

29 CFR Part 403

**[AS SIGNED AND SENT TO FR 02.26.08]**

Labor Organization Annual Financial Reports; Proposed Rule

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**DEPARTMENT OF LABOR**

**Office of Labor-Management Standards**

**29 CFR Parts 403 and 408**

**RIN 1215-AB64**

**Labor Organization Annual Financial Reports**

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

**ACTION:** Notice of proposed rulemaking; request for comments

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**SUMMARY:** The Department of Labor’s Employment Standards Administration (“ESA”) proposes to promulgate a rule that establishes a form to be used by labor organizations to file trust annual financial reports with ESA’s Office of Labor-Management Standards (“OLMS”), provides appropriate instructions, and revises relevant sections of 29 CFR Part 403 relating to such reports. The proposed changes are made pursuant to section 208 of the Labor-Management Reporting and Disclosure Act (“LMRDA”), 29 U.S.C. 438. The proposed rule will apply prospectively.

**DATES:** Comments must be received on or before forty-five days after publication in the Federal Register.

ADDRESSES: You may submit comments, identified by RIN 1215-AB64, only by the following methods:

Internet – Federal eRulemaking Portal. Electronic comments may be submitted through [www.regulations.gov](http://www.regulations.gov). To locate the proposed rule, use key words such as "Labor-Management Standards" or "Labor Organization Annual Financial Reports" to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

Mail: Mailed comments should be sent to:

Kay H. Oshel

Director of the Office of Policy, Reports and Disclosure

Office of Labor-Management Standards

U.S. Department of Labor

200 Constitution Avenue NW, Room N-5609

Washington, DC 20210.

Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

OLMS recommends that you confirm receipt of your mailed comments by contacting (202) 693-0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877-8339 (TTY/TDD).

Only those comments submitted through [www.regulations.gov](http://www.regulations.gov), hand-delivered, or mailed will be accepted.

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Director of the Office of Policy, Reports and Disclosure, at:

Kay H. Oshel

U.S. Department of Labor

Employment Standards Administration

Office of Labor-Management Standards

200 Constitution Avenue NW, Room N-5609

Washington, DC 20210

(202) 693-1233 (this is not a toll-free number)

(800) 877-8339 (TTY/TDD)

SUPPLEMENTARY INFORMATION:

I. STATUTORY AUTHORITY

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

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

Section 3(l) of the LMRDA provides:

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

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

## II. BACKGROUND

### A. Introduction

The Department proposes to establish a Form T-1 to capture financial information pertinent to “trusts in which a labor organization is interested” (“section 3(l) trusts”), information that historically has largely gone unreported despite the trusts’ significant effect on labor organization financial operations and their members’ own interests. This proposal is 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 provide financial information required by the LMRDA. By reviewing the reports, a member may ascertain the labor organization's priorities and whether they are in accord with the member's own priorities and those of fellow members. At the same time, this transparency promotes both the labor organization's own interests as a democratic institution and the interests of the public and the government. Furthermore, the LMRDA's reporting and disclosure provisions, together with the fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization's funds from depletion by improper or illegal means. Timely and complete reporting also helps deter labor organization officers or employees from embezzling or otherwise making improper use of such funds.

The proposed 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 like modern corporations in their structure, scope, and complexity than the labor organizations of 1959.<sup>1</sup> The balance between wages/salaries paid to workers and their "other compensation" has changed significantly during this time. For example, in 1966, over 80 percent of total compensation consisted of wages and salaries, with less than 20 percent representing benefits. U.S. Department of Labor, *Report on the American Workforce* (2001) 76, 87.

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<sup>1</sup> There are now more large labor organizations affiliated with a national or international body than ever before. In 2006, 4,452 labor organizations, including 95 national and international labor organizations, reported \$250,000 or more in total annual receipts.

By 2007, wages dropped to 71.8 percent of total compensation and benefits grew to 29.2 percent of the compensation package. U.S. Department of Labor, Bureau of Labor Statistics Chart on Total Benefits, *available at* <http://data.bls.gov/cgi-bin/surveymost>. Moreover, labor organization members today are better educated, more empowered, and more familiar with financial data and transactions than ever before. 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.

In August and September of 2007, Department officials met with representatives of the community that would be affected by the proposed Form T-1, including officials of labor organizations and their legal counsel, to hear their views on the need for reform and the likely impact of changes that might be made. The Department developed its proposal with these discussions in mind and it requests comments from this community and other members of the public on any and all aspects of the proposal.

#### 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(a). 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. The members may vote out of office any individual whose personal financial interests conflict with his duties to members”); facilitate legal action by members 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 202(b) of the Act, 29 U.S.C. 432(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.

Labor organizations with annual receipts of at least \$250,000 and all labor organizations in trusteeship (without regard to the amount of their annual receipts) must file the Form LM-2. 29 CFR 403.2-403.4. This form may be filed voluntarily by any other labor organization. The Form LM-2 now requires receipts and disbursements to be reported by functional categories, such as representational activities; political activities and lobbying; contributions, gifts, and grants; union administration; and benefits. Further, the form

requires filers to allocate the time their officers and employees spend according to functional categories, as well as the payments that each of these officers and employees receive, and it compels the itemization of certain transactions totaling \$5,000 or more. This form must be electronically signed and filed with the Department.<sup>2</sup>

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.

## II. PROPOSAL

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<sup>2</sup> The Form LM-2 and its instructions are published at 68 FR 58449-523 (Oct. 9, 2003) and are available at <http://www.olms.dol.gov>. Copies of the Form LM-3 and Form LM-4 are also available at <http://www.olms.dol.gov>.

