
Title						
4. Full Name						
Title						
5. Full Name						
Title						
6. Full Name						
Title						
7. Full Name						
Title						
8. Full Name						
Title						
9. Full Name						
Title						
10. Total from Continuation pages (if any)						
11. Total of Lines 1 through 10						

CONTINUATION ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 1 and 2

UNION FILE NUMBER (a): ___ – ___

TRUST FILE NUMBER (b): T ___ – ___

Schedule	Page Number	Total Number of Continuation Pages

Continuation Itemization Page

Name and Address (A)	Purpose (C)	Date (D)	Amount (E)
(B) Type or Classification			
	(F) Total of All Transactions Listed Above		

Form T-1 (2008)

SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

UNION FILE NUMBER (a): ___ - ___

TRUST FILE NUMBER (b): T ___ - ___

Page _____ of _____

Continuation Page

Full Name	(A) LAST, FIRST, MIDDLE INITIAL	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	TOTAL (F)
Title	Treasurer, Trustee, Attorney, etc.					
1. Full Name						
Title						
2. Full Name						
Title						
3. Full Name						
Title						
4. Full Name						
Title						
5. Full Name						
Title						
6. Full Name						
Title						
7. Full Name						
Title						
8. Full Name						
Title						
9. Full Name						
Title						
10. Total of Lines 1 through 9						

Form T-1 (2008)

Public reporting burden for this collection of information is estimated to average 135.41 hours per response in the first year, 97.98 hours per response in the second year, and 97.98 hours per response in the third year. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

INSTRUCTIONS FOR FORM T-1 TRUST ANNUAL REPORT

GENERAL INSTRUCTIONS

I. WHO MUST FILE

Every labor organization subject to the Labor-Management Reporting and Disclosure Act, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA), with total annual receipts of $250,000 or more (labor organization), must file Form T-1 each year for each trust in which it is interested, as defined in the LMRDA at 29 U.S.C. 402(l), if the following conditions exist:

The trust is a trust defined by section 3(l) of the LMRDA, that is, the trust is a trust or other fund or organization (1) that was created or established by a labor organization or a labor organization appoints or selects a member to the trust's governing board; and (2) the trust has as a primary purpose to provide benefits to the members of the labor organization or their beneficiaries (29 U.S.C. 402(l)); and the labor organization alone, or in combination with other labor organizations, either

- appoints or selects a majority of the members of the trust's governing board; or
- contributes greater than 50% of the trust's receipts during the one-year reporting period.

Any contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions.

No Form T-1 should be filed for any trust that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is expressly exempted from reporting in the LMRDA. No report need be filed for a trust established as a Political Action Committee (PAC) if timely, complete, and publicly available reports on the PAC are filed with a Federal or state agency, or for a trust established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service. No Form T-1 need be filed for any trust that is an employee benefit plan that is required to file a Form 5500, i.e., whose plan administrator is required to file an annual report on behalf of the trust, under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1021 and/or 1024, for a plan year ending during the reporting period of the union. If

the plan administrator of the trust, however, is eligible for an exemption from filing a Form 5500 or Form 5500-SF, then a Form T-1 must be filed for that section 3(l) trust regardless of whether a Form 5500 or Form 5500-SF is filed on its behalf. For a definition of plans "required to file a Form 5500" for purposes of filing the Form T-1, see 29 CFR 403.2(d)(3)(vi).[20] No report need be filed for federal employee health benefit plans subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), nor for any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843.

An abbreviated report may be filed for any covered trust or trust fund for which an independent audit has been conducted, in accordance with the standards (as adopted from 29 CFR. 2520.103-1) as discussed in the next paragraph.

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits are prepared according to the following standards and a copy of the audit is filed with the Form T-1. The audit must be performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA). The audit must include notes to the financial statements that disclose: losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and loans made to officers and employees that were liquidated, reduced, or written off. The audit must be accompanied by schedules that disclose: a statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in $10,000 or more of commerce and the total of the transactions with each party.

Form T-1 must be filed with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor's (Department) Employment Standards Administration. The labor organization must file a separate Form T-1 for each trust that meets the above requirements.

