DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1245–AA09

Labor Organization Annual Financial Reports For Trusts In Which A Labor Organization Is Interested, Form T–1

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

ACTION: Final rule.

SUMMARY: In this rule, the Department revises the forms required by labor organizations under the Labor-Management Reporting and Disclosure Act (''LMRDA'' or ''Act''). Under the rule, specified labor organizations file annual reports (Form T–1) concerning trusts in which they are interested. This document also sets forth the Department's review of and response to comments on the proposed rule. Under this rule, the Department requires a labor organization with total annual receipts of $250,000 or more (and, which therefore is obligated to file a Form LM–2 Labor Organization Annual Report) to also file a Form T–1, under certain circumstances, for each trust of the type defined by section 3(l) of the LMRDA (defining ''trust in which a labor organization is interested''). Such labor organizations will trigger the Form T–1 reporting requirements, subject to certain exemptions, where the labor organization during the reporting period, either alone or in combination with other labor organizations, selects or appoints the majority of the members of the trust's governing board or contributes more than 50 percent of the trust's receipts. When applying this financial or managerial dominance test, contributions made pursuant to a collective bargaining agreement (CBA) shall be considered the labor organization's contributions. The rule provides appropriate instructions and revises relevant sections relating to such reports. The Department issues the rule pursuant to section 208 of the LMRDA.

DATES: This rule is effective April 6, 2020; however, no labor organization is required to file a Form T–1 until 90 days after the conclusion of its first fiscal year that begins on or after June 4, 2020. A Form T–1 covers a trust's most recently concluded fiscal year, and a Form T–1 is required only for trusts whose fiscal year begins on or after June 4, 2020. A trust's ''most recently concluded fiscal year'' is the fiscal year beginning on or before 90 days before the filing union's fiscal year.

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SUPPLEMENTARY INFORMATION: The following is the outline of this discussion.

I. Statutory Authority

The Department's statutory authority is set forth in section 208 of the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 438. Section 208 of the LMRDA 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 the Act and such other reasonable rules and regulations as he may find necessary to prevent the circumvention or evasion of the reporting requirements in private sector labor unions.[1] This statutory authority also extends to federal public sector labor unions through both the Civil Service Reform Act of 1978 (CSRA), 5 U.S.C. 7120, ''Standards of Conduct'' regulations at 29 CFR part 458, and the Foreign Service Act of 1980 (FSA).

[1] The rule utilizes the terms 'union,' 'labor union,' and 'labor organization' interchangeably unless otherwise specified.

The Secretary has delegated his authority under the LMRDA to the Director of the Office of Labor-Management Standards and permitted re-delegation of such authority. See Secretary's Order 03–2012 (Oct. 19, 2012), published at 77 FR 69375 (Nov. 16, 2012).

Section 208 allows the Secretary to issue ''reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of [the Act's] reporting requirements.'' 29 U.S.C. 438.

Section 3(l) of the LMRDA, 29 U.S.C. 402(l) provides that a ''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.''

The authority to prescribe rules relating to section 3(l) trusts augments the Secretary's general authority to prescribe the form and publication of other reports required to be filed under the LMRDA. Section 201 of the Act requires unions to file annual, public reports with the Department, detailing the union's cash flow during the reporting period, and 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 union, 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 union's] financial conditions and operations.'' *Id.* Large unions report this information on the Form LM–2. Smaller unions report less detailed information on the Form LM–3 or LM–4.

II. Background

A. Introduction

On May 30, 2019 the Department proposed to establish a Form T–1 Trust Annual Report to capture financial information pertinent to ''trusts in which a labor organization is interested'' (''section 3(l) trusts''). See 84 FR 25130. Historically, this information has largely gone unreported despite the significant impact such trusts have on labor organization financial operations and union members' own interests. This proposal was part of the Department's continuing effort to better effectuate the reporting requirements of the LMRDA.

The LMRDA's various reporting provisions are 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. 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 disclose financial information as required by the LMRDA. By reviewing a labor organization's financial 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 rule helps bring the reporting requirements for labor organizations and section 3(l) trusts in line with contemporary expectations for the disclosure of financial information. Today, labor organizations are more complex in their structure and scope than labor organizations of the past. In reaction to an increasingly global, complicated, and sophisticated marketplace, unions must leverage significant financial capital to hire professional economic, financial, legal, political and public relations expertise not readily or traditionally on hand. *See Marick F. Masters, Unions at the Crossroads: Strategic Membership, Financial, and Political Perspectives* 34 (1997).

Labor organization members, no less than consumers, citizens, or creditors, expect access to relevant and useful information in order to make fundamental investment, career, and retirement decisions, evaluate options, and exercise legally guaranteed rights.

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.'' 29 U.S.C. 401(b). 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* 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* 29 U.S.C. 431–436, 441; detailed procedural, substantive, and reporting requirements relating to labor organization trusteeships, *see* 29 U.S.C. 461–466; detailed procedural requirements for the conduct of elections of labor organization officers, *see* 29 U.S.C. 481–483; 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, a prohibition on certain loans by a labor organization to officers or employees, prohibitions on employment by a labor organization of certain convicted felons, and prohibitions on payments to employees, labor organizations, and labor organization officers and employees for prohibited purposes by an employer or labor relations consultant, *see* 29 U.S.C. 501–505; and prohibitions against extortionate picketing, retaliation for exercising protected rights, and deprivation of LMRDA rights by violence, *see* 29 U.S.C. 522, 529, 530.

The LMRDA 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; and 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 were also 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. Report 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).

Financial reporting and disclosure were conceived as partial remedies for these improper practices. As noted in a key Senate Report on the legislation, disclosure would discourage questionable practices (''The searchlight of publicity is a strong deterrent.''), aid labor organization governance (labor organizations will be able ''to better regulate their own affairs'' because ''members may vote out of office any individual whose personal financial interests conflict with his duties to members''), facilitate legal action by members for fiduciary violations (against ''officers who violate their duty of loyalty to the members''), and create a record (''the reports will furnish a sound factual basis for further action in the event that other legislation is required''). S. Rep. No. 187 (1959) 16 reprinted in 1 NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, 412.

The Department has developed several forms for implementing the LMRDA's financial reporting requirements. The annual reports required by section 201(b) of the Act, 29 U.S.C. 431(b) (Form LM–2, Form LM–3, and Form LM–4), contain information about a labor organization's assets, liabilities, receipts, disbursements, loans to officers and employees and business enterprises, payments to each officer, and payments to each employee of the labor organization paid more than $10,000 during the fiscal year. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. 29 CFR 403.4.

The labor organization's president and treasurer (or its corresponding officers) are personally responsible for filing the reports and for any statement in the reports known by them to be false. 29 CFR 403.6. These officers are also responsible for maintaining records in sufficient detail to verify, explain, or clarify the accuracy and completeness of the reports for not less than five years after the filing of the forms. 29 CFR 403.7. A labor organization ''shall make available to all its members the information required to be contained in such reports'' and ''shall. . .permit such member[s] for just cause to examine any books, records, and accounts necessary to verify such report[s].'' 29 CFR 403.8(a).

The reports are public information. 29 U.S.C. 435(a). The Secretary is charged with providing for the inspection and examination of the financial reports, 29 U.S.C. 435(b). For this purpose, OLMS maintains: (1) A public disclosure room where copies of such reports filed with OLMS may be reviewed and; (2) an online public disclosure site, where copies of such reports filed since the year 2000 are available for the public's review.

C. History of the Form T–1

The Form T–1 report was first proposed on December 27, 2002, as one part of a proposal to extensively change the Form LM–2. 67 FR 79280 (Dec. 27, 2002). The rule was proposed under the authority of Section 208, which permits the Secretary to issue such rules ''prescribing reports concerning trusts in which a labor organization is interested'' as he may ''find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements.'' 29 U.S.C. 438. Following consideration of public comments, on October 9, 2003, the Department published a final rule enacting extensive changes to the Form LM–2 and establishing a Form T–1. 68 FR 58374 (Oct. 9, 2003) (2003 Form T–1 rule). The 2003 Form T–1 rule eliminated the requirement that unions report on subsidiary organizations on the Form LM–2, but it mandated that each labor organization filing a Form LM–2 report also file a separate report to ''disclose assets, liabilities, receipts, and disbursements of a significant trust in which the labor organization is interested.'' 68 FR at 58477. The reporting labor organization would make this disclosure by filing a separate Form T–1 for each significant trust in which it was interested. *Id.* at 58524.

To conform to the statutory requirement that trust reporting is ''necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements,'' the 2003 Form T–1 rule developed the ''significant trust in which the labor organization is interested'' test. It used the section 3(l) statutory definition of ''a trust in which a labor organization is interested'' coupled with an administrative determination of when a trust is deemed ''significant.'' 68 FR at 58477–78. The LMRDA defines a ''trust in which a labor organization is interested'' as 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. *Id.* (29 U.S.C. 402(l)).

The 2003 Form T–1 rule set forth an administrative determination that stated that a ''trust will be considered significant'' and therefore subject to the Form T–1 reporting requirement under the following conditions:

(1) The labor organization had annual receipts of $250,000 or more during its most recent fiscal year, and (2) the labor organization's financial contribution to the trust or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is $10,000 or more annually. *Id.* at 58478.

The portions of the 2003 rule relating to the Form T–1 were vacated by the D.C. Circuit in *AFL–CIO* v. *Chao,* 409 F.3d at 389–391. The court held that the form ''reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union's contribution of funds to an independent organization could circumvent or evade union reporting requirements by, for example, permitting the union to maintain control of the funds.'' *Id.* at 389. The court also vacated the Form T–1 portions of the 2003 rule because its significance test failed to establish reporting based on domination or managerial control of assets subject to LMRDA Title II jurisdiction.

The court reasoned that the Department failed to explain how the test—*i.e.,* selection of one member of a board and a $10,000 contribution to a trust with $250,000 in receipts—could give rise to circumvention or evasion of Title II reporting requirements. *Id.* at 390. In so holding, the court emphasized that Section 208 authority is the only basis for LMRDA trust reporting, that this authority is limited to preventing circumvention or evasion of Title II reporting, and that ''the statute doesn't provide general authority to require trusts to demonstrate that they operate in a manner beneficial to union members.'' *Id.* at 390.

However, the court recognized that reports on trusts that reflect a labor organization's financial condition and operations are within the Department's rulemaking authority, including trusts ''established by one or more unions or through collective bargaining agreements calling for employer contributions, [where] the union has retained a controlling management role in the organization,'' and also those ''established by one or more unions with union members' funds because such establishment is a reasonable indicium of union control of that trust.'' *Id.* The court acknowledged that the Department's findings in support of its rule were based on particular situations where reporting about trusts would be necessary to prevent evasion of the related labor organizations' own reporting obligations. *Id.* at 387–88. One example included a situation where ''trusts [are] funded by union members' funds from one or more unions and employers, and although the unions retain a controlling management role, no individual union wholly owns or dominates the trust, and therefore the use of the funds is not reported by the related union.'' *Id.* at 389 (emphasis added). In citing these examples, the court explained 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.'' *Id.* at 390. For this reason, while acknowledging that there are circumstances under which the Secretary may require a report, the court disapproved of a broader application of the rule to require reports by any labor organization simply because the labor organization satisfied a reporting threshold (a labor organization with annual receipts of at least $250,000 that contributes at least $10,000 to a section 3(l) trust with annual receipts of at least $250,000). *Id.*

In light of the decision by the D.C. Circuit and guided by its opinion, the Department issued a revised Form T–1 final rule on September 29, 2006. 71 FR 57716 (Sept. 29, 2006) (2006 Form T–1 rule). The U.S. District Court for the District of Columbia vacated this rule due to a failure to provide a new notice and comment period. *AFL–CIO* v. *Chao,* 496 F. Supp. 2d 76 (D.D.C. 2007). The district court did not engage in a substantive review of the 2006 rule, but the court noted that the AFL–CIO demonstrated that ''the absence of a fresh comment period . . . constituted prejudicial error'' and that the AFL–CIO objected with ''reasonable specificity'' to warrant relief vacating the rule. *Id.* at 90–92.

The Department issued a proposed rule for a revised Form T–1 on March 4, 2008. 73 FR 11754 (Mar. 4, 2008). After notice and comment, the 2008 Form T–1 final rule was issued on October 2, 2008. 73 FR 57412. The 2008 Form T–1 rule took effect on January 1, 2009. Under that rule, Form T–1 reports would have been filed no earlier than March 31, 2010, for fiscal years that began no earlier than January 1, 2009.

Pursuant to *AFL–CIO* v. *Chao,* the 2008 Form T–1 rule stated that labor organizations 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, had management control or financial dominance. 73 FR at 57412. For purposes of the rule, a labor organization had management control if the labor organization alone, or in combination with other labor organizations, selected or appointed the majority of the members of the trust's governing board. Further, for purposes of the rule, a labor organization had financial dominance if the labor organization alone, or in combination with other labor organizations, contributed more than 50 percent of the trust's receipts during the annual reporting period. Significantly, the rule treated contributions made to a trust by an employer pursuant to CBA as constituting contributions by the labor organization that was party to the agreement.

Additionally, the 2008 Form T–1 rule provided exemptions to the Form T–1 filing requirements. No Form T–1 was required for a trust: Established as a political action committee (PAC) fund if publicly available reports on the PAC fund were filed with Federal or state agencies; established as a political organization for which reports were filed with the IRS under section 527 of the IRS code; required to file a Form 5500 under ERISA; or constituting a federal employee health benefit plan that was subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), 5 U.S.C. 8901 *et seq.* Similarly, the rule clarified that no Form T–1 was required for any trust that met the statutory definition of a labor organization, 29 U.S.C. 402(i), and filed a Form LM–2, Form LM–3, or Form LM–4 or was an entity that the LMRDA exempts from reporting. *Id.*

In the Spring and Fall 2009 Regulatory Agenda, the Department announced its intention to rescind the Form T–1. It also indicated that it would return reporting of wholly owned, wholly controlled, and wholly financed (''subsidiary'') organizations to the Form LM–2 or LM–3 reports. On December 3, 2009, the Department issued a notice of proposed extension of filing due date to delay for one calendar year the filing due dates for Form T–1 reports required to be filed during calendar year 2010. 74 FR 63335. On December 30, 2009, following notice and comment, the Department published a rule extending for one year the filing due date of all Form T–1 reports required to be filed during calendar year 2010. 74 FR 69023.

Subsequently, on February 2, 2010, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to rescind the Form T–1. 75 FR 5456. After notice and comment, the Department published the final rule on December 1, 2010. In its rescission, the Department stated that it considered the reporting required under the rule to be overly broad and not necessary to prevent circumvention or evasion of Title II reporting requirements. The Department concluded that the scope of the 2008 Form T–1 rule was overbroad because it covered many trusts, such as those funded by employer contributions, without an adequate showing that reporting for such trusts is necessary to prevent the circumvention or evasion of the Title II reporting requirements. *See* 75 FR 74936.

III. Summary and Explanation of the Final Rule

A. Overview of the Rule

This rule requires a labor organization with total annual receipts of $250,000 or more to file a Form T–1, under certain circumstances, for each trust of the type defined by section 3(l) of the LMRDA, 29 U.S.C. 402(l) (defining ''trust in which a labor organization is interested''). Such labor organizations trigger the Form T–1 reporting requirements where the labor organization during the reporting period, either alone or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's receipts. When applying this financial or managerial dominance test, contributions made pursuant to a CBA are considered the labor organization's contributions. As explained further below, this test was tailored to be consistent with the court's holding in *AFL–CIO* v. *Chao,* 409 F.3d 377, 389–391 (D.C. Cir. 2005), as well as the 2008 final Form T–1 rule.

The Form T–1 uses the same basic template as prescribed for the Form LM–2. Both forms require the labor organization to provide specified aggregated and disaggregated information relating to the financial operations of the labor organization and the trust. Typically, a labor organization is required to provide information on the Form T–1 explaining certain transactions by the trust (such as disposition of property by other than market sale, liquidation of debts, loans or credit extended on favorable terms to officers and employees of the labor organization); and identifying major receipts and disbursements by the trust during the reporting period. The Form T–1, however, is shorter and requires less information than the Form LM–2. The Form T–1, unlike the Form LM–2, does not require that receipts and disbursements be identified by functional category.

The Form T–1 includes: 14 questions that identify the trust; six 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, which were granted at more favorable terms than were available to others; statements regarding the total amount of assets, liabilities, receipts and disbursements of the trust; a schedule that separately identifies any individual or entity from which the trust receives $10,000 or more, individually or in the aggregate, during the reporting period; a schedule that separately identifies any entity or individual that received disbursements that aggregate to $10,000 or more, individually or in the aggregate, from the trust during the reporting period and the purpose of disbursement; and a schedule of disbursements to officers and employees of the trust who received more than $10,000.

Two threshold requirements that were contained in the 2003 and 2006 rules, but not the 2008 rule, relating to the amount of a labor organization's contributions to a trust ($10,000 per annum) and the amount of the contributions received by a trust ($250,000 per annum) are not included in the rule. The Department believes that, consistent with the D.C. Circuit's *AFL–CIO* v. *Chao* decision, the labor organization's control over the trust either alone or with other labor organizations, measured by its selection of a majority of the trust's governing body or its majority share of receipts during the reporting period, provides the appropriate gauge for determining whether a Form T–1 must be filed by the participating labor organization.

Under the rule, exemptions are provided for labor organizations with section 3(l) trusts where the trust, as a political action committee (''PAC'') or a political organization (the latter within the meaning of 26 U.S.C. 527), submits timely, complete and publicly available reports required of them by federal or state law with government agencies; federal employee health benefit plans subject to the provision of the Federal Employees Health Benefits Act (FEHBA); or any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843. The Department also exempts credit unions from Form T–1 disclosure, as explained further below. Similarly, no Form T–1 is required for any trust that meets the statutory definition of a labor organization and files a Form LM–2, Form LM–3, or Form LM–4 or is an entity that the LMRDA exempts from reporting. Consistent with the 2008 rule, but in contrast to the 2003 and 2006 rules, today's rule includes an exemption for section 3(l) trusts that are part of employee benefit plans that file a Form 5500 Annual Return/Report under the Employee Retirement Income Security Act of 1974 (''ERISA''). Additionally, a partial exemption is provided for a trust for which an audit was conducted in accordance with prescribed standards and the audit is made publicly available. A labor organization choosing to use this option must complete and file the first page of the Form T–1 and a copy of the audit.