## A. Introduction

Labor organization members need to be provided with information about the finances and operation of section 3(l) trusts, which, by statutory definition are established and maintained primarily to provide benefits to the members and/or their beneficiaries. 29 U.S.C. 402(l). Section 3(l) trusts are created for a myriad of purposes; common examples include credit unions, strike funds, redevelopment or investment groups, training funds, apprenticeship programs, pension and welfare plans, building funds, and educational funds. These trusts are funded in a number of different ways. Some may be funded with employer contributions and jointly administered by trustees appointed by labor organizations and employers. By requiring that labor organizations file the Form T-1, labor organization members and the public will receive the same benefit of transparency they now receive under the Form LM-2. Under this proposal, any labor organization or trust official who places their own personal financial interests above their duty to the labor organization and the trust—and third parties complicit with these officials—will find it more difficult to circumvent and evade their legal obligations.

The Department proposes to require a labor organization with total annual receipts of \$250,000 or more to file a Form T-1 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”) 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 revenue; contributions made on behalf of the labor organization or its members shall be considered the labor organization's contribution.

The proposed 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 will be 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 trust); and identifying major receipts and disbursements by the trust during the reporting period. The proposed Form T-1, however, is shorter and requires less information than the Form LM-2. As proposed, the Form T-1, unlike the Form LM-2, does not require that receipts and disbursements be identified by functional category. The proposed 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 at terms below market rates, 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 of \$10,000 or more to officers and employees of the trust. Under the proposal, exceptions 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. A partial exception is provided for a trust for which an audit was conducted in accordance with prescribed standards and the audit is made publicly available. As proposed, 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.

The Department specifically invites comments on whether the trust’s “employer identification number” (“EIN”) should be reported on the first page of the Form T-1. This number could be used by members of labor organizations to cross-check the information on the Form T-1 with other reports submitted by the trust, such as its filings with the Internal Revenue Service (“IRS”).

This proposal contains many of the same features proposed by the Department in 2002 and incorporates some changes in the 2003 and 2006 final rules, which are discussed below. The proposal limits the reporting obligation to those labor organizations that alone or in combination with other labor organizations maintain management control or financial domination over a section 3(l) trust. For purposes of measuring a labor organization’s financial dominance, as discussed below, funds paid into the trust by an

employer on behalf of the labor organization or its members are treated the same as contributions made from the labor organization's own funds.

Two threshold requirements that were contained in the 2003 and 2006 rules 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 proposal. The Department believes that 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. In contrast to the 2003 and 2006 rules, the Department's proposal does not include 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 ("ERISA").

#### B. Judicial review of earlier Form T-1 rulemaking

This proposal follows the Department's earlier efforts to implement a Form T-1 reporting obligation. The proposal is an outgrowth of these earlier efforts and takes into account the guidance provided by the United States Court of Appeals for the District of Columbia Circuit in its 2005 review of the 2003 Form T-1 rule, 68 FR 58374 (*American Federation of Labor and Congress of Industrial Organizations v. Chao*, 409 F.3d 377 (2005)).

In November 2003, the American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) filed a complaint against the Department, challenging the combined Form LM-2 and Form T-1 rule. The suit was filed with the U.S. District Court for the District of Columbia; through this action, the AFL-CIO asked the court to order temporary, preliminary, and permanent relief to enjoin and vacate the Department’s rule. The rule was upheld on its merits by the district court (*AFL-CIO v. Chao*, 298 F.Supp.2d 104 (D.D.C. 2004)). On appeal, the D.C. Circuit in its 2005 opinion unanimously upheld the Form LM-2 rule as a reasonable exercise of the Department of Labor’s LMRDA rulemaking authority. In a divided decision, however, the court vacated the Form T-1 rule because, in its view, the Department exceeded its authority by “requiring general trust reporting.” 409 F.3d at 378-79, 391. The court framed the issue before it as “whether Form T-1 comports with the statutory requirements that the Department ‘find [such rule is] necessary to prevent’ evasion of LMRDA Title II reporting requirements.” *Id.* at 386 (quoting section 208 of the LMRDA, 29 U.S.C. 438).

Given what it viewed as the ambiguity inherent in the word “necessary” as used in section 208 (authorizing reports “necessary to prevent circumvention or evasion of ... reporting requirements”), the court examined the Form T-1 portion of the rule to determine whether the Department’s interpretation of the statute was permissible. *Id.* at 386-87; *see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). The AFL-CIO argued that the Department’s Form T-1 rule was impermissible, in part, because it encompassed joint trusts, which by operation of statute were independent of a labor organization’s control. 409 F.3d at 388; *see* 29 U.S.C.



186(c). In rejecting this argument, the court noted that the statutory definition of “trust in which a union is interested,” 29 U.S.C. 402(l), included joint trusts, such as Taft-Hartley employer-funded benefit plans, and agreed with the Department’s interpretation that such trusts could be used to evade the reporting requirements. 409 F.3d at 387-88. The court agreed with the Department’s reasoning that “[s]ince the money an employer contributes to such a ‘trust’ ... might otherwise have been paid directly to the workers in the form of increased wages and benefits, the members ... have a right to know what funds were contributed, how the money is managed and how it is being spent.” *Id.* at 387. The court held that “[s]ection 208 does not limit the [Department] to requiring reporting only in order to disclose transactions involving the misuse of labor organization members’ funds because leaving the decision about disclosure to such trusts ... would allow unions to circumvent or evade reporting on the use of members’ funds diverted to the trust.” *Id.* at 388-89.

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 reaching its conclusion, the court rejected an underlying premise of the rule that a labor organization’s appointment of a single member to a trust’s governing board could trigger a reporting obligation, even though the labor organization’s contribution to the trust constituted a fraction of the trust’s total revenues. *Id.* The court explained that “[w]here a union has minimal control over trust fund spending and a union’s contribution is so small a part of the trust’s revenues, and the trust is not otherwise controlled by unions or dominated by union members’ funds, the trust lacks the characteristics of the unreported transactions in the examples on which the [Department] based the final rule.”