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[20] The following sections of title 29 of the Code of Federal Regulations identify for purposes of these instructions, the types of ERISA plans that are not *required* to file a Form 5500: section 2520.104-20 (small unfunded, insured, or combination welfare plans), section 2520.104-22 (apprenticeship and training plans), section 2520.104-23 (unfunded or insured management and highly compensated employee pension plans), section 2520.104-24 (unfunded or insured management and highly compensated employee welfare plans), section 2520.104-25 (day care center plans), section 2520.104-26 (unfunded dues financed welfare plans maintained by employee organizations), section 2520.104-27 (unfunded dues financed pension plans maintained by employee organizations), section 2520.104-43 (certain small welfare plans participating in group insurance arrangements), and section 2520.104-44 (large unfunded, insured, or combination welfare plans; certain fully insured pension plans). *Labor organizations must file a Form T-1 for these types of plans.*

The LMRDA, CSRA, and FSA cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Questions about whether a labor organization is required to file should be referred to the nearest OLMS field office listed at the end of these instructions.

II. When to File

The Form T-1 requirements take effect on January 1, 2009; they apply to a labor organization whose fiscal year *and* the fiscal year of its section 3(l) trust begin on or after January 1, 2009. Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year. The Form T-1 shall cover the trust's most recently completed fiscal year, *i.e.*, the fiscal year ending on or before the closing date of the labor organization's own fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities and Penalties) of these instructions. Examples of filing dates for the Form T-1 follow:

Where the trust and labor organization have the same fiscal years

- The trust and labor organization have fiscal years ending on December 31. The Form T-1 for the fiscal year ending December 31, 2009 must be filed not later than March 31, 2010.

- The trust and the labor organization each has a fiscal year that ends on September 30. The labor organization's first Form T-1 will be for the trust's fiscal year ending September 30, 2010 and must be filed not later than December 29, 2010.

Where the trust and labor organization have different fiscal years

- The trust's fiscal year ends on June 30. The labor organization's fiscal year ends on September 30. Its first Form T-1 for this trust will be for the trust's fiscal year ending June 30, 2010 and must be filed not later than December 29, 2010.

- The trust's fiscal year ends on September 30. The labor organization's fiscal year ends on December 31. Its first Form T-1 for this trust will be for the trust's fiscal year ending September 30, 2010 and must be filed not later than March 31, 2011.

If a trust for which a labor organization was required to file a Form T-1 goes out of existence, a terminal financial report must be filed within 30 days after the date it ceased to exist. Similarly, if a trust for which a labor organization was required to file a Form T-1 continues to exist, but the labor organization's interest in that trust ceases, a terminal financial report must be filed within 30 days after the date that the labor organization's interest in the trust ceased. See Section IX (Trusts That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

III. How to File

Form T-1 must be prepared using software available on the OLMS Web site at and must be submitted electronically to the Department. A Form T-1 filer will be able to file a report in paper format only if it applies for and is granted a continuing hardship exemption of up to one year, but a paper format copy may be submitted initially if the filer asserts a temporary hardship and files electronically thereafter.

Information on downloading the electronic filing software and a detailed user guide can be found on the OLMS Web site at http://www.olms.dol.gov.

HARDSHIP EXEMPTIONS

A labor organization that must file Form T-1 may assert a temporary hardship exemption or apply for a continuing

hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. If it is possible to file Form LM-2, or one or more Form T-1s, electronically, no exemption should be claimed for those reports, even though an exemption is warranted for a related report.

TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing of Form T-1, it may be filed in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing this form under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards, which can be reached at the address below, by email at , by phone at 202-693-0123, or by fax at 202-693-1340.

Note: *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

CONTINUING HARDSHIP EXEMPTION:

(a) The labor organization may apply in writing for a continuing hardship exemption if Form T-1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The written application shall contain the information set forth in paragraph (b).

The application must be mailed to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5609
Washington, DC 20210-0001

Questions regarding the application should be directed to the OLMS Division of Interpretations and Standards, which can be reached at the above address, by e-mail at OLMS-Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

(b) The request for the continuing hardship exemption shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the burden and expense that the labor organization would incur if it was required to make an electronic submission; and (3) the reasons for not submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of labor organization members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

(d) If the request is granted, the labor organization shall submit the report(s) in paper format by the required due date. The filer may be required to submit Form T-1 in electronic format upon the expiration of the period for which the exemption is granted. Indicate in Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing under the hardship exemption procedures.

Note: *If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.*

IV. Public Disclosure

The LMRDA requires that the Department make reports filed by labor organizations available for inspection by the public. Reports may be viewed and downloaded from the OLMS Web site at http://www.unionreports.gov. Reports may also be examined and copies purchased through the OLMS Public Disclosure Room (telephone: 202-693-0125) at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210-0001

V. Officer Responsibilities and Penalties

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form T-1 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in the report or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form T-1 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

The reporting labor organization and the officers required to sign Form T-1 are also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440), provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

VI. Recordkeeping

The officers required to file Form T-1 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least five 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, applicable resolutions, and any electronic documents used to complete and file the report.

SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS

VII. Labor Organizations in Trusteeship

Any labor organization that has placed a

subordinate labor organization in trusteeship is responsible for filing the subordinate's annual financial reports. This obligation includes the requirement to file Form T-1 for any trusts in which the subordinate labor organization is interested. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) 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."

The report must be signed by the president and treasurer or corresponding principal officers of the labor organization that imposed the trusteeship and by the trustees of the subordinate labor organization. In order for the trustees to sign, click on the "Add Signature Block" button on page 1 to open a signature page near the end of the form.

VIII. Completing Form T-1

INTRODUCTION

Upon opening the Form T-1, a Document Status dialog box displays to briefly explain the special features of this document. Click on the "close" button to proceed.

Items 1, 2, and 4 - 7 are "pre-filled" items. These fields were filled in by the software based on information you entered when you accessed and downloaded the form from the OLMS Web site. You cannot edit these fields.

Be sure to click on the "Validate Form" button after you have completed the form but before you sign it. This action will generate an "Errors Page" listing any errors that must be corrected before you sign the form.

ITEMS 1 THROUGH 20

Answer Items 1 through 20 as instructed. Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

1. FILE NUMBER — Enter in Item 1(a) the 6-digit (###-###) file number that OLMS assigned to the labor organization. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at http:// or by contacting the nearest OLMS field office listed at the end of these instructions.

The software will enter the trust's 7-digit (T### ###) file number in Item 1(b) and at the top of each page of Form T-1. This is the number you entered when you downloaded Form T-1. If the number is incorrect, you must download another copy of the form using the correct number. For an initial filing of a Form T-1, this number may be obtained by calling the OLMS Division of Reports, Disclosure & Audits at (202) 693-0124 or by contacting OLMS at the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-5616
Washington, DC 20210-0001

For future filings, if the labor organization does not have the number on file and cannot obtain the number from the trust or from prior reports filed with the Department, information on obtaining the number can be found on the OLMS website at .

2. PERIOD COVERED — The software will enter the beginning and ending dates of the period covered by this report. These are the dates you entered when you downloaded Form T-1. If the dates are incorrect, you must download another form using the correct dates.

If the fiscal year changed, enter in Item 2 (Period Covered) the ending date for the period of less than 12 months, which is the new fiscal year ending date, and report in Item 25 (Additional Information) that the trust changed its fiscal year. For example, if the fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the annual report should cover a full 12-month period from January 1 to December 31.

3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Select Item 3(a) if the labor organization is filing an amended Form T-1 correcting a previously filed Form T-1. Select Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section III. Select Item 3(c) if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust, or if the labor organization's interest in the trust has ceased and this is the terminal report for the trust. Be sure the date the trust ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section IX (Trusts That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

4. NAME OF UNION — Enter the name of the national or international labor organization or if the labor organization is a subordinate entity of such organization the name of the national or international labor organization that granted its charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same parent body are affiliates of each other.

If the labor organization has no such affiliation, enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

5. DESIGNATION — Enter the specific designation, if any, that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc.

6. DESIGNATION NUMBER — Enter the number or other identifier, if any, by which the labor organization is known.

7. UNIT NAME — Enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local."

8. MAILING ADDRESS OF UNION — Enter the current address where mail is most likely to reach the labor organization as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included.

9. PLACE WHERE UNION RECORDS ARE KEPT — If the records required to be kept by the labor organization to verify this report are kept at the address reported in Item 8 (Mailing Address of Union), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the labor organization's records are kept.

10. NAME OF TRUST — The software will enter the name of the trust. This is the trust name you entered when you downloaded Form T-1. If the name is incorrect, you must download another form using the correct name.

This item cannot be edited. If the labor organization needs to change this information, contact the OLMS Division of

Reports, Disclosure, and Audits by telephone at 202-693-0124, by e-mail at , or by fax at 202-693-1345. Indicate that the subject of the inquiry is the Form T-1 pre-filled identifying information.

11. TRUST EMPLOYER IDENTIFICATION NUMBER (EIN) — Enter the Employer Identification Number assigned to the trust by the Internal Revenue Service.