Also, unlike the 2008 rule, the Department exempts unions from reporting on the Form T–1 their subsidiary organizations, retaining the requirement that unions must report their subsidiaries on the union's Form LM–2 report. *See* Part X of the Form LM–2 instructions (defining a ''subsidiary organization'' as ''any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization.'').

Also, unlike the 2008 rule, the Department permits the parent union (*i.e.,* the national/international or intermediate union) to file the Form T–1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test.[2] The affiliates must continue to identify the trust in their Form LM–2 report, and also state in their Form LM–2 report that the parent union will file a Form T–1 report for the trust. The Department will also allow a single union to voluntarily file the Form T–1 on behalf of itself and the other unions that collectively contribute to a multiple-union trust, relieving the Form T–1 obligation on other unions.

This final rule also differs in three specific respects from the proposed rule in response to concerns raised by commenters. These features of the rule are related above, but merit specific recognition here as determinations made by the Department subsequent to the published NPRM. First, unions need not file for trusts that operate as credit unions. Second, the Department will allow a union to voluntarily file the Form T–1 on behalf of one or more other unions where each of those unions would otherwise be obligated to individually file for the same trust. Third, the trust's fiscal year that the union must report on has been changed. Under the proposed rule, the union would have reported on trusts whose most recent fiscal year ended on or before the union's fiscal year. Under the current rule, the union will report on trusts whose most recent fiscal year ended 90 or more days before the end of the union's fiscal year.

B. Policy Justification

The Form T–1 closes a reporting gap whereby labor organizations are required to report only on the funds that they exclusively control, but not those funds over which they exercise domination. As a result, this rule helps prevent the circumvention or evasion of the LMRDA's reporting requirements. Further, this rule is designed to provide labor organization members a proper accounting of how their labor organization's funds are invested or otherwise expended by the trust. Such disclosure helps deter fraud and corruption involving such trusts. Labor organization members have an interest in obtaining information about a labor organization's funds provided to a trust for the member's particular or collective benefit whether solely administered by the labor organization or a separate, jointly administered governing board. Also, because the money an employer contributes to such trusts pursuant to a CBA might otherwise have been paid directly to a labor organization's members in the form of increased wages and benefits, the members on whose behalf the financial transaction was negotiated have an interest in knowing what funds were contributed, how the money was managed, and how it was spent.

In terms of preventing the circumvention or evasion of the LMRDA's reporting requirements, the rule will make it more difficult for a labor organization to avoid, simply by transferring money from the labor organization to a trust, the basic reporting obligation that applies if the funds had been retained by the labor organization. Although the rule will not require a Form T–1 to be filed for all section 3(l) trusts in which a labor organization participates, it will be required where a labor organization, alone or in combination with other labor organizations, appoints or selects a majority of the members of the trust's governing board or where contributions by labor organizations, or by employers pursuant to a CBA, represent greater than 50 percent of the revenue of the trust.

Thus, the rule follows the instruction in *AFL–CIO* v. *Chao,* where the D.C. Circuit concluded that the Secretary had shown that trust reporting was necessary to prevent evasion or circumvention where ''trusts [are] established by one or more unions with union members' funds because such establishment is a reasonable indicium of union control of the trust,'' as well as where there are characteristics of ''dominant union control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues.'' 409 F.3d at 389, 390.

As an illustration of how this check will work, consider an instance in which a Form T–1 identifies a $15,000 payment from the trust to a company for printing services. Under this rule, the labor organization must identify on the Form T–1 the company and the purpose of the payment. This information,

[2] If the purported trust actually constitutes a subsidiary of the parent union, then the parent union would need to include the subsidiary within its Form LM–2 report, pursuant to Part X of the Form LM–2 Instructions. *See* OLMS Interpretative Manual Sections 215.200 (Holding of Stock by District Council and Member Locals) and 215.300 (Holding of Stock by Member Locals).

coupled with information about a labor organization official's ''personal business'' interests in the printing company, a labor organization member or the Department may discover whether the official has reported this payment on a Form LM–30.[3]

Additional information from the labor organization's Form LM–2 might allow a labor organization member to ascertain whether the trust and the labor organization have used the same printing company and whether there was a pattern of payments by the trust and the labor organization from which an inference could be drawn that duplicate payments were being made for the same services.[4] Upon further inquiry into the details of the transactions, a member or the government might be able to determine whether the payments masked a kickback or other conflict-of-interest payment, and, as such, reveal an instance where the labor organization, a labor organization official, or an employer may have failed to comply with their reporting obligations under the Act. Furthermore, this rule will provide a missing piece to one part of the Department's system to crosscheck a labor organization's reported holdings and transactions by party, description, and reporting period and thereby helps identify deviations in the reported details, including instances where the reporting obligation appears reciprocal, but one or more parties have not reported the matter.

In reviewing submitted Form LM–2 reports, the Department located several instances in which labor organizations disbursed large sums of money to trusts. As an example, one local disbursed over $700,000 to one trust and over $1.2 million to another of its trusts, in fiscal year 2017. Also in 2017, a national labor organization disbursed almost $400,000 to one of its trusts. Several locals each reported on their FY 17 Form LM–2 reports varying ownership interests in a building corporation that owns the unions' hall. The Form T–1 requires that the labor organizations report the trusts' management of these disbursements and assets. By establishing reporting for their trusts comparable to that for their own funds, the Form T–1 will prevent the unions from circumventing or evading their reporting requirements, ensuring financial transparency for all funds dominated by the unions.

Additionally, as stated, the Form T–1 will establish a deterrent effect on potential labor-management fraud and corruption. Labor organization officials and trustees owe a fiduciary duty to both their labor organization and the trust, respectively. Nevertheless, there are examples of embezzlement of funds held by both labor organizations and their section 3(l) trusts.[5] By disclosing information to labor organization members—the true beneficiaries of such trusts—the Form T–1 will increase the likelihood that wrongdoing is detected and may deter individuals who might otherwise be tempted to divert funds from the trusts.

The following examples illustrate recent situations in which funds held in section 3(l) trusts have been used in a manner that, if subject to LMRDA reporting, could have been noticed by the members of the labor organization and would likely have been scrutinized by this Department: [6]

- In 2011, a former secretary for a union was convicted for embezzling $412,000 from the union and its apprenticeship and training fund.[7]
- In 2015, an employee of a union pled guilty to embezzling over $160,000 from a joint apprenticeship trust fund account that was used to train future union members.[8]
- In 2017, a former business manager and financial secretary for a union local pled guilty to charges that he embezzled between $250,000 and $550,000 in union funds from an operational account and from an apprentice fund.[9]
- In 2018, a former trustee of a trust fund for apprentice and journeyman education and training was sentenced for submitting a false reimbursement request in connection with training events. In his plea, the former trustee admitted that the amount owed to the training fund totaled $12,000.[10]
- In 2018, a union official was sentenced for illegally channeling funds from a union training center to union officials and employees for their personal use.[11]

Under the 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 that meets the significant contribution test, as outlined in the rule. In each instance, the labor organization's contribution to the trust, including contributions made pursuant to a CBA, 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 individually 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 that were granted at more favorable terms than were available to others, and any disbursements to officers and employees of the trust.

[3] *See* Form LM–30 Instructions, p.7 (''Complete Part B if you, your spouse, or your minor child held an interest in or derived income or other benefit with monetary value, including reimbursed expenses, from a business . . . any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or with a trust in which your labor organization is interested.'').

[4] *See* Form LM–2 Instructions, p.21 requires itemization of major disbursements, allowing the union members to see the recipients and the amount paid, as well as the purpose of the payments. (''Schedules 15 through 19 reflect various services provided to union members by the union in which all ''major'' disbursements during the reporting period in the various categories must be separately identified. A ''major'' disbursement includes: (1) any individual disbursement of $5,000 or more; or (2) total disbursements to any single entity or individual that aggregate to $5,000 or more during the reporting period.'')

[5] The fiduciary duty of the trustees to refrain from taking a proscribed action has never been thought sufficient in and of itself to protect the interests of a trust's beneficiaries. Although a fiduciary's own duty to the trust's grantors and beneficiaries includes disclosure and accounting components, public disclosure requirements, government regulation, and the availability of civil and criminal process complement these obligations and help ensure a trustee's observance of his or her fiduciary duty. *See* 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).

[6] The trusts in these examples constitute apprenticeship and training funds established under LMRA section 302(C)(6), 29 U.S.C. 186(c)(6). EBSA does not require such funds to file the Form 5500. *See* 29 CFR 2520.104–22 (conditional exemption from Form 5500 filing requirements for apprenticeship and training plans).

[7] *See https://www.wilx.com/home/headlines/Former_Union_Secretary_Sentenced_for_Embezzlement_126151908.html,* July 25, 2011.

[8] *See https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/newsroom/criminal-releases/11-24-015.pdf,* November 24, 2015.

[9] *See https://www.justice.gov/usao-ri/pr/union-officer-plead-guilty-embezzlement-identity-theft,* November 27, 2017.

[10] *See https://www.dol.gov/newsroom/releases/ebsa/ebsa20180323,* March 23, 2018.

[11] *See https://www.dol.gov/olms/regs/compliance/enforce_2018.htm.*

In developing this rule, the Department also relied, in part, on information it received from the public on previous proposals. In its comments on the 2006 proposal, a labor policy group identified multiple instances where labor organization officials were charged, convicted, or both, for embezzling or otherwise improperly diverting labor organization trust funds for their own gain, including the following: (1) Five individuals were charged with conspiring to steal over $70,000 from a local's severance fund; (2) two local labor organization officials confessed to stealing about $120,000 from the local's job training funds; (3) an employee of an international labor organization embezzled over $350,000 from a job training fund; (4) a local labor organization president embezzled an undisclosed amount from the local's disaster relief fund; and (5) a former international officer, who had also been a director and trustee of a labor organization benefit fund, was convicted of embezzling about $100,000 from the labor organization's apprenticeship and training fund. 71 FR 57716, 57722.

The comments received from labor organizations on previous proposals generally opposed any reporting obligation concerning trusts. By contrast, many labor organization members recommended generally greater scrutiny of labor organization trust funds. For example, in response to the Department's 2008 proposal, commenters included several members of a single international labor organization. They explained that under the labor organization's CBAs, the employer sets aside at least $.20 for each hour worked by a member and that this amount was paid into a benefit fund known as a ''joint committee.'' 71 FR 57716, 57722. The commenters asserted that some of the funds were ''lavished on junkets and parties'' and that the labor organization used the joint committees to reward political supporters of the labor organization's officials. They stated that the labor organization refused to provide information about the funds, including amounts paid to ''union staff.'' From the perspective of one member, the labor organization did not want ''this conflict of interest'' to be exposed. *Id.*

If the Department's 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 any potential improper use of the trust funds and thereby minimize the injury to the trust. Further, the fear of discovery could have deterred the wrongdoers from engaging in any offending conduct in the first place.

The foregoing discussion provides the Department's rationale for the position that the Form T–1 rule will add necessary safeguards intended to deter circumvention or evasion of the LMRDA's reporting requirements. In particular, with the Form T–1 in place, it will be more difficult for labor organizations, employers, and union officers and employees to avoid the disclosure required by the LMRDA. Further, 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.

IV. Review of Proposed Rule and Comments Received

A. Overview of Comments

The Department provided for a 60-day comment period ending July 29, 2019. 84 FR 25130. The Department received 35 comments on the Form T–1 proposed rule. Of these comments, all 35 were unique, but only 33 were substantive. The two remaining comments merely requested an extension of the comment period. The Department declined the extension requests by letter dated July 29, 2019.

Comments were received from labor organizations, employer associations, public interest groups, benefit funds and plans, accounting firms, members of Congress, and private individuals.

Of the 33 unique, substantive comments received, 15 expressed overall support for the proposed rule, 16 were generally opposed, and the remaining 2 comments were essentially neutral—focusing on a credit union exemption. The Department also received one late comment. Although not considered, the concerns raised were substantively addressed in the Department's responses to other timely-submitted comments.

Comments offering support for the proposed rule largely focused on the value of the rule in promoting financial transparency and union democracy and in curtailing union corruption. The primary concern expressed by this segment of commenters was that the Department not allow more than a few limited exemptions to the reporting requirement, if any. Some urged the Department not to adopt exemptions such as allowing parent unions to file on behalf of an affiliate when both are interested in the same trust, or even remove the union size threshold that limits the Form T–1 requirement to unions that currently file an annual Form LM–2 report.

Comments opposed to the NPRM largely focused on the additional reporting burden the Form T–1 would create for unions and the confidentiality concerns surrounding much of the itemization required by the Form T–1. The primary concerns advanced by these commenters were that the Department alleviate the redundancy of having each union report on a multi-union trust, include all proposed exemptions, and refrain from treating employer contributions to trust funds as union funds for any purpose. Commenters who opposed the Form T–1 also urged the Department to include exemptions beyond those contemplated in the NPRM, including exemptions for unions contributing a *de minimis* amount to a multi-union trust and for trusts that file the Form 990 with the IRS.

B. Policy Justifications

In the NPRM, the Department cited public disclosure and transparency of union finances as major benefits of and policy justifications for creating the Form T–1. A number of commenters approved of the Form T–1 as a means to increase union transparency. The Department agrees with these commenters that the fundamental reason the Form T–1 is necessary is to effectuate the level of transparency envisioned by Congress in drafting the LMRDA. In fact, those commenters who were generally opposed to this rule maintained only that the transparency benefits were outweighed by the costs involved, rather than claiming that preventing circumvention or evasion to ensure union financial transparency would not be a benefit to union members, the unions as organizations, and the public. One union commenter wrote, as part of expressing support for the proposed exemptions to the Form T–1 reporting obligation under the rule, that the union ''invests significant resources to ensure that we are accountable to our members and that our financial operations are transparent, responsible, and compliant with applicable laws.''

Thus, the comments collectively illustrate there is a general consensus that public reporting of union finances and the transparency it provides is desirable for all parties. The Department promulgates this rule, in part, because the Department agrees with those commenters who stated that the greater financial transparency that this rule provides, and which serves the LMRDA purpose of preventing circumvention or evasion, outweighs the reporting burden and other costs of this rule.

Finally, the Department notes that, as the union commenter quoted above recognized, the Department has provided exemptions from the reporting requirement wherever doing so does not compromise the benefits of the rule's transparency and reduces reporting redundancy. Two examples are: The Form 5500 exemption, which recognizes that trusts filing that form already provide sufficient public disclosure; and the confidentiality exemption, which recognizes that there are privacy concerns that outweigh the benefit of additional transparency for itemized disbursements in a limited number of circumstances.

Additionally, in the NPRM, the Department cited specific instances of, and the general potential for, corruption on the part of union leadership or individual union officials or employees as a significant rationale for establishing the Form T–1. A number of commenters agreed, highlighting additional instances of union corruption as justifications for the rule. Commenters agreed that a substantial benefit of the financial transparency discussed above is that it will reveal and likely deter misuse of covered funds. Documented instances of union corruption, involving trusts and the opportunities for such while union-controlled funds' financial information remained unreported, make a strong case for this rule.

The Department notes that many commenters relied upon the same example of union corruption as the specific type of corruption which necessitates the Form T–1. Nine separate commenters discussed a training center trust fund corruption scandal involving employees of Fiat Chrysler and top union officials of the United Auto Workers (UAW). In 2018, an investigation of this auto industry corruption in Detroit, Michigan produced multiple criminal convictions in the United States District Court for the Eastern District of Michigan. The joint investigations conducted by OLMS, the Department of Labor's Office of Inspector General, the Federal Bureau of Investigation, and the Internal Revenue Service focused on a conspiracy involving Fiat Chrysler executives bribing labor officials to influence labor negotiations. Their violations included conspiracy to violate the Labor Management Relations Act for paying and delivering over $1.5 million in prohibited payments and things of value to UAW officials, receiving prohibited payments and things of value from others acting in the interest of Fiat Chrysler, failing to report income on individual tax returns, conspiring to defraud the United States by preparing and filing false tax returns for the UAW-Chrysler National Training Center (NTC) that concealed millions of dollars in prohibited payments directed to UAW officials, and deliberately providing misleading and incomplete testimony in the federal grand jury.[12] These comments demonstrate that stakeholders are concerned about the problems caused by a lack of transparency, and that such corruption is not purely theoretical.

C. Employer Contributions/Taft-Hartley Plans

In the NPRM, the Department proposed a test for the degree of union control of a trust as the basis for applying the Form T–1 reporting obligation. This test has a managerial dominance prong and a financial dominance prong. As part of the test, the Department proposed that employer contributions to a trust made pursuant to a CBA with the union count as union contributions for purposes of determining financial dominance. This final rule adopts the test.

The rule's provision that employer contributions made pursuant to a CBA constitute union contributions will likely lead to a number of unions reporting joint union and employer trusts, known as Taft-Hartley trusts, on their Form T–1 reports. These trusts are expressly permitted by section 302 of the Taft-Hartley Act of 1947, 29 U.S.C. 186, and are designed to be managed by a board of trustees on which the union and employer are equally represented. The funding for these trusts typically comes from employer contributions under a negotiated CBA. Generally speaking, these trusts are designed to provide employee benefits, such as pensions. In addition to the requirement that these trusts be managed by a board of equal union and employer representation, these trusts are subject to specific regulatory requirements under the Taft-Hartley Act, and many of these trusts report under ERISA as well.