*Id.* at 391. In these circumstances, in contrast to the examples relied upon by the Department, the element of management control or financial dominance is missing. *Id.*

In light of the decision by the D.C. Circuit and guided by its opinion, the Department again reviewed the proposal as it related to the Form T-1 and the comments received on the proposal. The Department then issued a final rule on September 29, 2006, but the rule was vacated on procedural grounds by the U.S. District Court for the District of Columbia in *AFL-CIO v. Chao*, 496 F.Supp.2d 76 (D.D.C. 2007). In light of this court decision, the Department provides this new proposal for notice and comment.

### C. Reasons for the Form T-1

The proposed Form T-1 closes a reporting gap under the Department's former rule whereby labor organizations were only required to report on "subsidiary organizations." This proposal 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. Labor organization members have an interest in obtaining information about 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. Because the money an employer contributes to such a trust for the labor organization members' benefit 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 a right to know what funds

were contributed, how the money is managed, and how it is being spent. By reviewing the Form T-1, labor organization members will receive information on funds that would be accounted for on Form LM-2 but for their management through the section 3(l) trust.

The proposed rule will make it more difficult for a labor organization, its officials, or other parties with influence over the labor organization to avoid, simply by transferring money from the labor organization's books to the trust's books, the basic reporting obligation that would apply if the funds had been retained by the labor organization. Although the proposal 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 or on behalf of labor organizations or their members 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.

Labor organization officials and trustees both owe a fiduciary duty to their labor organization and the trust, respectively, but the Department's case files reveal numerous

examples of embezzlement of funds held by both labor organizations and their section 3(l) trusts.<sup>3</sup> The Form T-1, by disclosing information to labor organization members, the true beneficiaries of such trusts, will increase the likelihood that wrongdoing is detected and may deter individuals who might otherwise be tempted to divert funds from the trusts. See Archibald Cox, *Internal Affairs of Labor Organizations Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 827 (1960) (“The official whose fingers itch for a ‘fast buck’ but who is not a criminal will be deterred by the fear of prosecution if he files no report and by fear of reprisal from the members if he does”).

Because the labor organization’s obligation to submit a Form T-1 overlaps with the responsibility of labor organization officials to disclose payments received from the trust, the prospect that one party may report the payment increases the likelihood that a failure by the other party to report the payment will be detected. Moreover, given the increased transparency that results from the Form T-1 reporting, in some instances the proposed rule may cause the parties to reconsider the primary conduct that would trigger the reporting requirement. As discussed above, the LMRDA’s primary reporting obligation

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<sup>3</sup> The fiduciary duty of the trustees to refrain from taking a proscribed action has never been thought to be sufficient by itself to protect the interests of a trust’s beneficiaries.

Although a fiduciary’s own duty to the trust’s grantors and beneficiaries include disclosure and accounting components (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)), 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.

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

As an illustration of how this check will work, consider an instance in which a trust identifies a \$15,000 payment to a company for duplicating services. Under the proposal, the labor organization must identify the company and the purpose of the payment. With this information, coupled with information about a labor organization official's "personal business" interests in the company, a labor organization member or the Department may discover whether the official has reported this payment on a Form LM-30. 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. 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, the proposal will provide a missing piece to one part of the Department's crosscheck system that correlates reported holdings and transactions by party, description, and reporting period and thereby helps identify any deviations in the reported details, including instances where the reporting obligation appears reciprocal, but one or more parties have not reported the matter.

Under the instructions in effect prior to the 2003 rule, a labor organization was obliged to provide financial information about a section 3(l) trust only if the trust was a "subsidiary" of the reporting labor organization, *i.e.*, an entity, as defined by the Department, that is wholly owned, wholly controlled, and wholly financed by the labor organization. Thus, the former rule, which was crafted shortly after the LMRDA's enactment, required reporting by only a portion of the labor organizations that contributed to section 3(l) trusts, and, in many cases, no reporting at all. Currently, there is no enforceable form for trust reporting and the largest labor organizations, Form LM-2 filers, report only very limited and opaque information concerning trusts. This proposal will better effectuate the full disclosure intended under the LMRDA.

Many labor organizations now manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and

investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for labor organization officers and employees who may operate, receive income from, or hold an interest in, such businesses. The labor organizations' business relationships with outside firms and vendors that provide benefits and financial services to the labor organization and its members also increase the possibility that labor organization officers and employees may have financial interests in these businesses that might conflict with fiduciary obligations they owe to the labor organization and its members. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between labor organizations, labor organization officials, employers, and other entities, including section 3(1) trusts.

Both historical and recent examples demonstrate the vulnerability of trust funds to misuse and misappropriation by labor organization officials and others. The McClellan Committee, as discussed above, provided several examples of labor organization officials using funds held in trust for their own purposes rather than for their labor organization and its members. Additional examples of the misuse of labor organization benefit funds and trust funds for personal gain may be found in the 1956 report of the Senate's investigation of welfare and pension plans, completed as the McClellan Committee was beginning its investigation. *See Welfare and Pension Plans Investigation, Final Report of the Comm. of Labor and Public Welfare*, S. Rep. No. 1734 (1956); *see also Note:*



*Protection of Beneficiaries Under Employee Benefit Plans*, 58 Colum. L. Rev. 78, 85-89, 96, 107-08 (1958). Such problems continued, even after the passage of the LMRDA and ERISA. In the most comprehensive report concerning the influence of organized crime in some labor organizations, a presidential commission concluded that “the plunder of labor organization resources remains an attractive end in itself. .... The most successful devices are the payment of excessive salaries and benefits to organized crime-connected labor organization officials and the plunder of workers’ health and pension funds.” President’s Commission on Organized Crime, *Report to the President and Attorney General, The Edge: Organized Crime, Business, and Labor Unions* 12 (1986).