12. PURPOSE — Enter the purpose of the trust. For example, if the trust is a credit union that provides loans to labor organization members, the purpose may be "credit union."

13. MAILING ADDRESS OF TRUST — The software will enter the current address where mail is most likely to reach the trust as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent, and any building and room number should be included. These fields are pre-filled from the OLMS database, but can be edited by the filer.

14. PLACE WHERE TRUST RECORDS ARE KEPT — If the records required to be kept to verify this report are kept at the address reported in Item 13 (Mailing Address of Trust), answer "Yes." If not, answer "No" and provide in Item 25 (Additional Information) the address where the trust's records are kept. The labor organization need not keep separate copies of these records at its own location, as long as members have the same access to such records from the trust as they would be entitled to have from the labor organization.

Note: The president and treasurer of the labor organization are responsible for maintaining the records used to prepare the report.

15. AUDIT EXEMPTION — Answer "Yes" to Item 15 if the labor organization will be submitting an independent, certified audit in place of the remainder of Form T-1. If an audit report meeting the standards described in Section I (Who Must File) is submitted with a Form T-1 that has been completed for Items 1 through 15 then it is not necessary to complete Items 16 through 25, and Schedules 1 through 3. However, Items 26-27 (Signatures) must be completed.

16. LOSSES OR SHORTAGES — Answer "Yes" to Item 16 if the trust experienced a loss, shortage, or other discrepancy in its finances during the period covered. A "loss or shortage of funds or other property" within the meaning of Item 16 does not include delinquent contributions from employers, delinquent accounts receivable, losses from investment decisions, or overpayments of benefits. Describe the loss or shortage in detail in Item 25 (Additional Information), including such information as the amount of the loss or shortage of funds or a description of the property that was lost, how it was lost, and to what extent, if any, there has been an agreement to make restitution or any recovery by means of repayment, fidelity bond, insurance, or other means.

17. ACQUISITION OR DISPOSITION OF ASSETS — If Item 17 is answered "Yes," describe in Item 25 (Additional Information) the manner in which the trust acquired or disposed of the asset(s), such as donating office furniture or equipment to charitable organizations, trading in assets, writing off a receivable, or giving away other tangible or intangible property of the trust. Include the type of asset, its value, and the identity of the recipient or donor, if any. Also report in Item 25 the cost or other basis at which any acquired assets were entered on the trust's books or the cost or other basis at which any assets disposed of were carried on the trust's books.

A filer may group similar acquired or disposed assets together, in a larger category, as well as grouping multiple assets acquired from or disposed of to the

same source. For example, if a trust acquired various types of office equipment as a donation, these assets may be grouped together for purposes of the description in Item 25.

For assets that were traded in, enter in Item 25 the cost, book value, and trade-in allowance.

18. LIQUIDATION OF LIABILITIES — If Item 18 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with the liquidation, reduction, or writing off of the trust's liabilities without the disbursement of cash.

19. LOANS AT FAVORABLE TERMS — If Item 19 is answered "Yes," provide in Item 25 (Additional Information) all details in connection with each such loan, including the name of the labor organization officer or employee, the amount of the loan, the amount that was still owed at the end of the reporting period, the purpose of the loan, terms for repayment, any security for the loan, and a description of how the terms of the loan were more favorable than those available to others.

20. WRITING OFF OF LOANS — If Item 20 is answered "Yes," describe in Item 25 (Additional Information) all details in connection with each such loan, including the amount of the loan and the reasons for the writing off, liquidation, or reduction.

FINANCIAL DETAILS

REPORT ONLY DOLLAR AMOUNTS

Report all amounts in dollars only. Round cents to the nearest dollar. Amounts ending in $.01 through $.49 should be rounded down. Amounts ending in $.50 through $.99 should be rounded up.

Enter a single "0" if there is nothing to report.

REPORTING CLASSIFICATIONS

Complete all items and lines on the form as given. Do not use different accounting classifications or change the wording of any item or line.

ASSETS AND LIABILITIES

21. ASSETS — Enter the total value of all the trust's assets at the end of the reporting period including, for example, cash on hand and in banks, property, loans owed to the trust, investments, office furniture, automobiles, and anything else owned by the trust. Enter "0" if the trust had no assets at the end of the reporting period.

22. LIABILITIES — Enter the total amount of all the trust's liabilities at the end of the reporting period including, for example, unpaid bills, loans owed, the total amount of mortgages owed, payroll withholdings not transmitted by the end of the reporting period, and other debts of the trust. Enter "0" if the trust had no liabilities at the end of the reporting period.