Several commenters who objected to the Department applying the Form T–1 reporting obligation to Taft-Hartley trusts claimed that the Taft-Hartley Act provides sufficient protection against union or union agent misuse of the funds. These commenters pointed to three particular requirements they believe adequately protect the funds in these trusts such that T–1 reporting is not necessary. First, the trust must be legally separate from the union. Second, such trusts are administered by boards on which union(s) and employer(s) involved in the trusts are equally represented. Third, Taft-Hartley trusts are subjected to an annual independent audit.

As to the trust being a legally and functionally separate entity, the Department does not consider this sufficient either to prevent evasion or circumvention of LMRDA reporting requirements or to eliminate the opportunity for corruption created by such evasion or circumvention. A union or individual bad actor might engage in corrupt activities to misdirect union funds with an entity wholly separate from the union. If union officers or employees have the authority to direct the union's funds, then whether the trust is a separate legal entity will not meaningfully reduce the potential for misuse of such funds. Reporting on such trusts, however, will help prevent the opportunity for such misuse of union funds. Where the funds are overseen by a board that includes union representatives and are meant to benefit union members, the opportunities for such corruption are apparent. A more ''traditional'' union trust, such as a multi-union building trust, is legally distinct from the unions and yet also subject to abuse. ''Trusts'' that are wholly owned, governed, and financed by a single union are considered subsidiaries under the LMRDA and subject to a different reporting obligation that is already part of the Form LM–2.

As to the requirement that the trust's governing board be composed of an equal number of union and employer representatives, the Department does not consider this a sufficient protection against corruption either. While the Department acknowledges that this arrangement could provide a greater deterrent to corruption relative to a board composed wholly of union appointees, this arrangement does not sufficiently operate to prevent circumvention or evasion of the overall LMRDA reporting framework that provides for financial transparency and ensures funds are directed to the benefit of union members and their beneficiaries.

As Justice Louis D. Brandeis once wrote, ''Sunlight is said to be the best of disinfectants.''[13] The recent convictions of UAW and Fiat Chrysler officials involving funds intended for a Taft-Hartley trust meant to operate a training center for UAW members

[12] *See https://www.dol.gov/olms/regs/compliance/annualreports/highlights_18.pdf.*

[13] Brandeis, Louis D., *Other People's Money, and How the Bankers Use It* (National Home Library Foundation) (1933).

demonstrates that oversight from employer representatives is not enough.

As to the audit requirement, the Department does not consider this requirement alone or even in conjunction with the other two requirements discussed by commenters to provide an adequate justification for exempting Taft-Hartley trusts from the T–1 reporting requirements. The Department does, however, recognize that an independent audit that meets certain financial auditing standards is functionally equivalent to the financial disclosures required on the Form T–1, which is why this rule allows a union to file only the basic informational portions of the Form T–1 if it attaches such an audit. The Department allows this audit exception because it ensures that the key financial information of the trust is publicly disclosed.

Moreover, many Taft-Hartley trusts file Form 5500 reports with the Employee Benefit and Security Administration (EBSA), which exempts such trusts entirely from the Form T–1.

A commenter argued that requiring, for purposes of demonstrating managerial control, that a majority of trustees be appointed by unions would effectively free all Taft-Hartley funds from Form T–1 coverage. Management control or financial dominance is required, but not both. Under today's rule, a labor organization has management control if the labor organization alone, or in combination with other labor organizations, selects or appoints the majority of the members of the trust's governing board. Further, for purposes of today's rule, a labor organization had financial dominance if the labor organization alone, or in combination with other labor organizations, contributed more than 50 percent of the trust's receipts during the annual reporting period. This commenter proposed extending the reporting requirement to include trusts in which the labor organization selects or appoints only 50 percent of the members of the governing board, in order to maximize the application of the regulation within legal limits. The Department believes that, consistent with *AFL–CIO* v. *Chao,* labor organizations exert control over a trust, either alone or with others collectively, when labor organizations represent a majority of the trust's governing body or labor organizations contribute a majority share of receipts during the reporting period.

Additionally, many commenters discussed the Department's proposal to treat funds contributed by employers pursuant to a CBA as union funds for purposes of the financial dominance test. Some commenters supported this approach and the Department's rationale that such negotiated contributions are meant to be used to the exclusive benefit of union members and might otherwise have been secured by the union as wages or benefits for union members.

The commenters opposed to this approach advanced one or more of the following five arguments: (1) Unions are never actually in possession of these funds as they are paid directly into the trusts by employers; (2) unions cannot unilaterally determine how the funds are used because their use is governed by the agreement with the employer; (3) employer contributions are not legally considered the union's money; (4) the proposed approach could set a precedent for treating employer contributions as union money in other circumstances; and (5) the proposed approach could cause confusion about the union's relationship to the employer-contributed funds.

Initially, the Department notes that commenters did not challenge the Department's authority to apply Form T–1 reporting requirements to Taft-Hartley trusts, because that question was resolved in the affirmative by the court in *AFL–CIO,* 409 F.3d at 387. LMRDA section 208 grants the Secretary authority, under the Title II reporting and disclosure requirements, to issue ''other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.'' Employer payments to a trust are negotiated by a union. The union can choose to negotiate for numerous and varied items of value, and thus may choose to negotiate for employer concessions that do not benefit the trust. This means that the trust's continued existence depends on the union's decisions at the bargaining table. The influence that this potentially gives the union over the trust could be used to manipulate the trust's spending decisions. If so, the union has circumvented the reporting requirements by effectively making disbursements not disclosed on its Section 201 reporting form.

Further, Section 208 does not limit the ''circumvention or evasion'' of the reporting requirements to merely the Section 201 union disclosure requirements. Rather, such ''circumvention or evasion'' could also involve the Section 203 employer reporting requirements, as well as the related Section 202 union officer and employee conflict-of-interest disclosure requirements. As such, the reporting by unions of Taft-Hartley trusts could reveal whether the employer diverted, unlawfully, funds intended for the trust to a union official. For example, the public will see the amount of receipts of the trust, which could reveal whether it received all intended funds. As a further example, the public will know the entities with which such trusts deal, thereby providing a necessary safeguard against the potential circumvention or evasion by third-party employers (*e.g.,* service providers and vendors to trusts and unions) of the Form LM–10 reporting requirements.

Next, the Department's approach to employer contributions does not state or imply that such funds were at any point held by a union. The Department considers it sufficient, in light of the limited purpose for which employer contributions are treated as union funds, that the union secured those funds for the benefit of its members and their beneficiaries as part of a negotiated CBA.

Further, the Department's concern in every facet of LMRDA financial reporting is the misuse and misappropriation of union finances. The fact that a written agreement limits the legitimate use of certain funds does not in itself prevent their misuse. That a union and its agents are not authorized to use funds for purposes other than those contemplated in the CBA is not an adequate safeguard against financial abuse. This position is supported by the reality of the misuse of employer-contributed funds by the various apprenticeship and training plans mentioned above in Part III, Section B (Policy Justifications), as well as the UAW officials tasked with overseeing a training center for UAW members.

Moreover, as a response to both the third and fourth arguments offered by commenters, the Department notes that the treatment of employer contributions as union funds is expressly limited within the rule itself to the financial dominance test. The Department is not claiming that such funds are or should be considered union funds for any other purpose. Furthermore, the Department takes this approach in this specific case only in the interest of ensuring that there is financial disclosure, as a means to prevent circumvention or evasion of the LMRDA reporting that is necessary for union financial integrity, for all funds that a union secures, by any means, for the benefit of its members and their beneficiaries. As an illustration of why employer funding pursuant to a CBA should not remain as a means to evade LMRDA reporting, consider the following example.

Consider a trust that is 96 percent funded from union payments, 48 percent of which is funded by three different employers' payments made pursuant to a CBA negotiated by the same union (48 percent, or 16 percent per employer contribution). The remaining 4 percent is funded by some other, non-union entity. It is apparent that the union has a level of direct and indirect control over the trust that far exceeds any other entity that contributes to the trust and the trust would, appropriately, file under this rule. Yet, were employer contributions made pursuant to a CBA not considered by the Department, the public may not otherwise receive necessary disclosure.

As to the fifth assertion regarding potential confusion about the union's relationship to the employer-contributed funds, the Department notes that union members and the public should still be able to discern the nature of the employer-contributed funds, even if they are treated as union funds, for purposes of determining the Form T–1 reporting obligation. The rule itself and the Form T–1 instructions are clear that these funds come from the employer subject to a CBA and are treated as union funds solely for purposes of the reporting obligation. A union is also free to indicate that its trust's funds come from employer contributions in the additional information section on the Form T–1 in order to further dispel confusion. Those members of the public and of unions who take the time to review Form T–1 reports are likely familiar with Taft-Hartley trusts and the concept of employer contributions under a CBA.

D. Issues Concerning Multi-Union Trusts

In the NPRM, the Department proposed, in order to reduce the reporting burden, that parent unions may file the Form T–1 on behalf of their subordinate unions that also share an interest in a trust that triggers Form T–1 reporting. The Department sought comment on other possible methods to reduce burden in multi-union trust situations.

In regards to multi-union trusts in which managerial control or financial dominance by each participating labor organization would require a Form T–1 from each, one commenter expressed support for an approach to resolving the duplication of reports. Particularly, the commenter supported an approach allowing a single labor organization to voluntarily assume responsibility for filing the Form T–1 on behalf of all labor organizations associated with that trust. The Department agrees with this approach and it will allow a single union to file both on its behalf and on the behalf of the other unions involved. The union submitting must identify, in the Form T–1 Additional Information section, the name of each union that would otherwise be required to file a Form T–1 report for the multi-union trust. Additionally, on their Form LM–2 reports, the other unions must identify the union that filed the Form T–1 on their behalf.[14] The Department reiterates, however, that in the event the unions cannot agree on who should assume sole responsibility, each involved labor organizations will be obligated to file a Form T–1 for the reporting period.

In situations in which a single union voluntarily assumes responsibility, it may subsequently receive partial compensation from the other participating unions for doing so, pursuant to a pre-arranged agreement. Such options for consolidated filing should reduce burden, and mitigate the need for a *de minimis* exemption for relatively small contributors to a trust. Furthermore, the Department declines a *de minimis* exemption because such an exemption could allow for arrangements in which multiple unions join into a trust in such small proportions that, although they trigger the Form T–1 receipts branch of the dominance test, they each qualify for the *de minimis* exemption. In such a case, there would be no financial reporting despite the fact that unions exert control over the trust. Such a loophole could be exploited.

One commenter asserted that the Department is in logical error by conceiving that multiple unions, including some with minority stakes, could work in concert to circumvent reporting requirements and embezzle funds, yet provides no reason as to how this type of arrangement is ''vastly out of step with reality.'' One commenter also suggested that such working in concert would be effective only if the participating unions had the same affiliation. Reflecting on the ability of union officials to misdirect trust funds in all of the cases behind the convictions listed in Part III, Section B, the Department does not doubt that officials from different unions could work in concert to embezzle funds and evade reporting. Multiple unions can exercise joint control of a trust to use it as a vehicle for corruption that circumvents or evades reporting.

[14] The information collection request (ICR) accompanying this rule, pursuant to the Paperwork Reduction Act (PRA), revises the Form LM–2 instructions.

Finally, having received no support for such an approach, the Department declines to adopt the idea of requiring the labor organization with the largest stake in the covered trust to bear the sole responsibility of filing a Form T–1. The complexity of determining who has the largest ''stake'' would add additional unnecessary costs and complications; it is unclear whether the union with the largest percentage of managerial control or the largest percentage of financial contribution should be considered the stakeholder best suited to filing. Especially in situations where the difference is negligible between the size of the contributions of two unions, the rationale of obligating the largest contributor seems far less compelling.

Last, in regards to unnecessary costs to the trusts in having to provide information to multiple labor organizations instead of a single labor organization in these multi-union trust situations, the Department maintains that such additional costs are negligible. Although one commenter disagreed with the Department's reasoning, the commenter provided no evidence supporting its position. No additional information would need to be acquired in providing the information to one labor organization or multiple. The trust would forward the same files to each union. And, ultimately, the costs, including any hypothetical additional costs in providing electronic files to multiple unions instead of one, would be compensated by the unions at net zero cost to the trust.

E. ERISA Exemption

In the NPRM, the Department proposed to exempt from the Form T–1 all employee benefit trusts that are subject to Title I of ERISA and that file the Form 5500 Annual Return/Report of Employee Benefit Plan or, if applicable, the Form 5500–SF (Annual Return/Report of Small Employee Benefit Plan) (together Form 5500) with EBSA. The exemption applies even if an ERISA-covered plan was not otherwise required to submit an ERISA annual report. Effectively, this means that the exemption applies when a union has a plan covered by ERISA, and is therefore eligible under ERISA to file and files the full annual return/report of employee benefit plan or the Form 5500–SF for eligible small plans, as appropriate. A union would be exempt from filing a Form T–1 if it files an annual report under ERISA unless it files a Form 5500–SF without meeting the eligibility requirements for filing the simplified report, such as being a multi-employer plan, not having the correct plan membership size, or not being invested in "eligible plan assets." [15] For example, a multi-employer apprenticeship and training plan must file the full Form 5500, not the SF, in order for the union to qualify for this Form T–1 exemption. The Department received numerous comments in response to this proposal, and, while the Department retains the ERISA exemption in the final rule, the Department has modified the regulatory language and Form T–1 instructions to make clear its scope.

The commenters opposed to this exemption argued that the Form 5500 does not offer comparable disclosure. They also stated that ERISA and the LMRDA serve different purposes.

Those who supported the exemption argued that the Form 5500 exemption should be retained. ERISA exemptions have always been a feature of the Form T–1 filing requirements, and the reasoning has not changed. The Form 5500 offers disclosure and accountability for both employee benefit pension plans and employee benefit welfare plans operated with a trust comparable to what the Form T–1 offers. The commenters argued that, were no Form 5500 exemption granted, the resulting redundancy created by the overlapping reports would be an unjustifiable burden on labor organizations with no justifiable gain in disclosure for members. Moreover, some commenters maintained that the Form 5500 provides even greater transparency than the Form T–1, because the itemization threshold for reporting certain payments to service providers is only $5,000 on Form 5500 as opposed to $10,000 on the Form T–1. The Form 5500 also requires reporting of certain types of indirect compensation, not just direct compensation, paid to or received by a service provider. Finally, Form 5500 filers with plans funded by trusts generally have to file an audit report based on an audit conducted by an independent, qualified public accountant.

A commenter took the position that the Form 5500 does not offer sufficient disclosure and that ERISA works to blunt inquiry for members. Another commenter claimed that there is "no rationale basis [sic]" for the Department to believe the Form 5500 will adequately inform members for the purposes of maintaining democratic control of their union or to ensure a proper accounting of union funds. The Department disagrees with these statements. First, the Form 5500 has for decades provided important financial disclosure regarding the entities that file it. Second, the Form 5500 is available to not only participants, beneficiaries, and fiduciaries, but to union members and to the public. Members interested in the operations of the employee benefit trusts to which their union contributes can continue to utilize it for the effective monitoring of those filing entities. While the first commenter also suggested that the Form 5500 is inappropriate because the LMRDA and ERISA serve different purposes, this does not have any bearing on the quality of Form 5500 disclosure or the salience of those disclosures for these purposes. In any event, in the Department's view, the transparency provided by the Form 5500 can serve the purposes of both statutes.

Another commenter argued that the Form 5500 exemption should not be included because the additional burden of preparing the Form T–1 would be minimal. The trust would already have garnered much of the information needed when it was preparing the Form 5500. While it is true that similar information from the same sources would reduce the burden of a second form, even a reduced unnecessary burden is still an unnecessary burden. The exemption avoids any unnecessary burden in relation to the Form T–1.

The Department agrees with the reasoning offered by one union commenter as to why the Form 5500 exemption has long been a feature of Form T–1 initiatives and should be maintained. The exemption reduces the redundancy of information already publicly available, and eliminates burden hours that would be otherwise borne by the union. The exemption is, as another commenter explained, well-founded because Form 5500 reporting already ensures transparency and accountability to members whose trusts file. Lastly, as one accounting firm commenter reasoned, the Form 5500 is arguably superior in certain respects to the Form T–1, primarily the lower threshold for identifying recipients of disbursements which is set at $5,000 as opposed to $10,000.[16]

The ERISA exemption would require a union to take the step of determining whether or not a given trust covered by this rule in which it has an interest files the Form 5500 with EBSA.[17] On this point, one commenter argued that unions would have no more difficulty in finding out whether their trust files a Form 5500 than determining and acquiring all of the necessary information from the trust for the completion of the Form T–1. Again, the Form 5500 is publicly available, including via a simple search on the Department's Form 5500 online Search Tool.[18] Furthermore, when contacted by the union, the trust would know if it files the Form 5500 and could indicate the fact to the union. Thus, the Department remains convinced that the exemption for trusts that file the Form 5500 with EBSA should remain.

In a closely related issue, some commenters expressed concern that the trust's provision of information to the union for purposes of completing the Form T–1 raises ERISA fiduciary duty and prohibited transaction issues. In this regard, ERISA requires that plan assets be used only for the provision of plan benefits or for defraying the reasonable expenses of administering a plan. See 29 U.S.C. 1103(c)(2) and 1104(a)(1)(A). Moreover, ERISA prohibits, subject to exemptions, a plan fiduciary from using plan assets for the benefit of a party in interest, a term that includes a union whose members are covered by the plan. See 29 U.S.C. 1002(14)(D), 1106(a)(1)(D). Additionally, other commenters argued that when a trust enters an agreement with a union to receive reimbursement for costs incurred in providing Form T–1 data to a union, union trustees will have to recuse themselves in order to avoid violating ERISA's self-dealing restrictions in agreeing to the amount and terms of the reimbursement. These same issues were raised by commenters in connection with the 2008 final Form T–1 rule. Specifically, in the preamble to the 2008 rule, the Department noted that "[i]n 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."