The enactment of ERISA has ameliorated many of the historical problems, but many section 3(l) trusts are not covered by ERISA and even those that are covered do not file financial reports that provide transparency for LMRDA disclosures comparable to what will be provided by the proposed Form T-1. The Department has discovered numerous situations, as illustrated by the following examples, where funds held in section 3(l) trusts have been used in a manner that, if reported, would have been scrutinized by the members of the labor organization and this Department:

- A case in which no information was publicly disclosed about the disposition of tens of thousands of dollars (over \$60,000 on average per month) by participating locals into a trust established to provide statewide strike benefits. No information was disclosed because the trust was

established by a group of labor organization locals and not wholly controlled by any single labor organization.

- A case in which a credit union trust largely financed by a local labor organization had made large loans to labor organization officials but had not been required to report them because the trust was not wholly owned by any single local. (One local accounted for 97 percent of the credit union's funds on deposit). Membership in the credit union was limited to members of three locals; all of the credit union directors were local officials and employees. Four loan officers, three of whom were officers of the Local, received 61 percent of the credit union's loans.

Under the proposed rule, each labor organization in these examples would have been required to file a Form T-1 because each of these funds is a 3(l) trust. In each instance, the labor organization's contribution to the trust, including contributions made on behalf of the organization or its members, made alone or in combination with other labor organizations, represented greater than 50 percent of the trust's revenue in the one-year reporting period. The labor organizations would have been required to annually disclose for each trust the total value of its assets, liabilities, receipts, and disbursements. For each receipt or disbursement of \$10,000 or more (whether singly or in the aggregate), the labor organization would have been required to provide: the name and business address of the individual or entity involved in the transaction(s), the type of business or job classification of the individual or entity; the purpose of the receipt or disbursement; its

date, and amount. Further, the labor organization would have been required to provide additional information concerning any trust losses or shortages, the acquisition or disposition of any goods or property other than by purchase or sale; the liquidation, reduction, or write off of any liabilities without full payment of principal and interest, and the extension of any loans or credit to any employee or officer of the labor organization at terms below market rates, and any disbursements to officers and employees of the trust.

In developing this proposal, the Department also relies, in part, on information it received from the public on the 2002 proposal. In its comments on that 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 administrator of a local's retirement plan was convicted of embezzling about \$300,000 from the fund; (4) a local labor organization president embezzled an undisclosed amount from the local's disaster relief fund; (5) an employee of an international labor organization embezzled over \$350,000 from a job training fund; (6) 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; (7) a former officer of a national labor organization was convicted of embezzling about \$15,000 from the labor organization and about \$20,000 from the labor organization's welfare benefit fund; and (8) a former

training director of a labor organization's pension and welfare fund was charged and convicted of receiving gifts and kickbacks from a vendor that provided training for labor organization members.

The comments received from labor organizations and their members on the 2002 proposal generally opposed any reporting obligation concerning trusts (beyond the requirement then applicable to the "wholly-owned" subset of section 3(l) trusts). Labor organization members, however, recommended generally greater scrutiny of labor organization trust funds. These commenters included several members of a single international labor organization. They explained that under the labor organization's collective bargaining agreements, 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." 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.

The need for this proposal is also demonstrated by additional examples of improper administration and diversion of funds from section 3(l) trusts. Labor organization officials in New York were convicted in a "pension-fund fraud/kickback scheme" where labor organization officials were bribed by members of organized crime to invest pension

fund assets in corrupt investment vehicles. The majority of the funds were to be invested in legitimate securities, but millions of dollars were placed into a sham investment, the body of which was to be used to fund kickbacks to the labor organization officers with the hope that the return on investment from the majority of the legitimately invested assets would cover the amounts lost as kickbacks. *U.S. v. Reifler*, 446 F.3d 65 (2d Cir. 2006); see *The Final Report of the New York State Organized Crime Task Force: Corruption and Racketeering in the New York City Construction Industry* (1990) 27-29, 91-92, 182-84 (describing devices typically used by labor organization officials and third parties to divert trust funds for their own enrichment). In another case, nepotism and no-bid contracts depleted a labor organization's health and welfare funds of several million dollars. The problems associated with the fund included, among others, paying the son-in-law of a board member, a local labor organization official, a salary of \$119,000 to manage a scholarship program that gave out \$28,000 per year; paying a daughter of this board member \$111,799 a year as a receptionist; and paying \$123,000 for claims review work that required only a few hours of effort a week. See Steven Greenhouse, *Laborers' Union Tries to Oust Officials of Benefits Funds*, N.Y. Times, June 13, 2005, at B5.<sup>4</sup> If

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<sup>4</sup> Various concerns about the administration of joint trusts are addressed in legal periodicals such as *Note: Conflict of Interest Problems Arising from Union Pension Fund Loans*, 67 Colum. L. Rev. 162 (1967), 162-63; and Stephen Fogdall, *Exclusive Union Control of Pension Funds: Taft-Hartley's Ill-considered Prohibition*, 4 U. Pa. J. Lab. & Emp. L. 215 (2001-2002), 228-31 (providing examples of misuse and exemplary use of trust funds). See also Stephen Brill, *The Teamsters*, 151, 201-16, 221-60 (discussing problems with administration of Teamster funds, especially the Central States Pension Fund); James B. Jacobs, *Mobsters, Unions, and Feds* (2006) 181 (describing the looting

the Department's proposed rule had been in place, the members of the affected labor organizations, aided by the information disclosed in the labor organizations' Form T-1s, would have been in a much better position to discover the improper use of the trust funds and thereby minimize the injury to their stake in the trust. Further, the fear of discovery may have deterred the wrongdoers from engaging in the offending conduct in the first place.