RECEIPTS AND DISBURSEMENTS

Receipts are money actually received by the trust and disbursements are money actually paid by the trust. The purpose of Items 23 and 24 is to report the flow of cash in and out of the trust during the reporting period. Transfers between separate bank accounts or between special funds of the trust do not represent the flow of cash in and out of the trust and should not be reported as receipts and disbursements.

Since Items 23 and 24 report cash flowing in and out of the trust, "netting" is not permitted. "Netting" is the offsetting of receipts against disbursements and reporting only the balance (net) as either a receipt or a disbursement.

Do not include in Item 23 or 24 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in

U.S. Treasury securities, marketable securities, or other investments during the reporting period. "Promptly reinvested" means reinvesting (or "rolling over") the funds in a week or less without using the funds for any other purpose during the period between the sale of the investment and the reinvestment.

Receipts and disbursements by an agent on behalf of the trust are considered receipts and disbursements of the trust and must be reported in the same detail as other receipts and disbursements.

23. RECEIPTS — Enter the total amount of all receipts of the trust during the reporting period including cash, interest, dividends, realized short and long term capital gains, rent, royalties, and other receipts of any kind. Enter "0" if the trust had no receipts during the reporting period.

24. DISBURSEMENTS — Enter the total amount of all disbursements made by the trust during the reporting period including, for example, net payments to officers and employees of the trust, payments for administrative expenses, loans made by the trust, taxes paid, and disbursements for the transmittal of withheld taxes and other payroll deductions. Enter "0" if the trust made no disbursements during the reporting period.

SCHEDULES 1 THROUGH 3

SCHEDULES 1 AND 2 — RECEIPTS AND DISBURSEMENTS

Schedules 1 and 2 provide detailed information on the financial operations of the trust.

All "major" receipts during the reporting period must be separately identified in Schedule 1. A "major" receipt includes: 1) any individual receipt of $10,000 or more; or 2) total receipts from any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

All "major" disbursements during the reporting period must be separately identified in Schedule 2. A "major" disbursement includes: 1) any individual disbursement of $10,000 or more; or 2) total disbursements to any single entity or individual that aggregate to $10,000 or more during the reporting period. This process is discussed further below.

Exemptions

Labor organizations are not required to separately identify any individual or entity on Schedule 1 from which the trust receives receipts of $10,000 or more, individually or in the aggregate, during the reporting period, if the receipts are derived from pension, health, or other benefit contributions that are provided pursuant to a collective bargaining agreement covering such contributions. Additionally, the labor organization is not required to itemize benefit payments on Schedule 2 from the trust to a plan participant or beneficiary, if the detailed basis on which such payments are to be made is specified in a written agreement.

Filers should not include on Schedules 1 and 2 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., "rolled over") in U.S. Treasury securities, marketable securities, or other investments during the reporting period "Promptly reinvested" means reinvesting (or "rolling over") the funds in a week or less without using the funds for any other purpose during the period between the sale of the investment and the reinvestment.

Note: Disbursements to officers and employees of the trust who received more than $10,000 from the trust during the reporting period should be reported in Schedule 3, and need not also be reported in Schedule 2.

Example 1: The trust has an ongoing contract with a law firm that provides a wide range of legal services to which a single payment of $10,000 is made each month. Each payment would be listed in Schedule 2.

Example 2: The trust received a settlement of $14,000 in a small claims lawsuit. The receipt would be individually identified in Schedule 1.

Example 3: The trust made three payments of $4,000 each to an office supplies vendor for office supplies during the reporting period. The $12,000 in disbursements to the vendor would be reported in Schedule 2 in line I of an Initial Itemization Page for that vendor.

Procedures for Completing Schedules 1 and 2

Complete an Initial Itemization Page and a Continuation Itemization Page(s), as necessary, for each payer/payee for whom there is (1) an individual receipt/disbursement of $10,000 or more or (2) total receipts/disbursements that aggregate to $10,000 or more during the reporting period. For each major receipt/disbursement, provide the full name and business address of the entity or individual, type of business or job classification of the entity or individual, purpose of the receipt/disbursement, date, and amount of the receipt/disbursement. Receipts/disbursements must be listed in chronological order.