The Department does not believe that it is necessary to issue a "good faith" exception, as suggested by commenters, from the requirement to report Form T–

[15] *See* Who May File Form 5500–SF, Instructions for Form 5500–SF Short Form Annual Return/Report of Small Employee Benefit Plan, available at *https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500.*

[16] Filers required to file a Schedule C with their Form 5500 must identify various service providers who receive $5,000 or more directly or indirectly for services rendered to the plan or as a result of their position with the plan during the covered year.

[17] Under the ERISA exemption, the ERISA annual return/report filing would technically be for the plan of which the trust is part, and the annual filing would include and cover the trust.

[18] Available online at *https://www.efast.dol.gov/portal/app/disseminate?execution=e1s1.*

1 information in any case in which a trust refuses to provide required information to the union. In issuing today's rule, OLMS consulted with EBSA, the Department agency responsible for the administration and enforcement of the fiduciary rules under Title I of ERISA. As stated in the 2008 Form T–1 Final Rule preamble: ''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 union with [Form T–1 information], provided the plan is reimbursed for any material costs incurred in collecting and providing the information to the labor organization officials.'' 73 FR 57412, 57432 (Oct. 2, 2008). Additionally, the Department went on to state that EBSA explained that a ''sharing of information in this manner is consistent with ERISA's text and purposes, and a contrary construction [of ERISA] 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.'' *Id.* EBSA confirmed in connection with today's rule that those statements continue to reflect its view.[19]

Further, the exemption for trusts filing the Form 5500 should substantially reduce the number of trusts and unions that will need to follow this procedure in order to be compliant with the requirements of the Form T–1. If an employee benefit plan is exempt from filing a Form 5500 pursuant to EBSA regulations, but nevertheless chooses to file a Form 5500 so that the sponsoring union can avoid filing a Form T–1 for the trust, the union would reimburse the plan for any administrative costs associated with the Form 5500 filing that would not have otherwise been incurred by the plan.[20] If, however, the responsible plan fiduciaries decide not to rely on an exemption and file a Form 5500 for prudent reasons related to plan administration and unrelated to the union's ability to claim an exemption from the Form T–1, the fact that the Form 5500 filing might result in an incidental benefit to the sponsoring union would not require the union to reimburse the plan for all or part of the Form 5500 filing costs.[21]

One commenter reasoned that this rule's promulgation was generally inappropriate because Congress sought to regulate transactions between ERISA trust plans and union officers and employees through extensive reporting and disclosure through ERISA, not the LMRDA. This rule responds to the comment, to the extent appropriate, by including a Form 5500 exemption recognizing the quality and appropriateness of disclosure through that form rather than the Form T–1. However, section 208 of the LMRDA clearly affords the Secretary authority to promulgate regulations governing trusts in which a labor organization is interested.

A commenter argued that, due to several court cases, it is incorrect for the Department to count employer contributions to ERISA plans toward its determination of a union's control over a trust according to this rule's financial or managerial dominance test. More particularly, the commenter suggested that this line of cases establishes a total prohibition against counting ERISA trust funds for any LMRDA reporting or enforcement purposes whatsoever. The commenter inflated the scope of these decisions. The cases the commenter cited are limited to the misuse of ERISA plan funds as the basis for fiduciary violation claims under the LMRDA. Although courts have issued narrow holdings establishing that fiduciary breach under section 501(a) of the LMRDA cannot be shown through a trustee's malfeasance in regards to ERISA plan trust funds,[22] these cases do not support the commenter's conclusion that such cases establish a total prohibition of against applying LMRDA provisions to ERISA funds. Moreover, as discussed at Part III, Section C, the end use of employer funds contributed pursuant to a CBA, as negotiated by the union, is of obvious interest to union members and indicative of the control a union or unions have over the particular trust.

Furthermore, with harsh lessons learned from the UAW/Fiat Chrysler scandal, the ability of a union to collaborate with an employer to attain domination allowing for distribution of trust assets, including employer funds, is not to be underestimated. Some commenters argued that by including employer contributions towards the determination of union dominance, the Department failed to grasp the idea that the employer and its contributions serve as an inherently competitive balance to the union. While this might be the theoretical and traditional ideal, such a clean cut, unqualified role of employer funds has not been realized. Similarly while ERISA can be said to grant exclusive control to trustees alone, it does not alter the fact that a union might in fact control the trust. The Form T–1 and its dominance test have been crafted to deal with the reality that unions can exert control and/or domination of a trust through direct contributions or those employer contributions made at the union's direction, *i.e.,* contributions made pursuant to a CBA.

Lastly, commenters suggested changes that could be made to ERISA or its implementing regulations that would achieve additional disclosure from apprenticeship and training programs. Any suggestions for changes to ERISA regarding apprenticeship and training plans, or any other element of ERISA regulations, are outside the purview of this rulemaking and the purview of OLMS. OLMS has shared those comments with EBSA and encourages interested stakeholders to communicate their suggestions directly to EBSA. Today's rule, though, makes it clear that the ERISA exemption in this final rule for the Form T–1 includes apprenticeship and training plans that do file the Form 5500, even if EBSA by regulation has provided a conditional exemption for such plans from the generally applicable Form 5500 annual reporting requirements.

F. Other Exemptions Raised by Commenters

Exemption for Trusts That Are Required To File IRS Form 990

Multiple union commenters requested an exemption from filing the T–1 for any organization that files a Form 990 with the Internal Revenue Service (IRS). These commenters asserted that the Form 990 requests much of the same, if not more information than the Form T–

[19] Comments on the application of section 302(c) of the Labor Management Relations Act of 1947 (LMRA) are outside both the purview of this rulemaking and the purview of OLMS because the Department of Justice rather than the Department of Labor has jurisdiction regarding that provision.

[20] For example, under ERISA section 107, plans are required to maintain records sufficient to support a Form 5500 report even if they are eligible for a reporting exemption or simplified reporting alternative.

[21] See generally Advisory Opinion 2003–04A (''[T]the Supreme Court has recognized that plan sponsors receive a number of incidental benefits by virtue of offering an employee benefit plan, such as attracting and retaining employees, providing increased compensation without increasing wages, and reducing the likelihood of lawsuits by encouraging employees who would otherwise be laid off to depart voluntarily. It is the view of the Department that the mere receipt of such benefits by plan sponsors does not convert a settlor activity into a fiduciary activity or convert an otherwise permissible plan expense into a settlor expense. See *Hughes Aircraft Company* v. *Jacobson,* 525 U.S. 432 (1999); *Lockheed Corp.* v. *Spink,* 517 U.S. 882 (1996).'').

[22] *See, e.g., Hearn* v. *Mckay,* 603 F.3d 897 (11th Cir. 2010); *Noble* v. *Sombrotto,* 525 F.3d 1230 (D.C. Cir. 2008).

1. Thus, according to these commenters, the Form T–1 is largely unnecessary to prevent the circumvention or evasion of LMRDA reporting requirements because that information is already largely reported on a trust's Form 990, especially with regard to entities that are tax-exempt under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. *See* 26 U.S.C. 501. One commenter requested that the Department provide an exemption for completion of parts of the proposed Form T–1 for organizations that annually file IRS Form 990 or allow those organizations to skip completion of Schedules 1, 2, and 3 of Form T–1 because so much of the information is duplicated with information that is required to be reported on Form 990.

Required IRS disclosures do not exempt labor organizations from their LMRDA reporting requirements. Labor organizations that are required to file an annual Form 990 are still required to file their annual LM–2, LM–3, and LM–4 form. Indeed, the purposes of LMRDA and IRS disclosure differ to a greater degree than does the LMRDA with ERISA, with correspondingly different disclosure requirements. As explained, the LMRDA was enacted, in part, to address fraud and corruption occurring within labor-management relations. The LMRDA's reporting requirements exist to deter such fraud and corruption, as well as promote union democracy. IRS reporting requirements are not tailored in this manner because the IRS provisions were enacted for the purpose of ensuring the IRS can monitor the activity of tax-exempt entities to ensure they remain duly eligible for the substantial benefit of tax-exempt status. Rather, the LMRDA's reporting requirements were tailored to prevent the circumvention or evasion of meaningful financial disclosure for labor organizations and trusts in which a labor organization is interested. While some information may overlap, there are substantial differences between the forms that continue to make the need for the Form T–1 apparent. For example, the Form T–1 requires itemization in all three of its schedules and thus provides a degree of specificity that the Form 990 does not; such particular detail as to certain, large transactions provides a level of transparency that exceeds that provided by similar fields in the Form 990. The Form T–1 is organized for review by union members, who are familiar with similarly-structured union financial disclosure reports such as the Form LM–2. Members will find the reporting structure of the Form T–1 far more accessible than the Form 990. Furthermore, whatever information is overlapped on both forms will simply provide members with a means of cross-referencing financial disclosures of a particular trust.

Moreover, while the Form 990 is detailed, it is less readily available for public inspection than the Form T–1, Form LM–2, or Form 5500 reports. Contrast this to LMRDA disclosure, which allows free, instant access to the entire LM form from the time electronic filing was available (the year 2000 for unions filing the Form LM–2) using the OLMS database.

Exemption for Credit Unions

The Department invited comment on whether it should exempt financial institutions affiliated with labor organizations, such as credit unions, from the final rule. Several commenters supported an exemption for credit unions affiliated with labor organizations in any final rule. According to these commenters, credit unions are highly regulated by the National Credit Union Administration (NCUA) and other financial regulatory agencies. One commenter noted that the reporting thresholds created by the proposal would make it extremely unlikely that any credit union would be covered. Multiple commenters noted that the structure of a credit union, which includes a Board of Directors democratically elected by the credit unions' entire membership, does not warrant the treatment of a credit union as a labor organization's ''trust.'' Credit unions are distinct, independently-managed legal entities according to the commenter. Another commenter noted that credit unions' revenue come largely from the deposits of individual members. Thus, according to the commenter and as echoed by a second commenter, the only time Form T–1 reporting on a credit union would be required is in the ''extremely unlikely'' circumstance where most deposits come from labor organizations rather than from individual depositors.

Another commenter opposed an exemption for credit unions, asserting that labor union-controlled banking and financial institutions create an opportunity to covertly influence actors in the labor-management field and that non-disclosure serves no LMRDA purpose.

Another commenter expressed concern that the reporting called for by the Form T–1 proposal would directly conflict with the Federal Credit Union Act, 12 U.S.C. 1751, as well as other laws and regulations governing credit unions. The comment cited the Department's example in its 2002 Form T–1 proposal, in which a labor organization contributed 97 percent of the funds on deposit at a credit union and provided large loans to union officers exclusively. The commenter noted that ''the loans described in the Department's example are characterized by the NCUA as 'loans to insiders' and, as such, are subject to special review by NCUA examiners.'' The commenter also more pointedly observed that information about credit union loans, as personally identifiable financial information, is exempt from public disclosure under the Gramm Leach Bliley Act. This commenter also wrote that applicable privacy regulations forbid a credit union from providing loan information to a union without first giving the borrower an opportunity to prevent such disclosure.

Another commenter was concerned that by creating the impression that private financial dealings with credit unions might be subject to public disclosure, the Form T–1 proposal would discourage the use of credit unions, running contrary to the federal policy of fostering the formation of credit unions. Based on these comments, the Department considered the extensive reporting requirements and regulations to which credit unions and other financial institutions are subject. The Department has decided to exempt from filing the Form T–1 organizations that are subject to the Federal Credit Union Act, 12 U.S.C. 1751.

Exemption for Fraternal Benefit Societies

One commenter requested an exemption for Fraternal Benefit Societies, which generally issue life insurance products to members of the sponsoring organizations. The commenter maintained that such trusts merit an exemption due to their similarity to PACs and commercial financial institutions. According to the commenter, fraternal benefit societies operate under a rigorous regulatory framework of state insurance laws administered in most states by an Insurance Commissioner. This regulatory framework requires fraternal benefit societies to file, on a quarterly and annual basis, a true statement of its financial condition, transactions, and affairs with the relevant State Insurance Commissioner in a form approved by the National Association of Insurance Commissioners (NAIC). Fraternal benefit societies also must produce any supplemental information required by the relevant state's Commissioner, as well as a valuation of its certificates in force for the prior year, as certified by a qualified actuary. The commenter claimed that such reports produced and submitted by the fraternal benefit society are available to the public. Fraternal benefit societies are also subject to state insurance requirements for any state in which they sell insurance products.

The Department was not persuaded that this type of trust necessitated an exemption by the information the commenter provided, which did not detail the information required in existing financial disclosures. The Department is also concerned about variations in state requirements for these entities, even if each state's regime does meet a minimum set out by NAIC. Further, the Department has not been able to substantiate that such annual disclosures are wholly or widely available to the public as the commenter suggests. As to similarities to entities for which the Department has granted exemptions, fraternal benefit societies differ from PACs in this context because union-affiliated PACs are more restricted and more heavily regulated than PACs in general (*e.g.,* union PACs may only solicit contributions from members), whereas fraternal benefit societies are regulated in the same manner as other life insurance providers. Moreover, while union trusts that function as commercial banks or credit unions are also regulated in the same manner as any other such entity, it is significant that the services of fraternal benefit societies are much more related to traditional union activities than are commercial banking and credit union services. As stated previously, requirements for filing from another government agency does not, per se, exempt an organization from its LMRDA reporting requirements.

G. Objections to Proposed Exemptions

Opposition to the Audit Option for Trusts

Multiple commenters opposed the proposed audit option that allows trusts to submit an audit in addition to page one of the T–1 form, instead of the entire form. Under the audit option, a labor organization need only complete the first page of the Form T–1 (Items 1–15 and the signatures of the organizations' officers) and submit a copy of the audit of the trust that meets the requirements as detailed in the Form T–1 Instructions (generally modeled on provisions in 29 U.S.C. 1023 and 29 CFR 2520.103–1, relating to annual reports and financial statements required to be filed under ERISA). These requirements are that the audit must:

• Be performed by an independent qualified public accountant.
• Be performed by an accountant who examines the financial statements and other books and records of the trust, as the accountant deems necessary, and 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).
• Include notes to the financial statements that disclose, for the relevant fiscal year:
• 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 trust officers and employees that were liquidated, reduced, or written off.
• 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; 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.

These commenters asserted that the proposed option to file an audit would allow trusts to submit less information than is required on the complete T–1 Form, thus decreasing transparency and undermining the purpose of this rule. One commenter insisted that the audit must disclose the same information as the Form T–1 or the audit will disclose less information than required on a Form T–1 and undermine the regulation's goal of promoting transparency. The Department believes the requirement that a labor organization deciding to file an audit must complete and file the first page of the Form T–1 with a copy of the audit is an acceptable approach that reduces the overall reporting burden on the labor organization and the section 3(l) trust, while providing sufficient disclosure. The Department notes that the Form LM–2 already provides an audit option for subsidiaries, and subsidiaries in the usual course are closer to the labor organization than a section 3(l) trust. See Form LM–2 Instructions, Part X (Labor Organizations with Subsidiary Organizations).

One commenter suggested the Department require the Form T–1 signature page be included with the audit submission in order to allow the LMRDA-related criminal provisions to be effectuated. This was already a feature of the proposed rule and is included in this final rule.

One commenter expressed concern that the audit required for the audit exemption is more stringent than the Form T–1 in certain respects, namely with regard to losses and shortages. The commenter points to the reporting exception from Item 16, that indicates losses and shortages do not include ''delinquent contributions from employers, delinquent accounts receivable, losses from investment decision, or overpayments of benefits.'' The commenter explains that these three categories are not included next to the criterion for the audit that all ''Losses, shortages, or other discrepancies in the trust's finances'' are documented. The Department wishes to clarify that the exception in Item 16 for ''delinquent contributions from employers, delinquent accounts receivable, losses from investment decision, or overpayments of benefits'' does apply, and that the audit required by the audit exemption is no more stringent as to the documentation of losses and shortages than the Form T–1.

Other commenters supported the audit option but requested clarification on whether the exemption from itemized reporting on Schedule 1 for ''receipts derived from pension, health, or other benefit contributions that are provided pursuant to a collective bargaining agreement'' will also apply to the audit disclosure option. To clarify, this exemption applies to the audit option, as well.

One commenter stated that the Department should do one of the following: Retain the overall audit exemption but drop the requirement for itemization of transactions of $10,000 or more because it is unrelated to any business purpose of the trusts and would not be ordinarily tracked in that way; or, allow the audit to omit specific itemization for trust receipts of collectively bargained employer contributions or for benefit payments to participants. The Department declines to modify the audit exemption in either manner, because it is critical that the audit provide comparable disclosure to the full Form T–1.

Multiple commenters suggested that because of the complexity of producing audited financial statements for multiemployer trusts, they would rarely, if ever, be available within 90 days following the close of a trust's fiscal year. One such commenter argued that the T–1 should be due no sooner than a full year after the end of a trust's fiscal year. Another commenter requested that OLMS permit a labor organization to take advantage of the limited exemption by filing the trust's most recently available audited financial statements. In the alternative, this same commenter requested that the labor organization be permitted to file for an automatic extension enabling it to submit the audited financial statements of the trust no later than the date the trust is required to produce those statements, and in no event later than 10½ months following the end of the labor organization's fiscal year.

The Department concurs with these comments, in part. Under the final rule, as proposed, labor organizations will file a Form T–1 and Form LM–2 together. The filing will be due 90 days after the labor organization's fiscal year ends. The Form T–1 will be based on the latest available information for the trust. The Department recognizes, however, that the trust needs an adequate amount of time to gather the Form T–1 data and provide it to the union and the union needs an adequate amount of time to prepare and submit the Form T–1. In certain cases, time would not be adequate. For example, if the trust and the labor union follow the same fiscal year, the Form T–1 would be due within 90 days of the close of the trust's fiscal year. This would give the trust and the union only 90 days to collect the trust's Form T–1 data, transfer the data from the trust to the union, and complete and file the Form T–1. It would give the trust 90 days to conclude an audit, if that course was taken. Based on the comments, this likely would not be a sufficient amount of time.