As the foregoing discussion makes clear, the proposed Form T-1 rule will add necessary safeguards to deter circumvention and evasion of the LMRDA's reporting requirements. Under the proposal, it will be more difficult for labor organizations and complicit trusts to avoid the disclosure required by the LMRDA. Labor organization members will be able to review financial information they may not otherwise have had, empowering them to better oversee their labor organization's officials and finances as contemplated by Congress.

#### D. Specific Aspects of the Proposed Form T-1

##### 1. Determining management control or financial domination

In 2002, the Department proposed to require that any labor organization, regardless of its size or the proportion of the trust's receipts represented by its payments, file a Form T-1 of Teamster Local 560's benefit funds); Robert Fitch, *Solidarity for Sale* (2006), 149-52 (misuse of New York Mason Tenders pension fund).

if, among other conditions, it contributed \$10,000 or more to a section 3(l) trust during the reporting period. The proposal, however, invited comment on whether adequate disclosure could be achieved instead by expanding the definition of “subsidiary” to include trusts that were closely related to the labor organization but not “100% owned, controlled and financed by the [union].” 67 FR 79285. The Department suggested that this alternative would borrow from the test, used in other contexts, to determine whether multiple companies constitute a “single entity.” The Department explained that this approach would be based on various factors, including an assessment as to the integration of the companies’ operations and their common management.

In the 2003 rule, the Department explained that it had received only a few comments on the “single entity” test. After considering the comments, the Department determined that the test would be less effective than other approaches, because it could be easily evaded by labor organizations seeking to conceal their relationship with a trust. The Department further explained that even if information concerning the relationship between the trust and the labor organization was readily available, the test could prove difficult to apply and thus was a poor substitute for a “bright line” standard pegged to a specified dollar threshold. Several comments received by the Department suggested that the labor organization’s control over, not merely its participation in, a trust should fix any reporting obligation, and thus objected to the Department’s proposal imposing a general reporting obligation on all large labor organizations. The AFL-CIO’s objection to the proposal was twofold: “If the union does not control the trust, the trust cannot be used to circumvent the reporting requirements; and if the union does not control the trust it

cannot compel the trust to divulge the detailed financial information [required].” It explained: “[T]he Department’s proposal does not require that the union have effective control over the trust. Without de facto, or actual, control over a trust’s financial management, a labor organization has no mechanism by which it can circumvent or evade the Act’s reporting requirements.” Further, even though the AFL-CIO did not embrace the “single entity” approach, it viewed this approach as “a helpful starting point.” While disagreeing with the mechanisms suggested by the Department, it acknowledged that the Department possessed the authority “for developing an analytical framework for identifying ‘significant trusts’ as to which financial disclosure should be required.” A local labor organization, while generally opposed to the Form T-1, stated that “it seems reasonable that ownership or control can only be attributed to parties holding over 50% ownership of an organization.”

The “single entity” alternative was mentioned in the D.C. Circuit’s opinion in *AFL-CIO v. Chao*, but the court did not approve or disapprove of this approach. 409 F.3d at 390-91. Instead, the court focused its inquiry on the extent of the labor organizations’ relationship with section 3(l) trusts and indicia of their management control or financial domination of the trusts. *Id.* at 388-89. As discussed previously, the appeals court found that the Secretary had not demonstrated how a labor organization’s contribution of \$10,000, an amount that could be infinitesimal given the trust’s other contributions, could be indicative of the labor organization’s ability to exercise any effective control over the trust.



The court indicated that the Secretary could require a labor organizations to file a Form T-1 where labor organizations exercise management control or financial domination over a trust. The court did not establish a control test, leaving the Department to fashion a test consistent with the LMRDA and its policy preferences. After considering various alternatives, including a case-by-case determination, or one based on whether a labor organization or labor organizations hold the largest but not predominant share of the trust's interests (or the contributions to the trust during a reporting period), the Department is proposing a bright line approach. Under the proposal, a labor organization is required to file a report only where it alone or in combination with other labor organizations (1) selects or appoints the majority of the members of the trust's governing board, or (2) contributes more than 50 percent of the trust's revenue during the annual reporting period; contributions made on behalf of the organization or its members shall be considered contributions by the labor organization.<sup>5</sup> The test is responsive to the concerns expressed by the D.C. Circuit in that the test looks to the relationship between the labor organization or labor organizations and the trust and relies on principles of management control and financial domination.

Under this proposal, Form T-1 reports would be required on Taft-Hartley trusts where the contributions by or on behalf of the labor organization or its members comprise a majority of the trust's receipts.<sup>6</sup> Taft-Hartley trusts are statutorily defined trusts, established by a labor organization for the sole and exclusive benefit of the contributing

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<sup>5</sup> As a result, multiple unions may be required to report on a single trust. This aspect of the rule is discussed in detail below in section II D.7.

employer's employees, their families, and dependents that meet several prescribed conditions, including a written agreement with the employer(s) concerning the basis on which such payments are to be made and joint administration by an equal number of employee and employer representatives. See section 302(c) of the Labor Management Relations Act, 29 U.S.C. 186(c); see Steven J. Sacher, James S. Singer, et al., editors, *Employee Benefits Law* (2d ed. BNA 2001) 179-83, 642-43, 1177-03. Typically the establishment of such trusts and their funding is set through collective bargaining. Such payments comprise a portion of the employer's labor expenses, along with salaries, wages, and employer administered benefits. Thus, the money paid into the trusts reflects