An Initial Itemization Page must be completed for each payer/payee described above. Additional Itemization Page(s) for additional payers/payees can be generated and added to the end of Form T-1 by pressing the "Add More Receipts" or "Add More Disbursements" button located at the top of the first Initial Itemization Page. If the number of receipts/disbursements exceeds the number of space provided on the Initial Itemization Page a Continuation Itemization Page(s) can be generated and added to the end of the Form T-1 by pressing the "More Receipts for this Payee" or "More Disbursements for this Payer" button located below Column (A). The software will automatically enter the name, address, and type or classification of the payee/payer on the Continuation Itemization Page(s).

Enter in Column (A) the full name and business address of the entity or individual from which the receipt was received or to which the disbursement was made. Do not abbreviate the name of the entity or individual. If you do not have access to the full address, the city and state are sufficient.

Enter in Column (B) the type of business or job classification of the entity or individual, such as printing company, office supplies vendor, lobbyist, think tank, marketing firm, bookkeeper, receptionist, shop steward, legal counsel, union member, etc.

Enter in Column (C) the purpose of the receipt/disbursement, which means a brief statement or description of the reason the receipt/disbursement was made.

Enter in Column (D) the date that the receipt/disbursement was made. The format for the date must be mm/dd/yyyy. The date of receipt/disbursement for reporting purposes is the date the trust actually received or disbursed the money, rather than the date that the right to receive, or the obligation to disburse, was incurred.

Enter in Column (E) the amount of the receipt/disbursement.

The software will enter in Line (F) the total of all transactions listed in Column (E).

The software will enter in Line (G) the totals from any Continuation Itemization Pages for this payee/payer.

The software will enter in Line (H) the total of all itemized transactions with this

payee/payer (the sum of Lines (F) and (G)).

Enter in Line (I) the total of all other transactions with this payer/payee (that is, all individual transactions of less than $10,000 each).

The software will enter in Line (J) the total of all transactions with the payee/payer for this schedule (the sum of Lines (H) and (I))

Special Instructions for Reporting Credit Card Disbursements

Disbursements to credit card companies may not be reported as a single disbursement to the credit card company as the vendor. Instead, charges appearing on credit card bills paid during the reporting period must be allocated to the recipient of the payment by the credit card company according to the same process as described above.

The Department recognizes that filers will not always have the same access to information regarding credit card payments as with other transactions. Filers should report all of the information required in the itemization schedule that is available to the labor organization.

For instance, in the case of a credit card transaction for which the receipt(s) and monthly statement(s) do not provide the full legal name of a payee and the trust does not have access to any other documents that would contain the information, the labor organization should report the name as it appears on the receipt(s) and statement(s). Similarly, if the receipt(s) and statement(s) do not include a full street address, the labor organization should report as much information as is available and no less than the city and state.

Once these transactions have been incorporated into the recordkeeping system they can be treated like any other transaction for purposes of assigning a description and purpose.

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) of Schedule 1 must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

Special Procedures for Reporting Confidential Information

Filers may use the procedure described below to report the following types of information:

- Information that would identify individuals paid by the trust to work in a non-union bargaining unit in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the trust who receive more than $10,000 in the aggregate in the reporting year from the trust. Employees receiving more than $10,000 must be reported on Schedule 3;

- Information that would expose the reporting labor organization's prospective organizing strategy. The labor organization must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances information about past organizing drives should not be treated as confidential;

- Information that would provide a tactical advantage to parties with whom the reporting labor organization or an affiliated labor organization is engaged or will be

engaged in contract negotiations. The labor organization must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;

- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the labor organization or trust is otherwise prohibited by law from disclosing; and,

- Information in those situations where disclosure would endanger the health or safety of an individual.

In Item 25 (Additional Information) the labor organization must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required.

A labor organization member, however, has the statutory right "to examine any books, records, and accounts necessary to verify" the financial report if the member can establish "just cause" for access to the information. 29 U.S.C. 431(c); 29 U.S.C. CFR 403.8 (2002). Any exclusion of itemized receipts or disbursements from Schedules 1 or 2 would constitute a *per se* demonstration of "just cause" for purposes of this Act. Consequently, any labor organization member (and the Department), upon request, has the right to review the undisclosed information in the labor organization's possession at the time of the request that otherwise would have appeared in the applicable schedule if the information is withheld in order to protect confidentiality interests. The labor organization also must make a good faith effort to obtain additional information from the trust.

Information that is withheld from full disclosure is not subject to the *per se* disclosure rule if its disclosure would violate the Health Insurance Portability and Accountability Act of 1996 or applicable regulations or other state or federal law, a non-disclosure provision of a settlement agreement, or would endanger the health or safety of an individual.