The Department will avoid this scenario. A labor union must still file the Form T–1 within 90 days of the close of its fiscal year. But it will be required to report on the trust's fiscal year that ends 90 days or more before the union's fiscal year ends. In other words, if a union and trust both have a calendar fiscal year ending December 31, 2021, the union would file its Form T–1 by March 31, 2023. The Form T–1 would cover the trust's fiscal year ending December 31, 2021. That would be the trust's most recent fiscal year that ended 90 days or more before the union's fiscal year's end. In another example, the union has a March 31, 2022 fiscal year ending date. The trust's fiscal year ends December 31, 2021. The Form T–1 would be filed June 29, 2022 (90 days after the close of the union's fiscal year) and would cover the trusts fiscal year ending December 31, 2021. That would be the trust's most recent fiscal year that ended 90 days or more before the union's fiscal year's end. Under this rule, the trust and the union would always have at least 180 days to prepare the Form T–1. This additional time will also aid in the preparation of a qualifying audit.

The Department's intention in 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, is to ease the burden for both the trust and the labor organization. The Department anticipates that a trust will be able to more readily provide necessary information to the reporting labor organization at the conclusion of the trust's fiscal year and that a labor organization will have correspondingly less difficulty in obtaining information at that time. This change will alleviate the need for any later deadline or any form of automatic extension. The Department includes in the instructions that are published as part of the final rule examples of the rule's application to trusts and labor organizations that have the same or different fiscal years.

Finally, a commenter suggested that the Department should accept an audit, prepared pursuant to the Taft-Hartley Act, pursuant to the Form T–1 audit exemption. The Department declines this suggestion, since the audit option described here is specifically tailored for the requirements of the LMRDA and the trusts' connection with labor unions, such as whether the trusts made loans to labor union officers.

Opposition to Exemption for Smaller Labor Organizations and Subordinate Organizations

Several commenters opposed the proposed rule's exemption of unions with total annual receipts less than $250,000. These commenters stated that members of smaller labor organizations deserve as much protection and transparency as members of larger labor organizations. In the 2003, 2006, and 2008 rules, the Department explained that it had been persuaded that the relative size of a union, as measured by its overall finances, will affect its ability to comply with the proposed Form T–1 reporting requirements. 68 FR 58412–13. For this reason, the Department set as a Form T–1 reporting threshold a union's receipt of at least $250,000 during the one-year reporting period, the same filing threshold that applies for the Form LM–2. 68 FR 58413. For the same reason, the final Form T–1 rule applies only to unions that have $250,000 or more in annual receipts. This threshold is based on annual receipts because they are the monetary component that is most reflective of the union's overall finances and are the most effective proxy for ''size'' in the sense of number of members and effect on commerce. Moreover, using receipts is also consistent with the existing delineation between unions that file the Form LM–2 and unions that file the Form LM–3 or 4, which makes it a more familiar and straight-forward method for labor organizations to determine their size.

The Department has carefully considered and balanced the burden on labor organizations versus the benefits of increased transparency gained through such reporting and determined that T–1 reporting was most beneficial for larger labor organizations and their trusts. The Department is particularly hesitant to expand coverage to filers with less than $250,000 in annual receipts, as this rule is already predicted to have a significant impact on a substantial number of small entities, even when applied only to Form LM–2 filers. Were compliance to be expanded to all Form LM–3 and LM–4 filers, every one of these small filers would be impacted, and, in some cases, the cost of compliance could exceed the entire amount of annual receipts the labor organization receives annually. Therefore, expanding coverage to the smallest labor organizations is untenable and the Department declines to eliminate the filing threshold.

Many of the comments on the 2002 proposal expressed the view that the Form T–1 would impose a substantial burden on small labor organizations, because they are usually staffed with part-time volunteers, with little computer or accounting experience and limited resources to hire professional services. In the 2003, 2006, and 2008 rules, the Department explained that it had been persuaded by the comments 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. For this reason in the 2003, 2006, and 2008 final rules, the Department did not require any labor organization with annual receipts of less than $250,000 to file a Form T–1 report. For the same reasons, the Department again adopts a Form T–1 filing threshold of $250,000 in annual receipts for the labor organization.

One commenter opposed creating an exemption for a subordinate union when both a parent and its subordinate meet the financial or managerial domination test. This commenter suggested that the trust prepare a Form T–1, make blank signature copies for each affiliated labor organization, and have each sign and submit the Form T–1 with their LM filing. The Department declines this suggestion. The Department has determined that this requirement would create a burden on the trust and the affiliate unions without increasing transparency in any demonstrable manner.

Criticism of Written Agreement Requirement for Itemization Exceptions

Two commenters argued that the Benefits Payment Itemization Exemption in the Form T–1 Instructions is insufficient because as written it fails to exempt a number of benefits payments. The instructions read that a ''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*'' (emphasis added). The commenters argue that the last clause is too limiting, because many benefits payments are not in the original governing written document and are later added on through additional notes on a plan summary or a schedule of benefits that are not expressly incorporated into the governing document. One of the two commenters also makes the same claim about this ''written agreement'' language with respect to the Department permitting a confidentiality exception to itemization requirements for employer contributions that could reveal business operations. In each scenario, the commenters suggest that the simplest solution is to eliminate the final clause and simply indicate that all benefit payments and all employer contributions meet the exceptions. The Department believes that the edit is unnecessary and that removing the clause would provide undue opportunities for trusts and labor organizations to hide illicit transactions under the guise of ''benefit payments'' or ''employer contributions'' without having any proof. Having a written agreement of some sort is important in order to ensure there is documentation providing the terms of a legitimate agreement for the movement of funds. The Department, however, clarifies that the term ''written agreement'' is more expansive than how the commenters have interpreted it. The term is not limited to the original governing document or to documents that are expressly incorporated into it. If the union or trust entered into an associated agreement in writing that provides a detailed basis for such benefit payments to a plan participant or beneficiary or employer contributions to the trust, the exemption is met.

H. Burden on Unions and Confidentiality Issues

The proposed Form T–1 used the same basic template as the Form LM–2. Both forms require the labor organization to provide specified aggregated and disaggregated information relating to the financial operations of the labor organization and the trust. Typically, the Form T–1 will require that a labor organization disclose information related to a covered trust's transactions, such as: Disposition of property by other than market sale, liquidation of debts, and loans or credit extended on favorable terms to officers and employees of the trust. Further, the Form T–1 will require that a labor organization identify major receipts and disbursements by the trust during the reporting period.

Several union commenters opposed the level of disclosure required by the Form T–1 report because of confidentiality concerns. These commenters asserted that the necessary information for the Form T–1, such as the total assets, total liabilities, total receipts, and total disbursements, is confidential information that belongs exclusively to the trust. These commenters further asserted that the trust is legally obligated to protect the information from public reporting.

One commenter opposed the proposed rule because it would require public disclosure of confidential information regarding employer work hours. The commenter reasoned that employers who work with its association would be obliged to disclose information about contributions they make to the funds. Because employers often sign agreements specifying how much they contribute per employee work hour, this would then permit readers to estimate the number of hours an employer's employees worked during the reporting period. This would undermine the contributing employers' businesses by making this type of information available to competitors.

One commenter opposed the required disclosure of apprentice trust funds. According to this commenter, requiring union representatives to disclose all contributions received in excess of $10,000 and all disbursements made in excess of $10,000 would require disclosure by the apprentice fund of its employees, their salaries, instructor salaries, apprentice coordinator salaries, payments to vendors, suppliers, equipment manufacturers, training materials, publications, website designers, and many other features which are confidential and proprietary. This would also give apprenticeship programs not covered by this rule the benefit of reviewing confidential and propriety information and an undeserved advantage, according to the commenter.

Another commenter opposed the NPRM's proposed protections for union members' personal information and for sensitive information related to a labor organization's negotiating or bargaining strategies. This commenter asserted that these exemptions undermined the LMRDA's purpose of informing employees about who is trying to influence and persuade them to join or not join a union and that publicity would constrain fraudulent activity. This commenter stated that allowing labor organizations to conceal their actions while requiring employers to report and disclose their ''sensitive information,'' creates an imbalance the LMRDA statutorily prohibits. The commenter proposed that, if adopted, the protections from disclosure discussed in the proposed rule should apply to all current LM forms and not just those filed by union officers. The commenter did not identify what sensitive information employers currently report or would be exempt from reporting under the commenter's proposal. The Department notes that employers, generally, have no obligation to file any LM report unless the employer ''has made an expenditure, payment, loan, agreement, or arrangement'' to or with a third party. 29 U.S.C. 433(d). An employer need not report the employer's own, regular efforts, sensitive or otherwise, to influence or persuade their employees concerning union membership. Moreover, this approach to the Form T–1 is consistent with the existing exemptions for such information on the Form LM–2. Furthermore, LMRDA Title II protects all filers from disclosing material protected by the attorney-client privilege. See LMRDA Section 204, 29 U.S.C. 434.

The Department carefully balanced increased transparency against revealing confidential private information or information that may place an organization at a competitive disadvantage. The final rule maintains consistency with the LMRDA's other disclosure requirements for the LM–2, as well as protecting confidential trust information. The Form T–1 will be subject to the same confidentiality provisions contained in the Form LM–2 regulations, 29 CFR 403.8. The only difference between the provisions relating to the Form LM–2 and final rule for the Form T–1 is that each addresses the distinct itemization thresholds for the two reports ($5,000 for Form LM–2 and $10,000 for Form T–1).

In the proposed rule as well as this final rule the Department also provides labor organizations the same reporting options available under the Form LM–2 for reporting certain major transactions in situations where a labor organization, acting in good faith and on reasonable grounds, believes that reporting the details of the transaction would divulge information relating to the labor organization's prospective organizing strategy, the identification of individuals working as ''salts'' (persons having sought and attained employment at a company in order to organize its workers), or its prospective negotiation strategy. Reporting labor organizations may withhold such information provided they do so in the manner prescribed by the instructions. Thus, this information may be reported without itemization; however, as discussed below, this information must be available for inspection by labor organization members with ''just cause.''

Under the final rule, a labor organization that elects to file only aggregated information about a particular receipt or disbursement, whether to protect an individual's privacy or to avoid the disclosure of sensitive negotiating or organizing activities, must so indicate on the Form T–1. A labor organization member has the statutory right ''to examine any books, records, and accounts necessary to verify'' the labor organization's financial report if the member can establish ''just cause'' for access to the information. 29 U.S.C. 431(c); 29 CFR 403.8. Information reported only in aggregated form remains subject to a labor organization's member's statutory right to access such financial information. Such aggregation will constitute a per se demonstration of ''just cause,'' and thus the information must be available to a member for inspection. By invoking the option to withhold such information, the labor organization is required to undertake reasonable, good faith actions to obtain the requested information from the trust and facilitate its review by the requesting member. Payments that are aggregated because of risk to an individual's health or safety or where federal or state laws forbid the disclosure of the information are not subject to the per se disclosure rule.

Commenters also made various suggestions as to ways in which the burden of the form could be reduced. First, the burden of itemization on Schedules 1 and 2 could be reduced by raising the threshold for the individual itemization of receipts and disbursements higher than $10,000. The Department declines the suggestion. While raising the threshold would reduce the burden of itemization, it also would unacceptably reduce the amount of disclosure available to union members. Furthermore, the Department has already accounted for this concern by increasing the threshold to $10,000; on the Form LM–2 for labor organizations, the threshold for major receipts and disbursements for itemization on Schedules 14–19 is $5,000. Since the threshold of $10,000 already doubles the traditional threshold for itemization, the Department declines to alter it further.[23] Additionally, the Department is declining the request of another commenter who advocated for the lower $5,000 threshold on the Form T–1. The Department has decided against a lower threshold in favor of a $10,000 threshold in recognition of the underlying concerns about burden advanced by the commenters asking for a higher threshold.

Another suggestion made was that DOL should reduce the burden by requiring only the top five receipts or disbursements to be itemized. The commenter offered no explanation as to why such a method or number of receipts/disbursements is well suited for financial transparency and burden reduction. The Department declines this idea due to the arbitrary limit suggested and for the obvious deficiencies in transparency this could create. For example, a trust with a dozen $50,000 disbursements as its top disbursements could handpick which five of its disbursements it wanted to have to itemize and name, and which to hide in non-itemized disbursements. To continue the example, it could have another dozen disbursements of $49,999, each for questionable purposes, that would go without itemization or the naming of recipients.

The Department also declines the idea offered by another commenter to extend the deadline for the Form T–1 beyond 90 days after the end of the union's fiscal year in an attempt to reduce the burden. While giving more time to trusts and unions to gather the necessary information would reduce the burden, the Department believes that 90 days at the end of the union's fiscal year creates a familiar, predictable timeline for both union members and the Department to expect union disclosure. Any recommendation to extend the deadline would cause problems greater than the burden reduction benefit in separating the Form T–1 deadline from the Form LM–2 deadline. Without a shared deadline, it will be more difficult for the Department to confirm that all obligated unions are complying with Form T–1 filing requirements, including identifying whether they or another union on their behalf will file the Form T–1 for each and every covered trust in which they are interested. Similarly, it will be more difficult for unions that have another union filing on their behalf, whether as a parent or a volunteer, to monitor compliance with that arrangement, which they must report on their Form LM–2 in lieu of a Form T–1. The Department sees no sufficient reason to depart from the statutory deadline for Form LM–2 reporting in requiring the Form T–1 from some of the same unions. Further, the policy that the union will report on trust fiscal years ending 90 days prior to the close of the labor unions' fiscal years will provide additional time, ensuring that there will always be a minimum of 180 days from the close of the trust's fiscal year to the submission of the Form T–1.

Lastly, while the Department has not changed its regulatory impact analysis methodology in response to public comments, the Department has updated its wage figures to the most recent, available, and complete data set from 2018. All figures are measured in 2018 dollars except where noted.

I. Legal Support for Rule

The NPRM explains that this rule is based on the Secretary's authority to require union financial reporting under Title II of the LMRDA, proposing that the Secretary has such legal authority as delegated by Congress. 29 U.S.C. 438. The LMRDA provides the Secretary with the specific authority to regulate ''trusts in which a labor organization is interested'' in order to prevent

[23] A commenter proposed that the threshold for the itemization of major disbursements and major receipts on the form T–1 should be set at $5,000, not $10,000. The commenter, however, did not provide reasoning as to why the decreased threshold is necessary in this context to prevent circumvention or evasion and thereby provide adequate union financial transparency, justifying the additional burden. Without support in the rulemaking record why $10,000 is insufficient but $5,000 sufficient to prevent circumvention or evasion, the Department declines to make this change.

circumvention or evasion of reporting requirements. *Id.*

One commenter asserted that the Form T–1 reporting obligation would exceed the Secretary's statutory authority on the basis that trusts make expenditures ''beyond traditional union expenditures'' that are accordingly beyond the authority granted to the Secretary under the LMRDA.

The Department acknowledges that the Secretary's authority is limited and that the case *AFL–CIO* v. *Chao,* 409 F.3d 377 (D.C. Cir. 2005) made clear that the Secretary cannot require ''general trust reporting'' in the sense of requiring reporting on all trusts in which unions have any stake. Yet, as explained in the Department's response to comments that raised concerns related to the treatment of employer contributions to a trust, or Taft-Hartley trusts, the Department has ensured this rule remains within the bounds of the Secretary's authority by making the managerial or financial dominance test a prerequisite for coverage under this rule. As the court stated in *AFL–CIO* v. *Chao,* ''[t]here is no serious dispute over whether Congress delegated authority to the Secretary to promulgate rules to enforce section 208 . . . . Under section 208, the Secretary may require reporting of union-related trusts where a two part nexus is met: A union must have an interest in the trust as defined in 29 U.S.C. 402(l), and the required reporting must be 'necessary' only for the purpose of 'prevent[ing] the circumvention or evasion of [union] reporting requirements' under LMRDA Title II.'' 409 F.3d 377, 386–87 (D.C. Cir. 2005) (internal citations omitted). The control test in this current rule, along with the union receipts threshold and other features, ensures that Form T–1 reporting covers trusts where the danger of circumvention and evasion is most serious, the control unions have over the trusts is higher, and there is currently an absence of significant financial disclosure.

The LMRDA explicitly grants the Secretary the power to require reporting for ''trusts in which a labor organization is interested.'' 29 U.S.C. 402(l). The LMRDA definition of ''trusts in which a labor organization is interested'' specifies that such trusts are those ''a *primary* purpose of which is to provide benefits for the members of such labor organization or their beneficiaries'' (emphasis added). *Id.* Thus, the LMRDA already contemplates that trusts will have purposes and expenditures in addition to those that serve the ''traditional'' union and union member interests.

The Department has taken due consideration of this comment, as well as other comments that argued the Department has the authority to require more trust reporting than was proposed. Ultimately, the Department adopts the managerial and financial dominance test as its basis for determining which trusts primarily serve union interests and purposes. Further, such a threshold test focuses reporting on those trusts that are most susceptible to corrupt misappropriation of union funds in the absence of adequate financial disclosures.

J. Multi-Union Control of Trusts

The NPRM explained that this rule is grounded in the Secretary's authority to require union financial reporting under the LMRDA, proposing that the Department take the position that the Secretary has such legal authority as delegated by Congress. This includes the specific authority to regulate ''trusts in which a labor organization is interested'' to prevent circumvention or evasion of reporting requirements. 29 U.S.C. 438. The NPRM further proposed that under the managerial and dominance tests, where multiple unions are involved in the same trust, the Department will count the total number of trustees appointed and total amount of funds contributed by all interested unions together in determining whether the interested unions must each file a Form T–1.

Some commenters questioned the Department's proposal to apply the control test collectively to multiple unions interested in the same trust. The policy justifications for this proposal are discussed at Part III, Section B of this rule. One commenter, however, specifically pointed to the language of LMRDA, which discusses ''trust'' in which ''a'' labor organization is interested, as presenting a legal barrier to the Department's approach. Given the statutory wording, this commenter asserted that the control test can only be applied serially to each individual union interested in a given trust.