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<sup>6</sup> A labor organization's obligation to report on section 3(l) trusts is based on the majority control and financial domination tests embodied in the proposed rule. Thus, the designation of a trust as a "Taft-Hartley Trust," a "welfare benefit trust," or other designation will not control the coverage question. Examples of trusts for which a Form T-1 may be required include training or educational funds, strike funds, and redevelopment or investment funds. Other examples, depending upon their particular characteristics, would include trusts such as Multiple Employer Welfare Arrangements, Multi-Employer Plans, Voluntary Employees' Beneficiary Associations, or other similar plans. This is not an exhaustive list. At the same time, a labor organization should also be mindful that a designation of an entity as something other than a trust or its description as a particular kind of trust does not except the labor organization from filing a Form T-1 for the entity if it meets the filing standards. Again, the coverage question is to be based on the majority control and financial domination tests embodied in the proposed rule.

payments that otherwise could be made directly to employees as wages, benefits, or both, but for their assignment to the trusts.

The administration of a Taft-Hartley fund is under the control of the labor organization and employer trustees, not the employees or their beneficiaries. While the disbursements from the funds often represent individual payments to employees or their beneficiaries by reason of health or other claims, payments also often reflect more collective interests of employees such as developing apprenticeship or vocational training programs or operating job targeting programs, payments that serve the interests of the labor organization. In such instances, the funds cover expenses that otherwise would be paid from the labor organization's general treasury and reported on the Form LM-2.

Under this proposal, management domination or financial control is determined by looking at the involvement of all labor organizations contributing to or managing the trust. As discussed above, the Department's experience, as noted by the D.C. Circuit in its 2005 opinion, demonstrates that participating labor organizations may "retain a controlling management role, [even though] no individual union wholly owns or dominates the trust." 409 F.3d at 389. This occurs, for example, where a trust is created from the participation of several labor organizations with common affiliation, industry, or location, but none alone holds predominant management control over or financial stake in the trust. Absent the Form T-1, the contributing labor organizations, if so inclined, would be able to use the trust as a vehicle to expend pooled labor organization funds without the disclosure required by Form LM-2 and the members of these labor organizations would

continue to be denied information vital to their interests. If a single labor organization may circumvent its reporting obligations when it retains a controlling management role or financially dominates a trust, then a group of labor organizations may also be capable of doing so. A rule directed to preventing a single labor organization from circumventing the law must, in all logic, be similarly directed to preventing multiple labor organizations from also evading their legal obligations.

Because labor organizations filing the Form LM-2 already are required to identify section 3(l) trusts on the Form LM-2, the proposed rule will not add any significant reporting burden with respect to identifying the section 3(l) trusts. The Form LM-2 requires labor organizations to provide the full name, address, and purpose of each section 3(l) trust in which it participates. The Form T-1 will be filed for only a subset of the labor organization's section 3(l) trusts. No Form T-1 will be required for any trust not required to be listed on the Form LM-2.

In most cases labor organizations already possess information to determine whether a Form T-1 is required for a particular section 3(l) trust. If a labor organization selects or appoints a member of the trust's governing board, it will know how the other members are selected and whether the majority control prong of the reporting test is satisfied. In other situations, the section 3(l) trust in question will consist entirely of units of the same national or international labor organization. Here too, each labor organization participating in the trust will know whether the majority control prong of the test is satisfied and likely will possess information to determine whether the alternative

financial domination prong of the test is met.

In some situations, the Department expects that labor organizations will have to contact the trusts to obtain information about whether the trust's "pooled receipts" from labor organizations constitute a majority of the trust's receipts during a reporting period. The trust can easily determine whether labor organizations have financial dominance by examining their accounting records. Finally, no specific information as to voting or contributions need be disclosed by the trust at this phase. Therefore, the trust will not be required to release any confidential information pertaining to financial contributions or control. The Department expects that labor organizations that do not already possess the information to determine whether they need to file a Form T-1 will be able to obtain this information simply by calling the trust. The Department invites comments on its assumptions concerning the information already possessed by labor organizations that will enable them to readily determine whether they must file a Form T-1 for their section 3(l) trusts and the relative ease by which they may obtain additional information from the section 3(l) trusts.

By tying the proposed reporting obligation to instances in which a labor organization (or labor organizations) selects (or select) a majority of the members on the trust's governing board or contributes a majority of its receipts during the reporting period, the Department has stayed well within the bounds established by the appeals court. At the same time, the Department recognizes that in other contexts, effective, de facto, or practical control is an appropriate measure of control and one that also would be consistent with the court's

opinion. The Department is aware that some legal writers have suggested that labor organizations exercise effective control over many Taft-Hartley trusts notwithstanding the legal requirement that there be equal representation by labor organizations and employers on their governing boards. See Ronald H. Malone, *Criminal Abuses in the Administration of Private Welfare and Pension Plans: A Proposal for a National Enforcement Plan*, 1 S. Ill. U. L.J. (1976) 400, 406 (“An ... alleged benefit of the Taft-Hartley plan is that joint control of the trust assets makes misappropriation less likely. However, experience indicates that the labor organization trustees will often functionally wrest control of such a fund from the employer trustees and destroy the theoretical benefits of joint-administration.”); Fogdall, *Exclusive Union Control of Pension Funds: Taft-Hartley’s Ill-considered Prohibition*, 4 U. Pa. J. Lab. & Emp. L. at 221 (“A [multi-employer ] fund ... is easier for a union to dominate [than a joint plan with a single employer] because ‘it puts the union in a position of having more trustees on a board than any single employer, creating de facto control of the fund by the union.’”); *Protection of Beneficiaries*, 58 Colum. L. Rev. at 86 (“A significant contributing cause of many ... irregularities is management’s abdication of responsibility in jointly administered plans. Employer representatives all too often have taken the position that since payments to an employee fund are in lieu of wages, the money is the property of the employees to deal with as they will. Thus, the theoretical safeguard of joint control is dissipated, allowing those union administrators who may be unscrupulous or incompetent greater freedom to divert or mismanage funds.”). The Department invites comment on whether the observations made by these authors are accurate and, if so, for this reason or other

independent reasons, whether the Department should establish a reporting threshold that is based on less than predominant union control over a section 3(l) trust.