NOTE: *Under no circumstances should a filer disclose the identity of the recipient of HIPAA-related payments. Likewise, a filer should not disclose the identity of the recipient of any payment where doing so would violate federal or state law, a non-disclosure provision of a settlement agreement, or would endanger the health or safety of an individual. Filers should not include social security or bank account numbers in completing the form.*

SCHEDULE 3 — DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST

List the names and titles of all officers of the trust, whether or not any salary or disbursements were made to them or on their behalf by the trust. Report all direct and indirect disbursements to all officers of the trust and to all employees of the trust who received more than $10,000 in gross salaries, allowances, and other direct and indirect disbursements from the trust during the reporting period. Benefit payments made to an officer or employee of the trust as a plan participant or beneficiary should not be reported as a payment to a particular individual if the detailed basis on which such payments are to be made is specified in a written agreement. Any such payments, instead, should be included in the total disbursements in Item 24. If no direct or indirect disbursements were made to any officer of the trust enter 0 in Columns (B) through (F) opposite the officer's name.

For purposes of completing the Form T-1,

- An "officer of the trust" means any person designated as an officer in the trust's governing documents, any person authorized to perform the executive functions of the trust, and any member of its executive board or similar governing body.

- An "employee of the trust" means any individual employed by the trust.

These definitions will require a fact-specific inquiry by filers to determine whether trustees, the trust administrator, and other individuals performing service to the trust under its control or the trust administrator's control are officers or employees of the trust.

Continuation pages can be generated if needed by clicking on the "Add More Disbursements To Officers Of Trust" button located at the top of Schedule 3.

NOTE: *A "direct disbursement" to an officer or employee is a payment made by the trust to the officer or employee in the form of cash, property, goods, services, or other things of value.*

An "indirect disbursement" to an officer or employee is a payment made by the trust to another party for cash, property, goods, services, or other things of value received by or on behalf of the officer or employee. "On behalf of the officer or employee" means received by a party other than the officer or employee of the trust for the personal interest or benefit of the officer or employee. Such payments include payments made by the trust for charges on an account of the trust for credit extended to or purchases by, or on behalf of, the officer or employee.

Column (A): Enter in Column (A) the last name, first name, and middle initial of each person who was either (1) an officer of the trust at any time during the reporting period or (2) an employee of the trust who received $10,000 or more in total disbursements from the trust during the reporting period. Also enter the title or the position held by each officer or employee listed. If an officer or employee held more than one position during the reporting period, in Item 25 (Additional Information) list each position and the dates during which the person held the position.

Column (B): Enter the gross salary of the officer or employee (before tax withholdings and other payroll deductions). Include disbursements by the trust for "lost time" or time devoted to trust activities.

Column (C): Enter the total allowances made by direct and indirect disbursements to the officer or employee on a daily, weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (D) or (E), as applicable.

Column (D): Enter all direct and indirect disbursements to the officer or employee that were necessary for conducting official business of the trust, except salaries or allowances which must be reported in Columns (B) and (C), respectively.

Examples of disbursements to be reported in Column (D) include: all expenses that were reimbursed directly to an officer or employee, meal allowances and mileage allowances, expenses for officers' or employees' meals and entertainment, and various goods and services furnished to officers or employees but charged to the trust. Such disbursements should be included in Column (D) only if they were necessary for conducting official business; otherwise, report them in Column (E). Include in Column (D) travel advances that meet the following conditions:

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably

expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.

- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

Do not report the following disbursements in Schedule 3, but they should be reported in Schedule 2 if they meet the definition of a major disbursement:

- Payments to individuals, other than officers and employees of the trust, who perform work or service for the trust;

- Reimbursements to an officer or employee for the purchase of investments or fixed assets, such as reimbursing an officer or employee for a file cabinet purchased for office use;

- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer or employee is in travel status away from his or her home and principal place of employment with the trust if payment is made by the trust directly to the provider or through a credit arrangement;

- Disbursements made by the trust to someone other than an officer or employee as a result of transactions arranged by an officer or employee in which property, goods, services, or other things of value were received by or on behalf of the trust rather than the officer or employee, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of meetings, and food and refreshments for the entertainment of groups other than the officers or employees on official business;

- Office supplies, equipment, and facilities furnished to officers or employees by the trust for use in conducting official business; and

- Maintenance and operating costs of the trust's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

Column (E): Enter all other direct and indirect disbursements to the officer or employee. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer or employee and were essentially for the personal benefit of the officer or employee and not necessary for conducting official business of the trust. Benefits payments to the trust officers and employees are not of the type required to be reported in Schedule 3 if the detailed basis on which such payments are to be made is specified in a written specific trust agreement.