The commenter's argument ignores the Dictionary Act: ''In determining the meaning of any Act of Congress, unless the context indicates otherwise—words importing the singular include and apply to several persons, parties, or things . . . .'' 1 U.S.C. 1; *see, e.g., FDIC* v. *RBS Sec. Inc.,* 798 F.3d 244, 258 (5th Cir. 2015). The context here does not suggest that Congress meant the Department to only regulate trusts in which one labor organization has an interest, but not trusts in which several labor organizations have an interest, or that the Department can only regulate trusts with certain relationships to a particular labor organization while ignoring others. Union members in both instances have the same interest in transparency, and nothing else in the statutory context suggests the overly technical reading of the statute propounded by the commenter. *See N. Ill. Serv. Co.* v. *Perez,* 820 F.3d 868, 870 (7th Cir. 2016) (''Statutes and regulations are long enough as they are without forcing drafters to include both the singular and the plural every time.'').

Further, the commenter's reading reaches a conclusion contrary to the language and purposes of the LMRDA. The statutory language concerning ''a trust in which a labor organization is interested'' in section 208 and the statutory definition of that terminology at section 3(l) do not expressly limit the number of unions that might be interested in a single trust. Rather, they relate to the relationship between a given union and given trust, with no regard for exclusivity. Accordingly, the statute is properly read as requiring that *at least* one union must be interested in a given trust for it to be a 3(l) trust. Once a trust meets the definition of a 3(l) trust in this manner, the section 208 language provides the Secretary with authority to require reporting from that trust for the purpose of preventing circumvention or evasion of LMRDA requirements. Given this statutory language and purpose, the Department must use its discretion, within the parameters set forth by the D.C. Circuit in *AFL–CIO* v. *Chao,* to establish reporting requirements that are tailored to effectuating the LMRDA through trust reporting rules that cover all trusts where union dominance allows for circumvention or evasion of the LMRDA, while not amounting to general trust reporting. This purpose warrants a control test that aggregates the level of control of multiple unions interested in the same trust because unions could work together to circumvent or evade their respective LMRDA reporting obligations.

The D.C. Circuit described this aspect of the LMRDA as ''a two part nexus'' for determining the extent of the Secretary's authority to require trust reporting. *AFL–CIO* v. *Chao,* 409 F.3d at 387. The first part of the nexus is that the Department must establish that a trust is a trust in which ''a'' labor organization is interested. But, as the court noted, the Secretary's authority to find coverage under the statutory definition is quite broad. *Id.* (''statutory definition of 'trusts in which a union has an interest,' 29 U.S.C. 402(l), is sufficiently broad to encompass trusts that are neither financed nor controlled by unions'').

The breadth of coverage under section 402(l) makes it reasonable to treat a trust that is funded by multiple labor organizations the same as a trust funded by a labor organization. This is further demonstrated by the fact that, in such cases, those unions likely already report the trust as a trust in which they are interested on their annual Form LM–2 reports.

The second part of the nexus is the control test, which is not used to determine whether a trust is a trust in which a labor organization is interested, but to determine whether the trust must be reported on a Form T–1 in order to prevent circumvention or evasion of the reporting requirements. Applying this to multiple unions collectively thereby acts on the Court's determination in *AFL–CIO* v. *Chao,* where the D.C. Circuit concluded that the Secretary had shown that trust reporting was necessary to prevent evasion or circumvention where ''trusts [are] established by one or more unions with union members' funds because such establishment is a reasonable indicium of union control of the trust,'' as well as where there is some form of ''dominant union control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues.'' 409 F.3d at 389, 390. Accordingly, the Department's position is reasonable and in furtherance of the purposes of the LMRDA.

The same commenter asserting that the control test should be applied serially also stated that the Department presumptively conflated the existence of aggregate contributions by multiple unions into a trust as establishing concerted effort to control a trust. The Department's response is that the rule properly addresses union dominance over trusts because once multiple unions are in a position to collectively control the trust, there exists a clear opportunity for circumvention or evasion. The Department is not obligated to prove case-by-case that circumvention has occurred for each and every multi-union trust. The Department's authority to *prevent* circumvention or evasion of LMRDA reporting requirements encompasses preemptively closing off opportunities for one or more unions to exploit their financial or managerial dominance over a trust. While the Department can point to, and has, instances of union financial corruption with respect to trusts, this rule aims to prevent any future evasive and corrupt uses of union trusts, of any variety, as much as to address past instances. Thus, the clear opportunity for unions to act in concert is sufficient.

V. Regulatory Procedures

Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (PRA).[24]

A. Summary

The LMRDA entitles union members to important information about union funds that are directed to other entities, for the members' benefit, when the Secretary finds that such reporting would be necessary to prevent the circumvention or evasion of the reporting requirements. *See* 29 U.S.C. 438. Examples include joint funds administered by a union and an employer pursuant to a CBA, educational or training institutions, and redevelopment or investment groups. The Form T–1 is necessary to close the information gap that exists for these trusts and thereby prevent certain trusts from being used to evade the LMRDA Title II reporting requirements, which are designed to provide union members with information about financial transactions involving a significant amount of money relative to the union's overall financial operations and other reportable transactions. Trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a union's financial condition and operations, including a full accounting to union members whose work obtained the payments to the trust. It is also necessary to prevent circumvention or evasion of the reporting requirements imposed on officers and employees of unions and on employers.

Union members thus will be able to obtain a more accurate and complete picture of their union'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 union member or a compliance audit by an OLMS investigator.

This rule is based upon improvements from previous efforts to institute the Form T–1, and this PRA analysis has been adjusted according to the Department's more accurate understanding of the Form LM–2 filers that will actually be subject to this revised Form T–1.

The Department estimates that a maximum of 2,070 Form T–1 reports will be submitted annually by 810 labor organizations as a result of this rule. The Department derives this estimate from a review of 2018 LM–2 reports from labor organizations that identified having a trust. The Department recognizes that this number of Form T–1 filers is an overestimation due to the Department's policy determination that only the parent union (*i.e.,* the national/international or intermediate union) should file the Form T–1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test.

Each of these 810 labor organizations will file at least one Form T–1 annually. Given that the Department estimates a maximum of 2,070 Form T–1 reports will be submitted annually, the 810 labor organizations will file ~2.56 reports on average.

Based on the calculations of the 2008 Form T–1 Final Rule, 73 FR 57436–57445, the Department estimates that, on average, labor organizations will expend 86.21 hours on recordkeeping the first year and 69.70 hours on recordkeeping each subsequent year for each Form T–1 filed. Additionally, on average, labor organizations will expend 35.17 hours on reporting the first year and 14.42 hours on reporting each subsequent year for each Form T–1 filed. Therefore, Form T–1 filers will spend 121.38 hours (86.21 + 35.17 = 121.38) on each T–1 report in the first year, and 84.12 hours (69.70 + 14.42 =

[24] *See* 5 CFR 1320.9. The 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 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 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, which 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.'' *See* 5 CFR 1320.9; 44 U.S.C. 3506(c).

84.12) on each Form T–1 report in subsequent years.

On any given report in the first year, the Form T–1 filers would spend approximately 121.38 hours per report (*see* Form T–1 Instructions), which results in a total of 251,256.6 additional burden hours (121.38 × 2,070 = 251,256.6 hours). In subsequent years, T–1 filers would spend approximately 84.12 hours per report (*see* Form T–1 Instructions), which would result in 174,128.4 additional burden hours (84.12 × 2,070 = 174,128.4), a 30.70 percent decrease from the first year.

The Department estimates that the total burden averaged over the first three years to comply with the Form T–1 to be 199,837.8 hours per year.

B. Response to Comments Received

Some commenters claimed that the reporting burden is too high, but offered no reasoning as to how they reached this conclusion. Similarly, many commenters argued that ultimately members are disserved by the expenditure of union funds for the purpose of disclosure, but offered no argument as to why securing disclosure is not of sufficient benefit. While the rule has a burden, the Department believes securing much-needed and long-awaited transparency for union members is well worth the burden in order to prevent embezzlement and maintain a corruption free labor-management relationship.

There were also numerous comments concerned with the burden of the rule taking away from the funds or time these trusts provide for training and benefits to union members. For example, one commenter expressed concern at the expense trusts would sustain from coding credit card transactions of officers. While there is recordkeeping burden shared by the union and the trust, this burden analysis includes estimates of time for both parties, and the union will entirely compensate the trust for its time. As such, these concerns are misplaced. The costs associated with this rule are ultimately not borne by the trusts, but by the unions who dominate them. Thus, it is the recordkeeping and reporting burden of the union that is the subject of the burden analyses in this final rule.

There were multiple comments relating to the accuracy of the burden. One commenter stated that the burden is incorrect because the union would have to hire outside consultants to gather trust information. The Department believes this commenter misunderstands the rule. The trust will gather all information necessary and then provide that information to the union, which will compensate the trust. Due to the financial expertise the administration of such funds require, trusts will overwhelmingly already have the expertise to analyze and provide their own information; any outside assistance should be needed infrequently and to a minimal extent because trusts overwhelmingly already possess the financial expertise necessary to administer and analyze their own financial records and transaction data. Thus, the cost would be negligible and, again, whatever part of the recordkeeping burden the trust would bear is ultimately compensated by the union. The same commenter also indicated that it seems likely that special software will be needed to process the trust information. This is incorrect. The information needed for the Form T–1 is largely similar to the Form LM–2. Every union that will ultimately submit a Form T–1 is submitting an LM–2 as well. Thus, the union will already have access to the necessary software. Lastly, a commenter indicated that the Department had only calculated the burden for each Form T–1, not for the total number of Form T–1s that a union would have to file, which could be multiple. This is incorrect. The NPRM provided both the individual cost of a Form T–1 ($7,226.97, as adjusted in the final rule) and the total average union figure ($18,513, as adjusted in the final rule, including the one-time regulation familiarization cost of $11.90, as adjusted in the final rule). The total figure is the cost for a single Form T–1 multiplied by the average number of Form T–1s for unions that have at least one trust in which a union is interested (2.56 Form T–1s). This figure is an overestimation. It does not take into account the audit exemption, for example, which will lower the average number of Form T–1s even further. It also does not account for duplicative filings; many of these unions are part of trusts for which a parent organization, or another union involved in the arrangement, will file the Form T–1, thus freeing those other unions from also filing for that year. Furthermore, the LM–2 filers with the most trusts, many of which will meet the Form 5500 exemption and others which may meet the audit exemption, are the largest LM–2 filing unions, namely district councils, national/international parent bodies, and very large locals. Thus, the scenario one commenter contemplates of labor organizations mired in hundreds of burden hours with no benefit to their respective members is likewise incorrect. The Department has carefully selected its exemptions, reviewed its Form LM–2 filer data, and ensured that the average experience of labor organizations, and the expense they will endure, do not constitute a substantial burden.

Some commenters argued that the burden on trusts extends beyond financial and to the time and effort taken away from helping beneficiaries and participants. Initially, the Department has quantified those aspects of reporting and recordkeeping associated with the Form T–1, and none of the commenters provided concrete alternative estimates. Further, as explained, the Department has refuted the critiques of such estimates. Moreover, even to the extent that the Form T–1 would prevent the trust from serving beneficiaries, the amount of time required is minimal, and, in any event, the Department considers the transparency benefits to outweigh the costs. Indeed, if the Form T–1 helps prevent or deter the potential loss of millions of dollars of plan funds like in the UAW-Fiat Chrysler training center scandal, then this would clearly justify marginal burdens.

Finally, as noted by multiple members of Congress, the Department has narrowly tailored the Form T–1, reducing the burden to a mere $7,226.97 (as adjusted for the final rule) a year and requiring only the largest labor organizations with significant stakes in trusts to carry such a burden. These unions have a correspondingly large membership that will finally gain transparency into the trusts providing them with vitally important training and benefits. Thus, the Department concludes that, as another commenter stated, the burden is fair for the labor organizations that deemed it necessary to divert funds to trusts either for legitimate purposes or as potential vehicles for evasion of LM reporting.

The NPRM discussed the recordkeeping and reporting burden that unions will bear in complying with this rule. The NPRM also provided a monetary estimate of this burden as legally required by the RFA and PRA. The Department's position in this Final Rule and in the NPRM is that there will be a burden on unions created by the rule but that it will be outweighed and thereby justified by the benefits of the rule.

Some commenters expressed concern that some labor organizations would incur significant costs in complying with the reporting requirements of the Form T–1. These commenters speculated that a given labor organization might need to pay for training, develop new recordkeeping processes, purchase new software, or even hire expert consultants in order to complete the Form T–1.

The Department recognizes the possibility of increased costs for some unions that would be obligated to file under this rule. In fact, in the RFA section of this final rule the Department has built these costs into its estimation of the rule's total burden. The Department has accordingly designed the rule such that these costs will be small and will be outweighed by the substantial benefits of Form T–1 reporting. For example, the Department has restricted the reporting obligation to unions with more than $250,000 in annual receipts (*i.e.,* only those unions that file the LM–2 based on size). This measure ensures that only unions that already have significant resources and sufficient financial sophistication will file the Form T–1. The Department has sufficient experience with the Form LM–2 and the unions that file it to know they are equipped to provide essentially the same types of information with the same level of detail for the trusts in which they are interested.

C. Hours To Complete and File Form T–1

The Department modeled its current analysis on the analysis in the 2008 Form T–1 final rule. The Department estimates 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 this rule. *See* 73 FR 57436–57445.

The Department estimates that, on average, labor organizations will expend 1.83 reporting hours each year completing page one of the Form T–1. 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 questions 9, 14, and 15; provide addition information (if necessary); and sign the report. The labor organization's information should 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 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, LM–3 filers spend approximately 5 minutes on each item and question 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 answering the 3 yes/no questions. If additional information is required, the Department has determined that the labor organization should be able to fill out the mailing address for the records of the trust and labor organization 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 signature software setup for the LM–2. In most cases, it will be a matter of pressing a button to apply the signature.

There is no unique recordkeeping burden associated with the first page of the Form T–1. Under the LMRDA, and pursuant to the Form LM–2 Instructions, Part XI (Completing Form LM–2), Item 10 (Trusts or Funds, the labor organization should already keep records on itself and trusts in which it is interested to complete the Form LM–2, including the trust's name, address, purpose, and EIN.[25] Further, neither the trust nor the labor organization will have to make any changes to its accounting systems to report the information required on page 1 of the Form T–1.

The Department estimates that, on average, labor organizations will expend 1.33 reporting hours each year completing page two of the Form T–1. The labor organization will have to train new staff, answer five questions, enter the total assets and liabilities, and enter additional information as necessary. Like the first page of the Form T–1, the second page of the Form T–1 is relatively straight forward. The Department has determined that labor organizations can train staff to complete the second page of the Form T–1 in 15 minutes. The majority of the reporting burden is attributable to questions 16 through 20. Although rare, the types of losses and transactions captured by questions 16 through 20 are of significant importance to both labor organizations and trusts. Each of these losses or transactions is 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 easily to identify and provide details on any loss or transaction that falls within questions 16 through 20. The Department estimates that the trust should be able to provide the labor organization with answers to questions 16 through 20 in 25 minutes, 5 minutes per question. Further, the Department estimates that the labor organization will spend approximately 30 minutes entering the details of the transaction or loss in item 25. Finally, the Department estimates that it will take 10 minutes to find and enter the total assets and liabilities in items 21 and 22.

There is no recordkeeping burden associated with the second page of the Form T–1. The answers to questions 16 through 20 are tracked by the trust along with receipts and disbursements. Therefore, the recordkeeping burden associated with questions 16 through 20 has been included in the recordkeeping burden for the receipts and disbursements schedules. 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, will be automatically calculated and entered by the reporting software.

Trusts are already tracking most receipts, disbursements, and payments to officers and employees in the regular course of business, but it is unlikely they are tracking the information in the detail or structure required by Form T–1 reporting. Therefore, covered 3(l) trusts will have to change their accounting systems to track the necessary information in a format that can be provided to the interested labor organization to complete the Form T–1. 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, T–1 respondents will expend 9.75 (of nonrecurring burden) hours developing, testing, and reviewing revisions to the account software; preparing the download methodology; and training personnel on each of the schedules.

[25] The proposed rule contained a typographical error. On the Form T–1, as reproduced the **Federal Register**, Item 11 asks for the ''Tax Status of the Trust.'' 84 FR 25150. In contrast, the Instructions provide, ''Enter the Employer Identification Number assigned to the trust by the Internal Revenue Service.'' *Id.* at 25,162. A commenter asserted difficulty in calculating the burden when it is unclear which piece of data is being sought. The Department calculated the burden on the assumption that the filer would be entering the trust's Employer Identification Number. The error did not prevent meaningful comment on Item 11, or its commensurate burden, because both alternatives were made public, permitting comment on the burden of either alternative.

The Form 5500 exemption significantly reduces the variability of 3(l) trusts covered by the Form T–1. A careful analysis of the remaining trusts, used in the analysis above, indicates that most of the Form T–1s will be filed for building trusts, strike funds, labor-management cooperation committees, 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, similar to the 2008 rule, the Department uses the Form LM–2 experience to estimate the number of disbursements, receipts, officers, and employees listed on the Form T–1.

In terms of recordkeeping, 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. Additionally, for the Form T–1 disbursement schedule, the Department estimates that, on average, filers will expend 54.13 hours a year on recordkeeping. Further, 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.

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 rulemakings indicates that a labor organization 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.

Therefore, the Department estimates that, on average, labor organizations will expend 86.21 hours on recordkeeping the first year and 69.70 hours on recordkeeping each subsequent year on each Form T–1 filed. Additionally, on average, labor organizations will expend 35.17 hours on reporting the first year and 14.42 hours on reporting each subsequent year on each Form T–1 filed. Therefore, Form T–1 filers will spend 121.38 hours (86.21 + 35.17 = 121.38) on each T–1 report in the first year, and 84.12 hours (69.70 + 14.42 = 84.12) on each T–1 report in subsequent years.

D. Estimated Number of Form T–1 Reports

The following charts were used to calculate the various figures necessary to do the above calculations.