2. Form T-1 reporting requirement only applies to the largest  
labor organizations

The Department's proposal to require only labor organizations with annual receipts of at least \$250,000 to file a Form T-1 tracks the mandatory filing threshold for the Form LM-2. This proposal is consistent with the 2003 and 2006 vacated rules. In 2002, however, the Department proposed that all labor organizations that contributed \$10,000 or more to a "significant" section 3(l) trust file a Form T-1. A "significant trust" was defined as one having annual receipts of at least \$200,000. Thus, under the 2002 proposal it was the size of the trust, not the size of the labor organization, that triggered the reporting obligation. In this regard, the 2002 proposal departed from the model proposed for the Form LM-2, where only labor organizations with annual receipts of at least \$200,000 (\$250,000 in the final rule) would be obliged to provide the kind of detailed reporting comparable to the Form T-1.

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 rule, 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 final rule, the Department excused from the Form T-1 reporting obligation any labor organization with annual receipts of less than \$250,000. And, for the same reasons, this proposal establishes \$250,000 in annual receipts for the labor organization as the mandatory filing threshold for the Form T-1.

The Department acknowledges that because the section 3(l) trust, not the reporting labor organization, will undertake the bulk of the recordkeeping burden, the size of the reporting labor organization may be less significant than it is in the Form LM-2 context. However, because only labor organizations with annual receipts of \$250,000 or greater, as a general rule, will have had any direct experience with the recordkeeping and reporting software utilized in preparing the Form LM-2, the Department believes it appropriate to limit this particular reporting obligation to organizations with annual receipts of \$250,000 or greater.

### 3. Elimination of threshold requirements in prior rules

This proposal does not include the requirement in the earlier rulemaking efforts that limited the mandatory Form T-1 filing to labor organizations that contributed \$10,000 or more to the trust in a reporting year. As discussed below, given the structure of this proposal, this requirement has become superfluous and transparency will be improved by its removal. This requirement had been based on the Department's concern that labor



organizations might have difficulty persuading trusts to provide a detailed accounting of the trust's financial activities if their stake in the trust was insubstantial in comparison with other contributions. However, under this proposal, no labor organization will need to file a Form T-1 unless it alone or together with other labor organizations holds management control or financial domination over a trust. Thus, under these circumstances it is unlikely that any participating labor organization should have difficulty in obtaining from the trust the information needed to complete the Form T-1.

Additionally, OLMS's review of section 3(l) trusts has found that a number of such trusts do not receive any yearly contributions from a labor organization during a reporting period but still hold large amounts of labor organization-derived money. For example, one building trust had less than \$200 in receipts other than investment income but held \$802,323 in assets, in this case investments. The trust and the labor organization the trust was created to benefit had many of the same individuals serving as officers (five officers of the labor organization are among the seven individuals identified as officers and directors of the trust). Although this trust was reported on an IRS Form 990, it does not appear on any report filed with the Department. But for a Form T-1 reporting obligation, many of the labor organization's members would not even be aware of such a trust or its Form 990, and likely would remain uninformed if the Form T-1 reporting obligation was contingent on the labor organization's \$10,000 contribution to the trust.

In the vacated rules, the Department limited the Form T-1 reporting obligation to only a subset of section 3(l) trusts: only those trusts that received \$250,000 or more in annual

receipts. Based on the Department's recent experience with section 3(l) trusts, however, it has determined that the retention of this requirement could operate to deny information about trusts to labor organization members whose labor organizations have a substantial investment in the trust notwithstanding the absence of significant contributions by the labor organization during the reporting period. For example, one section 3(l) trust reported on its IRS Form 990 assets of \$434,501, but its only source of receipts was rent, \$46,285, which was more than offset by its rental expenses of \$75,483, *i.e.*, its net receipts were -\$29,198. Another trust, on its Form 990, reported \$123,573,716 in assets, and \$1,354,258 in annual receipts only because it sold a single asset worth over \$1.1 million. This trust's sole source of annual receipts is rent in the amount of \$203,858. It is assumed that the labor organization has managerial control over the trusts in the above examples. These trusts would not be reported on a Form T-1 if the reporting obligation was tied solely to the labor organization's contributions to the trust during the reporting period. For this reason, the Department's proposal, in a departure from earlier rulemakings, does not tie a labor organization's reporting obligation to the level of the contributions made to a trust during the reporting period.

The elimination of this condition from the Department's proposal may require a labor organization to report on some trusts that contain only insubstantial amounts of money. However, a labor organization will be required to report very little for a trust with insubstantial receipts and therefore will only be subject to a slight burden. This slight drawback is countered by the transparency gained by members in those situations where the value of the trust is substantial. The Department, however, invites comments on

whether the alternatives considered or others should be established to eliminate a reporting obligation where a trust, in effect, is so small or insignificant that the burden of preparing a Form T-1 plainly outweighs any benefit that transparency would provide to the union's members. In this connection, it would be helpful to receive comments about whether it would be appropriate to establish a threshold based on the amount of assets held by a trust and, if so, the amount that would be appropriate for this purpose and any problems that would be posed by such an approach.