Include in Column (E) all disbursements for transportation by public carrier between the officer or employee's home and place of employment or for other transportation not involving the conduct of official business. Also, include the operating and maintenance costs of all the trust's assets (automobiles, etc.) furnished to the officer or employee essentially for the officer or employee's personal use rather than for use in conducting official business.

Column (F): The software will add Columns (B) through (E) of each line and enter the totals in Column (F).

The software will enter on Line 10 the totals from any continuation pages for

Schedule 3.

The software will enter on Line 11 the totals of Lines 1 through 10 for Columns (B) through (F).

SPECIAL RULES FOR AUTOMOBILES

Include in Column (E) of Schedule 3 that portion of the operating and maintenance costs of any automobile owned or leased by the trust to the extent that the use was for the personal benefit of the officer or employee to whom it was assigned. This portion may be computed on the basis of the mileage driven on official business compared with the mileage for personal use. The portion not included in Column (E) must be reported in Column (D).

Alternatively, rather than allocating these operating and maintenance costs between Columns (D) and (E), if 50% or more of the officer or employee's use of the vehicle was for official business, the trust may enter in Column (D) all disbursements relative to that vehicle with an explanation in Item 25 (Additional Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer or employee's use of the vehicle was for official business, the trust may report all disbursements relative to the vehicle in Column (E) with an explanation in Item 25 indicating that the vehicle was also used part of the time on official business.

The amount of decrease in the market value of an automobile used over 50% of the time for the personal benefit of an officer or employee must also be reported in Item 25.

ADDITIONAL INFORMATION AND SIGNATURES

25. ADDITIONAL INFORMATION — Use Item 25 to provide additional information as indicated on Form T-1 and in these instructions. Enter the number of the item to which the information relates in the Item Number column if the software has not entered the number.

26-27. SIGNATURES — Before entering the date and signing the form, enter the telephone number at which the signatories conduct official business.

The completed Form T-1 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in the title field next to the signature and explain in Item 25 (Additional Information) why the president or treasurer did not sign the report. Forms must be signed with digital signatures. Information about digital signatures can be obtained on the OLMS Web site at http://www.olms.dol.gov.

IX. TRUSTS THAT HAVE CEASED TO EXIST

If a trust has gone out of existence as a trust in which a labor organization is interested, the president and treasurer of the labor organization must file a terminal financial report for the period from the beginning of the trust's fiscal year to the date of termination. A terminal financial report must be filed if the trust has gone out of business by disbanding, merging into another organization, or being merged and consolidated with one or more trusts to form a new trust. Similarly, if a trust in which a labor organization previously was interested continues to exist, but the labor organization's interest terminates, the labor organization must file a terminal financial report for that trust.

The terminal financial report must be filed within 30 days after the date of termination to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210-0001

To complete a terminal report on Form T-1, follow the instructions in Section VIII and, in addition:

- Enter the date the trust, or the labor organization's interest in the trust, ceased to exist in Item 2 after the word "Through."

- Select Item 3(c) indicating that the trust, or the labor organization's interest in the trust, ceased to exist during the reporting period and that this is the terminal Form T-1 for the trust from the labor organization.

- Enter "3(c)" in the Item Number column in Item 25 (Additional Information) and provide a detailed statement of the reason the trust, or the labor organization's interest in the trust, ceased to exist. If the trust ceased to exist, also report in Item 25 plans for the disposition of the trust's cash and other assets, if any. Provide the name and address of the person or organization that will retain the records of the terminated organization. If the trust merged with another trust, report that organization's name and address.

Contact the nearest OLMS field office listed below if you have questions about filing a terminal report.

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Los Angeles, CA
Miami (Ft. Lauderdale), FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark (Iselin), NJ
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult the OLMS Web site listed below or local telephone directory listings under United States Government, Labor Department, Office of Labor-Management Standards, for the address and telephone number of the nearest field office.

Copies of labor organization annual financial reports, labor organization officer and employee reports, employer reports, and labor relations consultant reports filed for the year 2000 and after can be viewed and printed at http://. Copies of reports for the year 1999 and earlier can be ordered through the Web site.

Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations documents, is also available at:

http://www.olms.dol.gov

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