The first chart (Table 1) generated the total number of Form T–1s by averaging the known number of Form T–1s that would be generated in the top 10 percent and bottom 10 percent of Form LM–2 filers with at least one (1) trust.

The second chart (Table 2) generated the actual number of Form T–1 filers by averaging out the number of Form T–1 filers that exist in the top 10 percent and bottom 10 percent of Form LM–2 filers with at least one (1) trust.

The final chart (Table 3) generated the average number of Form T–1s that would be filed per Form T–1 filer in each decile and overall.

TABLE 1—TOTAL NUMBER OF FORM T–1S BY DECILE

Decile of LM–2s with at least 1 3(l) trust	Formula *	Variable	Number of T–1s
10 (Top 10%)	Y	Y	330
9	(W + Y)/2		299.25
8	(Z + Y)/2	W	268.5
7	(W + Z)/2		237.75
6	(X + Y)/2	Z	207
5	(X + Y)/2	Z	207
4	(T + Z)/2		176.25
3	(Z + X)/2	T	145.5
2	(T + X)/2		114.75
1 (Bottom 10%)	X	X	84
Total			2070

* These formulae represent the process by which the Department calculated the average number of T–1 reports likely to be produced in each decile. X and Y were not calculations; these variables were figures determined from extensive, time-consuming reviews of all LM–2 filers with trusts in the bottom and top deciles by annual revenue size, respectively. Decile 5 and 6, being the middle deciles, were represented by a simple arithmetic mean, averaging X and Y together to find Z, the average number of T–1 reports in those deciles.

Given the divide in the number of T–1 reports between the top decile consisting of the largest LM–2 filers and the bottom consisting of the smallest, namely that the top decile has over twice as many T–1 reports likely to be filed as the bottom decile, the Department assumes that using the simple arithmetic mean Z to represent the number of T–1 reports by decile would misrepresent the number of reports in those deciles. Z would be an overestimation of reports in the lower deciles and an underestimation in the top deciles. Instead, in order to represent the gradual decline in T–1 reports that is expected in each decile, and thus represent the number of T–1 reports generated in each decile more accurately, the Department calculated the average of Z & Y and then the average of Z & X in order to calculate W and T, respectively, where W is the number of T–1 reports expected for the middle decile in the top deciles (Decile 8) and T is the middle decile in the bottom deciles (Decile 3).

With W and T, the remaining deciles were determined. The number of T–1 reports for Decile 9 was calculated by averaging Y (the number of T–1 reports in Decile 10) and W (the number of T–1 reports in Decile 8). Decile 7 by averaging W (the number of T–1 reports in Decile 8) and Z (the number of T–1 reports in Decile 6). Decile 4 by averaging Z (the number of T–1 reports in Decile 5) and T (the number of T–1 reports in Decile 3). Decile 2 by averaging T (the number of T–1 reports in Decile 3) and X (the number of T–1 reports in Decile 1).

TABLE 2—NUMBER OF UNIONS FILING AT LEAST 1 FORM T–1

Decile of LM–2s with at least 1 3(l) trust	Formula *	Variable	Number of unions filing at least 1 T–1
10 (Top 10%)	Y	Y	100
9	(W + Y)/2	....	95.25
8	(Z + Y)/2	W	90.5
7	(W + Z)/2	....	85.75
6	(X + Y)/2	Z	81
5	(X + Y)/2	Z	81
4	(T + Z)/2	....	76.25
3	(Z + X)/2	T	71.5
2	(T + X)/2	....	66.75
1 (Bottom 10%)	X	X	62
Total	....	....	810

* These formulae represent the process by which the Department calculated the average number of labor organizations filing at least 1 (one) T–1 report in each decile. X and Y were not calculations; these variables were figures determined from extensive, time-consuming reviews of all LM–2 filers with trusts in the bottom and top deciles by annual revenue size, respectively. Decile 5 and 6, being the middle deciles, were represented by a simple arithmetic mean, averaging X and Y together to find Z, the average number of unions filing at least 1 (one) T–1 report in those deciles.

Given the divide in the number of labor organizations filing at least 1 (one) T–1 report between the top decile consisting of the largest LM–2 filers and the bottom consisting of the smallest, namely that the top decile has nearly twice as many labor organizations likely to file a T–1 report as the bottom decile, the Department assumes that using the simple arithmetic mean Z to represent the number of labor organizations likely to file a T–1 report in the remaining deciles would significantly misrepresent the number of such organizations likely in those deciles. Z would be an overestimation of labor organizations in the lower deciles and an underestimation in the top deciles. Instead, in order to represent the gradual decline in labor organizations filing at least 1 (one) T–1 report that is expected in each decile, and thus represent the number of labor organizations filing the T–1 report in each decile more accurately, the Department calculated the average of Z & Y and then the average of Z & X in order to calculate W and T, respectively, where W is the number of labor organizations filing the T–1 report expected for the middle decile in the top deciles (Decile 8) and T is the number of such labor organizations for the middle decile in the bottom deciles (Decile 3).

With W and T, the remaining deciles were determined. The number of labor organizations filing at least 1 (one) T–1 report for Decile 9 was calculated by averaging Y (the number of such labor organizations in Decile 10) and W (the number of such labor organizations in Decile 8). Decile 7 by averaging W (the number of such labor organizations in Decile 8) and Z (the number of such labor organizations in Decile 6). Decile 4 by averaging Z (the number of such labor organizations in Decile 5) and T (the number of such labor organizations in Decile 3). Decile 2 by averaging T (the number of such labor organizations in Decile 3) and X (the number of such labor organizations in Decile 1).

TABLE 3—NUMBER OF FORM T–1 REPORTS PER UNION FILING AT LEAST 1 FORM T–1

Decile of LM–2s with at least 1 3(l) trust	Formula *	Number of T–1s	Number of unions filing at least 1 T–1	Average number of T–1s per union **
10 (Top 10%)	X/Y = Z	330	100	3.3
9	X/Y = Z	299.25	95.25	3.14
8	X/Y = Z	268.5	90.5	2.97
7	X/Y = Z	237.75	85.75	2.77
6	X/Y = Z	207	81	2.56
5	X/Y = Z	207	81	2.56
4	X/Y = Z	176.25	76.25	2.31
3	X/Y = Z	145.5	71.5	2.03
2	X/Y = Z	114.75	66.75	1.72
1 (Bottom 10%)	X/Y = Z	84	62	1.35
Total	....	2070	810	*** 2.56

* = Where "X" represents the Number of Form T–1s, "Y" represents the Number of Unions Filing at Least 1 Form T–1, and Z represents the Average number of Form T–1s per Union.
** = Rounded to the Nearest 100th.
*** = This represents the overall average number of reports Form T–1 filers must file.

As this Form T–1 rule requires an information collection, the Department is submitting, contemporaneous with the publication of this rule, an information collection request (ICR) to revise the Paperwork Reduction Act clearance to address the clearance term. The ICR includes a new form, the Form T–1, which the Department has drafted and that LM–2 filing labor organizations must complete and submit, consistent with this rule. The ICR also contains corresponding changes to the Form LM–2 Instructions, Part XI (Completing Form LM–2), Item 10 (Trusts or Funds). A copy of this ICR, with applicable supporting documentation, including among other items a description of the likely respondents, frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* website at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201903-1245-001* (this link will be updated following publication of this rule) or from the Department by contacting Andrew Davisat 202–693–0123 (this is not a toll-free number)/email: *OLMS-Public@dol.gov.*

Type of Review: Revision of a currently approved collection.

Agency: Office of Labor-Management Standards.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1245–0003.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Responses: 33,571.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours: 4,754,242.

Estimated Total Annual Other Burden Cost: $0.

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Review)

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and OMB review.[26] Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. OMB has determined that this rule is significant under section 3(f) of E.O. 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this rule as not a 'major rule', as defined by 5 U.S.C. 804(2).

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

A. Costs of the Form T–1 for Labor Organizations

The Form T–1 will be filed by Form LM–2 filing labor organizations with trusts that meet the dominance test, if those labor organizations are not otherwise exempted from filing. Using data from LM–2 filings, the Department estimates that there are at least 810 total affected labor organizations (*i.e.,* LM–2 filers with trusts for which they must submit at least 1 Form T–1). The average form LM–2 filer will spend approximately 121.38 hours on average in the first year, and 84.12 hours each subsequent year to fill out the report.[27] The average hourly wage for Form T–1 filers, as with Form LM–2 filers, includes: $37.89 for an accountant, $20.25 for a bookkeeper or clerk, $25.15 for a Form LM–2 filing union secretary-treasurer or treasurer, and $29.21 for the Form LM–2 filing president, respectively.[28] The weighted average hourly wage is $36.53.[29] To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been multiplied by 1.63, so the fully loaded hourly wage is $59.54 ($36.53 × 1.63 = $59.54).[30]

During the first year, the cost for each T–1 filer to complete a Form T–1 is estimated to be $7,226.97 ($59.54 × 121.38 hours = $7,226.97). This number, however, should be multiplied by the average number of reports that each Form T–1 filer will be responsible for (2.56), for a total of $18,501. In subsequent years, the cost for each Form T–1 filer would be $12,822 (2.56 × 84.12 × 59.54 = $12,822).

Regulatory familiarization costs represent direct costs to Form LM–2 labor organizations associated with reviewing the new regulation to see if it applies to them. The Department calculated this cost by multiplying the estimated time to review the rule by the hourly compensation of the president of the Form LM–2 filing labor organization. Using the same fringe benefit and overhead costs rationale as above, the fully loaded hourly wage for the president is $47.61 ($29.21 × 1.63 = $47.61). The Department estimates that the president of each labor organization will spend 15 minutes to review the rule. Therefore, this rule should have a one-time regulation familiarization cost of $11.90 per filer (0.25 hours × $47.61 = $11.90) included as well. Doing so brings the first year costs per filer to $18,513 ($18,501 + $11.90 = $18,513).

Thus, the total annual cost in the first year for all 810 Form T–1 filers is estimated to be $14,995,530 (810 × $18,513 = $14,995,530), and the total annual cost in subsequent years is estimated to be $10,385,820 (810 × $12,822 = $10,385,820).

The one-time familiarization cost for all remaining 1,199 Form LM–2 filing labor organizations with trusts (2,009 LM–2 filers with trusts minus the 810 T–1 filers that are already accounted for = 1,199), for whom this rule does not apply, is estimated to be $14,271 ($47.61 × 1,199 LM–2 filers with trusts × .25 hours = $14,271) in the first year.

B. Summary of Costs

The total expected first-year costs would be $15,009,801 ($14,995,530 + $14,271 = $15,009,801). In subsequent years, the total cost would be $10,385,820. The 10-year annualized cost is expected to be $10,285,704 at a

[26] See 58 FR 51735 (September 30, 1993).

[27] For more details, see the Paperwork Reduction Act section above.

[28] Wage rates are derived from 2018 data; more specifically, the president and treasurer wage rates are determined from FY 19 Form LM–2 report filings, while the accountant and bookkeeper wage rates come from 2018 Bureau of Labor Statistics (BLS) data available at: *https://www.bls.gov/oes/2018/may/oes_nat.htm.*

[29] The weighted average calculates the wage rate per hour weighted according to the percentage of time that the Form T–1's completion will demand of each official/employee: 90 percent of the Form T–1 burden hours will be completed by an accountant, 5 percent by the bookkeeper, 4 percent by the union's treasurer/secretary-treasurer, and 1 percent by the union president.

[30] The use of 1.63 accounts for 17 percent for overhead and 46 percent for fringe. In the case of the 46 percent for fringe, see the following link to BLS data showing that wages and salaries represent 68.6 percent (.686) of compensation (*https://www.bls.gov/news.release/ecec.t02.htm*). Dividing total compensation by the 68.6 percent represented by wages and salaries is equivalent to a 1.46 multiplier. Adding a 17 percent multiplier (.17) for overhead equals 1.63.

3 percent discount rate and $9,608,788 at a 7 percent discount rate. As required under E.O. 13771, the annualized perpetual cost in 2016 dollars at a 7 percent discount rate is expected to be $7,826,522.

C. Benefits

As explained more fully in the preamble to this final rule, the Department has promulgated this rule in order to prevent the circumvention or evasion of the LMRDA reporting requirements, which Congress created as part of its efforts to ''eliminate or prevent improper practices'' in labor organizations, protect the rights and interests of workers, and prevent union corruption. 29 U.S.C. 401(b), (c). Specifically, to curb embezzlement and other improper financial activities of labor organizations, Congress required labor organizations to file detailed annual financial reports with the Secretary of Labor, which must also be made available to labor organization members. 29 U.S.C. 431(b). The reporting provisions of the LMRDA were devised to safeguard democratic procedures within labor organizations and protect the basic democratic rights of union members. By mandating that labor organizations disclose their financial operations to employees they represent, Congress intended to promote labor organization self- government, which would be advanced by labor organization members receiving sufficient information to permit them to take effective action in regulating internal union affairs. This final rule would ensure that those reporting obligations are not evaded and thus expand the benefits of labor organization financial transparency to the members of all Form LM–2 filing labor organizations that utilize trusts to expend funds for the members' benefit.

Recent cases of corruption and the continued potential for corruption within those trusts only confirms the Department's determination that additional financial reporting is necessary to avoid the type of circumvention and evasion that Congress authorized him to prevent. As recognized in the LMRDA, private sector labor organization members and the public have an interest in how labor organizations spend their member dues or employer funds through a CBA for their benefit. This interest is no less great when the money is expended by a trust rather than the labor organization directly. Extending LMRDA reporting requirements to bring additional transparency to the activities of section 3(l) trusts serves the public interest in disclosure and financial integrity.

Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' Public Law 96–354. To achieve that objective, the RFA requires agencies promulgating final rules to prepare a certification and a statement of the factual basis supporting the certification, when drafting regulations that will not have a significant economic impact on a substantial number of small entities. The RFA requires the consideration of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. *Id.* However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. *See* 5 U.S.C. 605. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

According to the Small Business Administration, organizations under NAICS 813930 are considered small entities if they have average annual receipts of less than $8 million.[31] For this analysis, based on previous standards utilized in other regulatory analyses, the threshold for significance is 3% of annual receipts, while a substantial number of small entities would be 20 percent.

The Department conducted an initial regulatory flexibility analysis at the NPRM stage to aid stakeholders in understanding the small entity impacts of this rule and to obtain additional information on the small entity impacts. The Department invited interested persons to submit comments on the number of small entities affected by the proposed rule's requirements, the compliance cost estimates, and whether alternatives existed that would reduce the burden on small entities.

All numbers used in the analysis were based on 2018 data taken from the Office of Labor-Management Standards e.LORS data base, which contains records of all labor organizations that have filed LMRDA reports with the Department and Bureau of Labor Statistics wage data.

(1) Reasons for and Objectives of the Form T–1 Rulemaking

As explained more fully in the preamble to today's rule, the Department is considering this rule as a means to prevent circumvention or evasion of the reporting requirements established by Congress in the LMRDA to ''eliminate or prevent improper practices'' in labor organizations, protect the rights and interests of workers, and prevent labor organization corruption. 29 U.S.C. 401(b), (c), 431(b). These reporting provisions of the LMRDA were intended to safeguard democratic procedures within labor organizations and protect the basic democratic rights of union members. Recent cases of corruption have highlighted the potential for circumvention and evasion of these requirements through the use of section 3(l) trusts. The Form T–1 will prevent such evasion and thereby enable labor organization members to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; and strengthen the effective and efficient enforcement of the Act by the Department.

The Form T–1 is specifically designed to close a reporting gap where labor organization finances related to LMRDA section 3(l) trusts were not disclosed to members, the public, or the Department. The Form T–1 would 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, ostensibly for the members' benefit, such as joint funds administered by a labor organization and an employer pursuant to a CBA, educational or training institutions, and redevelopment or investment groups. *See* 67 FR 79285. The Form T–1 is necessary to close this gap and prevent certain trusts from being used to evade the Title II reporting requirements. It will provide labor organization members with information about financial transactions involving a

[31] *See https://www.sba.gov/document/support—table-size-standards.*

significant amount of money relative to the labor organization's overall financial operations and other reportable transactions. 68 FR 58415. For example, the Form T–1 will also 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 then be able to determine whether the business and the labor organization official have made required reports concerning that relationship. This rule thus serves the fundamental purpose of the LMRDA disclosure requirements to prevent financial malfeasance on the part of those handling labor organization money. 67 FR 79282–83.

Congress enacted the LMRDA after an extensive investigation of ''the labor and management fields . . . [found] that there ha[d] 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 . . . .'' 29 U.S.C. 401(b). Congress intended the Act to ''eliminate or prevent improper practices'' in labor organizations, to protect the rights and interests of employees, and to prevent union corruption. 29 U.S.C. 401(b), (c).

As part of the statutory scheme designed to accomplish these goals, the Act required labor organizations to file annual financial reports with the Secretary of Labor. 29 U.S.C. 431(b). Congress sought full and public disclosure of a labor organization's financial condition and operations in order to curb embezzlement and other improper financial activities by union officers and employees. *See* S. Rep. No. 86–187 (1959), reprinted in 1 NLRB, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959, at 398–99.

The legal authority for this rule is section 208 of the LMRDA, 29 U.S.C. 438. 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 he 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.''

(2) Comments From the Public Regarding the RFA

There were no comments submitted by the public about the RFA. However, as indicated in the PRA section above, the Department received comments on burden, generally, and responded to those comments.

(3) Comments From the Chief Counsel for Advocacy of the Small Business Administration

There were no comments submitted from the Chief Counsel for Advocacy of the Small Business Administration.

(4) Estimates Regarding the Number of Small Entities to Which the Rule Will Apply

For this analysis, a small union is defined as one in which annual receipts are less than $8 million dollars. This final rule impacts 2,009 labor organizations at least $250,000 in size by annual receipts, with at least one trust, resulting in approximately 2,070 Form T–1 reports. Of these organizations, 1,667 have annual receipts less than $8 million. The data cited for the following calculations came from a query of the Department's database containing all submitted 2018 Form LM–2 union financial disclosure reports. The query asked for all Form LM–2 filers with at least one trust. It returned a list of each such filer along with various discrete informational fields, including each Form LM–2 filer's annual receipts information, which was used to identify all of the Form LM–2 filers with less than $8 million in annual receipts that inform this RFA analysis.

(5) The Projected Reporting and Recordkeeping Costs and Requirements

This rule requires that labor organizations subject to the LMRDA, the CSRA, or the FSA, as well as labor organizations representing employees of the U.S. Postal Service, with total annual receipts of $250,000 or more, 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 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.

The average hourly wage of the parties filing both the Form LM–2 and Form T–1 include: $37.89 for an accountant, $20.25 for a bookkeeper or clerk, $25.15 for a secretary-treasurer or treasurer, and $29.21 for the president, respectively.[32] The weighted average hourly wage for Form LM–2 filers is $36.53.[33] To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been doubled, so the fully loaded hourly wage is $59.54 ($36.53 × 1.63 = $59.54).[34]

As discussed in the regulatory impact analysis above, the average cost per respondent to complete the Form T–1 is $18,513 in the first year, and is $12,822 in each subsequent year. As mentioned earlier, for this analysis, a small union is defined as one in which annual receipts are less than $8 million dollars.

A threshold of 3 percent of revenues has been used in prior rulemakings for the definition of significant economic impact. *See, e.g.,* 79 FR 60634 (October 7, 2014, Establishing a Minimum Wage for Contractors) and 81 FR 39108 (June 15, 2016, Discrimination on the Basis of Sex). This threshold is also consistent with thresholds used by other agencies. *See, e.g.,* 79 FR 27106 (May 12, 2014, Department of Health and Human Services rule stating that, under its agency guidelines for conducting regulatory flexibility analyses, actions that do not negatively affect costs or revenues by more than three percent annually are not economically significant). The Department believes that its use of a 3 percent of revenues significance criterion is appropriate.

The Department believes that its use of a 20 percent of affected small business entities substantiality criterion is appropriate given prior rulemakings.

There are only 315 LM–2 filers with at least one trust whose annual receipts were small enough that the Form T–1 costs would amount to more than a 3 percent impact. The largest of the 315 had annual receipts of $614,813 for a 3.01 percent impact. The smallest of the filers had $253,475 in annual receipts for an 7.30 percent impact.

Under this rule 315 unions would have costs representing more than 3 percent of their annual receipts (at most 7.30 percent). The rule thus impacts 18.90 percent of small business entities in the first year. In all subsequent years, the percentage of small entities significantly impacted is 8.94 percent (149 out of 1,667 small entities).

[32] See Regulatory Impact Analysis above.

[33] See Regulatory Impact Analysis above.

[34] See Regulatory Impact Analysis above.

SIGNIFICANT IMPACT ON SMALL UNIONS IN THE FIRST YEAR

[$8 Million size standard]

Size (by receipts)	# of small unions affected	Avg. annual receipts	Avg. T–1 rule burden per union	Burden as % of annual receipts	% of small unions affected	# of small unions subject to significant impact *	% of small unions subject to significant impact **
$5M–$8M	164	$6,266,111	$18,513	0.30	9.84	0	
$2.5M–$4.99M	377	3,542,277	18,513	0.52	22.62	0	
$1M–$2.49M	543	1,642,769	18,513	1.13	32.57	0	
$500K–$999,999	368	740,459	18,513	2.50	22.08	100	
$250K–$499,999	215	380,192	18,513	4.87	12.90	215	
Total	1,667				100	315	18.90

* The Revenue test for significant impact on small unions is set at 3% for this rule.
** The standard for substantial number is set at 20% of small unions overall for this rule.

SIGNIFICANT IMPACT ON SMALL UNIONS IN SUBSEQUENT YEARS

[$8 Million size standard]

Size (by receipts)	# of small unions affected	Avg. annual receipts	Avg. T–1 rule burden per union	Burden as % of annual receipts	% of small unions affected	# of small unions subject to significant impact *	% of small unions subject to significant impact **
$5M–$8M	164	$6,266,111	$12,822	0.20	9.84	0	
$2.5M–$4.99M	377	3,542,277	12,822	0.36	22.62	0	
$1M–$2.49M	543	1,642,770	12,822	0.78	32.57	0	
$500K–$999,999	368	740,460	12,822	1.73	22.08	0	
$250K–$499,999	215	380,192	12,822	3.37	12.90	149	
Total	1,667				100	149	8.94

* The Revenue test for significant impact on small unions is set at 3% for this rule.
** The standard for substantial number is set at 20% of small unions overall for this rule.

(6) Considerations of Significant Alternatives to the Rule

The Department's NPRM proposed and invited comments on three regulatory alternatives: (1) No regulatory action, (2) a similar proposal, but with a modified test for when a Form T–1 is required for a given 3(l) trust, and (3) a similar proposal, but modifying the Form T–1 in order to reduce its scope. In shaping this final rule, the Department did not find any public comments that warranted taking any of the three alternative paths from the NPRM. See the response to comments in Part IV (Review of Proposed Rule and Comments Received) and Part V (Regulatory Procedures), Section A (Paperwork Reduction Act).

The Department did, however, make three changes between the NPRM and this final rule, each of which reduced the burden on T–1 filers in general and therefore on small entities. As stated in the preamble, the changes that the Department did make in order to reduce the burden of this final rule, without losing efficacy in preventing circumvention or evasion of LMRDA financial reporting, include: (1) Creating an exemption for credit unions, which mitigates the impact on small entities because it reduces the number of trusts for which a Form T–1 will be required; (2) granting permission for a given union to voluntarily file on behalf of other unions interested in the same trust, which mitigates the impact on small entities and reduces the number of unions that will file and especially reduces redundant filing; and (3) changing the trust's fiscal year on which the union must report, such that a there will be a minimum of 180 days between the end of the trust's fiscal year and the filing deadline of a T–1 covering that fiscal year. These significant changes will help with the impact on small entities and are the reason why the Department has determined that other alternatives or further modifications to this rule—including the three proposed in the NPRM and the various commenter proposals for exemptions that were discussed and declined in Part III—are not warranted.

If the Department were not to take this regulatory action, it would avoid any new burden on labor organizations and thus ensure no new significant economic impact on small entities, but it would at the same time prevent realization of the many benefits of the Form T–1 detailed in this rule. Regulatory inaction would leave open the current avenue for circumvention or evasion of reporting requirements through moving funds into union-controlled trusts and would eliminate the associated benefits to union financial transparency. The Department did not pursue this alternative because the prevention of circumvention or evasion of union financial reporting is a responsibility of the Department pursuant to the LMRDA.

Modifying the financial or managerial domination test would serve to reduce the burden on small labor organizations because fewer trusts would be covered under that alternative to the rule. However, the Department has concluded this would not ensure that the trusts that are no longer covered do not serve as possible tools for circumventing or evading financial reporting. Accordingly, the Department declined to change the domination test.

Simplifying and reducing the scope of the Form T–1 could potentially alleviate the burden on small entities by reducing the burden hours of completing each Form T–1, but the Department would be doing so at the cost of losing important information on every single Form T–1 filed. The Department did not pursue this alternative because the schedules and itemization requirements are already greatly reduced compared to the Form LM–2 that the covered labor organizations complete and because further modification could impede the prevention of circumvention or evasion of LMRDA reporting requirements.

Thus, this rule provides for no differing compliance requirements 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. However, it is important to remember that these ''small entities'' consist of the largest category of labor organizations with all of these unions filing the Form LM–2 with OLMS annually.

Similarly, while all of these small entities will be filing the same form, the burden of completing that form is totally dependent on the complexity of the entity's operation. The smaller the union, the fewer trusts it will dominate and thus it will ultimately file fewer Form T–1s.

(7) Clarification, Consolidation, and Simplification of Compliance and Reporting Requirements for Small Entities

This final rule was drafted to clearly state the compliance and reporting requirements for all small entities subject to this Form T–1 rule.

OLMS will update the e.LORS system to allow labor organizations to file the Form T–1 as they file the Form LM–2.

OLMS will provide compliance assistance for any questions or difficulties that may arise from using the reporting software. A help desk is staffed during normal business hours and can be reached by telephone.

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 any given filer 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 29 CFR Part 403

Labor Organization, Trusts, Reporting and Recordkeeping Requirements.

Accordingly, for the reasons provided above, the Department amends part 403 of title 29, chapter IV of the Code of Federal Regulations as set forth below:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

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

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

■ 2. Amend § 403.2 by adding paragraph (d) 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) of this section, 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. Only the parent labor organization (*i.e.,* the national/international or intermediate labor organization) must file the Form T–1 report for covered trusts in which both the parent labor organization and its affiliates satisfy the financial or managerial domination test set forth in paragraph (d)(1)(i) of this section. The affiliates must continue to identify the trust in their Form LM–2 Labor Organization Annual Report, and include a statement that the parent labor organization will file a Form T–1 report for the trust.

(3) No Form T–1 should be filed for any trust (or a plan of which the trust is part) that:

(i) Meets the statutory definition of a labor organization and already files a Form LM–2, Form LM–3, Form LM–4, or simplified LM report;

(ii) The LMRDA exempts from reporting;

(iii) Meets the definition of a subsidiary organization pursuant to Part X of the instructions for the Form LM–2 Labor Organization Annual Report;

(iv) 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;

(v) 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 (IRS);

(vi) Constitutes a federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA);

(vii) Constitutes any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 184;

(viii) Is an employee benefit plan within the meaning of 29 U.S.C. 1002(3) that is subject to Title I of the Employee Retirement Income Security Act pursuant to 29 U.S.C. 1003, and that files an annual report in accordance with 29 U.S.C. 1021 and 1024, and applicable rules and requirements, for a plan year ending during the reporting period of the labor organization; or

(ix) Constitutes a credit union subject to the Federal Credit Union Act, 12 U.S.C. 1751.

(4) A labor organization may complete only Items 1 through 15 and Items 26 through 27 (Signatures) of Form T–1 if an annual audit prepared according to standards set forth in the Form T–1 instructions was performed and a copy of that 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 § 408.5 of this chapter.

■ 3. Amend § 403.5 by adding 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. Amend § 403.8 by revising paragraph (b)(3) to read as follows:

§ 403.8 Dissemination and verification of reports.

* * * * *

(b) * * *

(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.

Arthur F. Rosenfeld,

Director, Office of Labor-Management Standards.

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
Office of Labor-Management Standards
Washington, DC 20210

FORM T-1 TRUST ANNUAL REPORT

Form Approved
Office of Management and Budget
No. 1245-0003
Expires: 08-31-2021

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)	2. PERIOD COVERED MO DAY YEAR From Through	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		10. NAME OF TRUST	
5. DESIGNATION (Local, Lodge, etc.)	6. DESIGNATION NUMBER	11. EMPLOYER IDENTIFICATION NUMBER	
7. UNIT NAME OF UNION (if any)		12. PURPOSE OF TRUST	
8. MAILING ADDRESS OF UNION (use capital letters)		13. MAILING ADDRESS OF TRUST (use capital letters)	
First Name	Last Name	First Name	Last Name
P.O. Box - Building and Room Number (if any)		P.O. Box - Building and Room Number (if any)	
Number and Street		Number and Street	
City		City	
State	Zip Code + 4	State	Zip Code + 4

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

Yes ☐ No ☐

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

____________ Date ____________ Telephone

27. SIGNED:______________________ TREASURER

____________ Date ____________ Telephone

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

Complete Items 16 Through 25

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 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. (Text entered will appear on last page of form. To enter comments, press the General Additional Information” button.)

SCHEDULE 1 - INDIVIDUALLY IDENTIFIED RECEIPTS

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

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

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))		

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

SCHEDULE 2 - INDIVIDUALLY IDENTIFIED DISBURSEMENTS

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

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):

Full Name Title	(A) LAST, FIRST, MIDDLE INITIAL Treasurer, Trustee, Attorney, etc.	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	TOTAL (F)
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						

25. ADDITIONAL INFORMATION

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

Paperwork Reduction Act Notice: Public reporting burden for this collection of information is estimated to average 84.12 hours per response. 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. See 29 C.F.R. Part 403. 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, 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 employer contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions.

The parent labor organization (i.e., the national/international or intermediate labor organization) may file the Form T-1 report for covered trusts in which both the parent labor organization and its affiliates meet the above financial domination or managerial control test. The affiliates must continue to identify the trust in their Form LM-2 Labor Organization Annual Report, and include a statement that the parent labor organization will file a Form T-1 report for the trust.

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 subsidiary organization, as defined in

Part X of the instructions for the Form LM-2 Labor Organization Annual Report. 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 within the meaning of 29 U.S.C. 1002(3) that is subject to Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), pursuant to 29 U.S.C. 1003, and that filed an annual report with the Employee Benefits Security Administration (EBSA) in accordance with 29 U.S.C. 1021 and 1024, and applicable rules and requirements, for a plan year ending during the reporting period of the labor organization. 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. No Form T-1 need be filed for any trust that constitutes a credit union subject to the Federal Credit Union Act, 12 U.S.C. 1751.

When more than one Form LM-2 filing labor organization jointly dominates a trust, that is, the organizations jointly appoint or select a majority of the members of the trust's governing board or jointly contribute greater than 50% of the trust's receipts during the one-year reporting period, only one organization must file a Form T-1. A single organization may voluntarily assume responsibility for the filing of the Form T-1. For the exemption to hold, 1) the volunteer, filing labor organization must list in Item 25 all of labor organizations for which it is filing the Form T-1, and 2) the non-filing labor organizations must note in Item 69 (Additional Information) of their Form LM-2 that another labor organization is filing the Form T-1 on its behalf, along with the name of that labor organization and the name of the trust.

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 an annual audit is 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 (Department). The labor organization must file a separate Form T-1 for each trust that meets the above requirements.

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 apply to a labor organization whose fiscal year *and* the fiscal year of its section 3(l) trust begin on or after July 1, 2020. 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 ending on or before 90 days before the union's 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:

<u>Where the trust and labor organization have the same fiscal years</u>

- The trust and labor organization have fiscal years ending on December 31. The Form T-1 for the fiscal year ending December 31, 2021 must be filed not later than March 31, 2023.
- The trust and the labor organization each has a fiscal year that ends on June 30. The labor organization's first Form T-1 will be for the trust's fiscal year ending June 30, 2022 and must be filed not later than September 28, 2023.

<u>Where the trust and labor organization have different fiscal years</u>

- 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, 2022 and must be filed not later than December 29, 2022.
- The trust's fiscal year ends on June 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 June 30, 2022 and must be filed not later than March 31, 2023.

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 submitted electronically to the Department via the OLMS Electronic Forms System (EFS) available on the OLMS website at: http://www.dol.gov/olms. Form T-1 filers will be able to file reports in paper format only if they assert a temporary hardship exemption.

If you have difficulty navigating EFS, or have questions about its functions and features, call the OLMS Help Desk at: (866) 401-1109. For questions concerning the reporting requirements, please send an e-mail to OLMS-Public@dol.gov or call (202) 693-0123.

HARDSHIP EXEMPTIONS

A labor organization that must file Form T-1 may assert a temporary hardship exemption. 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 OLMS by email at OLMS-Public@dol.gov or by phone at 202-693-0123.

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
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

Most pages have a "Save & Calculate" button to total and transfer data to fields in various parts of the form. You may click on one or more of these buttons as you fill out the form at any time.

You may click on the "Validate Form" button at any time to check for errors. This action will generate an "Errors Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.
Items 1, 2, and 4 - 7 are "pre-filled" items. These fields were filled in by EFS based on information you entered when you initially accessed the system. 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 — EFS will enter the labor organization's 6-digit file number here 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. 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 website at http://www.unionreports.gov, or by contacting the nearest OLMS field office.

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 the initial filing of a Form T-1, this number may be obtained by calling the OLMS Division of Reports, Disclosure & Audits at (202) 693-0123.

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 http://www.olms.dol.gov.

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

If the labor organization changed its fiscal year, the ending date in Item 2 should be the labor organization's new fiscal year ending date and the labor organization should indicate in Item 25 (Additional Information) that the report is for a period of less than 12 months because its fiscal year has changed. For example, if the labor organization's 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 labor organization's 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 — EFS accesses this information from the OLMS database and will enter the name of the national or international labor organization that granted the labor organization a 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 not reported such an affiliation, EFS will enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

This item cannot be edited by the filer. If the labor organization needs to change this information, contact OLMS at (202) 693-0123.

5. DESIGNATION — EFS will enter the specific designation that is used to identify the labor organization, such as Local, Lodge, Branch, Joint Board, Joint Council, District Council, etc. This field cannot be edited by the filer.

6. DESIGNATION NUMBER — EFS will enter the number or other identifier, if any, by which the labor organization is known. This field cannot be edited by the filer.

7. UNIT NAME — EFS will enter any additional or alternate name by which the labor organization is known, such as "Chicago Area Local." This field cannot be edited by the filer.

8. MAILING ADDRESS OF UNION — EFS accesses the union's mailing address on record in the OLMS database and enters it in Item 8. 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 can be edited.

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 202-693-0123 or by e-mail at OLMS-Public@dol.gov. 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 an apprenticeship and training plan that provides training to labor organization members, the purpose may be "training."

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 completed within the preceding 12 months 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.

<u>Special Procedures for Reporting Confidential Information</u>

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 CFR 403.8. 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 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, violate state or federal law, violate a non-disclosure provision of a settlement agreement, or 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, would violate 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.

Before signing the form, enter the telephone number at which the signatories conduct official business and the date. Click the Validate button at the top of the form to ensure that the report passes validation.

To sign the form, click the signature spaces provided. Fill in the requested information in the screen that pops up.

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 electronically with OLMS, via EFS, within 30 days after the date of termination.

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://www.unionreports.gov. Copies of reports for the year 1999 and earlier can be ordered through the website.

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**

March 2020

[FR Doc. 2020–03958 Filed 3–5–20; 8:45 am]
BILLING CODE 4510–86–C