#### 4. Itemization of receipts and disbursements

The Department proposes that itemization should be required for "major disbursements" and "major receipts" of the section 3(l) trust. The Department defines "major disbursements" and "major receipts" for Form T-1 purposes as \$10,000 or more. Thus, under the proposal a labor organization would report payments of \$10,000 or more from any individual or entity to the trust and payments of \$10,000 or more to any individual or entity from the trust. In completing the Form T-1, the labor organization would specify the amount of the receipt or disbursement, its purpose, and other information pertinent to the transaction, including the name and address of the entity or individual involved.

Itemization is an essential component of Form LM-2 and also is integral to Form T-1 as a means to prevent circumvention or evasion of the reporting obligations imposed on labor organizations and labor organization officials. Itemization not only provides members with information pertinent to the trusts, but allows them to better monitor the other reporting obligations of their labor organization and its officials under the LMRDA and

to detect and thereby help prevent circumvention or evasion of the LMRDA's reporting requirements. Among other requirements under this proposal, Form T-1 requires a labor organization to identify:

- the names of all the trust's officers and all employees making more than \$10,000 in salary and allowances and all direct and indirect disbursements to them;
- disbursements to any individual or entity that aggregate to \$10,000 or more during a reporting period and provide for each individual or entity their name, business address, type of business or job classification, and the purpose and date of each individual disbursement of \$10,000 or more; and
- any loans made at favorable terms by the trust to the labor organization's officers or employees, the amount of the loan, and the terms of repayment.

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

The proposed \$10,000 figure is an outgrowth of the earlier rulemaking efforts and is shaped by the concerns there expressed and the Department's accommodation to those

concerns. This amount is a higher amount than the itemization threshold provided for the Form LM-2 (\$5,000). As the Department has stated in the past, “The Department will continue to monitor this threshold, as well as all other thresholds established by this rule, and may make future adjustments if economic conditions warrant such a change.” 68 FR 58374, 58421. In proposing the \$10,000 threshold, the Department considered but rejected alternative approaches to triggering itemization. A threshold tied to a particular percentage of a trust’s assets or other benchmark could deny members information about substantial transactions where a trust holds substantial assets. Furthermore, a percentage-based threshold that is subject to annual fluctuation lacks predictability and would complicate a year-to-year comparison of reports. If a percentage test was used, information concerning large trusts would be disclosed in much higher dollar amounts and information from smaller trusts would be reported in smaller amounts. For example, if you have two trusts, one with \$100,000 in disbursements and the other with \$10,000,000 and the itemization threshold was 1 percent then the first trust would report any disbursements that aggregate to \$1,000 or more while the second trust would only report disbursements that aggregate to \$100,000 or more. To ensure a uniform level of disclosure regardless of the size of the trust, the Department is proposing a flat dollar threshold of \$10,000 for itemization purposes. The Department seeks comments on the appropriateness of using a dollar value threshold in general, and a \$10,000 threshold in particular.

The Department’s proposal requires that a labor organization aggregates the trust’s receipts from, or disbursements to, a particular entity or individual during the reporting

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

The Department recognizes that tracking multiple payments from a specific source throughout the fiscal year imposes some additional burden on a reporting labor organization and a section 3(l) trust. Modern developments in electronic recordkeeping, however, minimize these demands. Electronic recordkeeping is now relatively simple and used routinely even by very small organizations and by individuals. Moreover, given the nature of their day-to-day operations, section 3(l) trusts are likely to already possess the technology and expertise to provide relevant information without undue burden. The recent Form LM-2 filing experience demonstrates the ability of labor organizations, often without the same level of recordkeeping sophistication possessed by most trusts, to satisfy the requirements posed by the Form LM-2, requirements generally more demanding than those posed by the Form T-1.

Comments on the 2002 proposal suggested that itemization could “bury” members in unnecessary detail, forcing them to plow through hundreds of pages to review a labor organization’s finances. The Department’s proposal is based on its belief that this concern is overstated. Labor organization members will be able to utilize the advantages of computer technology to review Form T-1s (and other documents required to be filed under the LMRDA). Electronic filing permits the reviewer to focus his or her review using a search engine to guide the inquiry, allowing review of a potentially large number of itemization reports with relative ease compared to review of the same documents in hard copy. However, the Department seeks comments from the public on this issue.

The Department specifically invites comments on whether reported loans should be limited to those which were made to union officers and employees at a favorable term. The Department seeks comments on whether to expand trust reporting requirements to include all loans to officer and employee regardless of the terms.

#### 5. Protection of sensitive information

This proposal protects the disclosure of personal information about members of labor organizations and the disclosure of sensitive information about a labor organization’s negotiating or bargaining strategies. In the earlier rulemaking, several labor organizations raised privacy concerns about the itemization requirements of the proposed Form T-1; specifically, they expressed the concern that the disclosure of the name and address of individuals receiving trust funds (as well as the date, purpose, and amount of

the transfer) might be unlawful under federal privacy laws or might pose risk to the individuals' health or safety. The Department took those concerns into account in fashioning the Form LM-2 and the approach there taken is embodied in this proposal. These confidentiality provisions, as described herein and in greater detail in the accompanying instructions, are also contained in the regulatory provision applicable to Form LM-2, section 403.8(b)(1). The only difference between the provisions relating to the Form LM-2 and this proposal 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).

The Department also proposes to provide labor organizations the same reporting option available under the Form LM-2 for reporting certain major transactions in situations where a labor organization, acting in good faith and on reasonable grounds, believes that reporting the details of the transaction would divulge information relating to the labor organization's prospective organizing strategy, the identification of individuals working as "salts," or its prospective negotiation strategy. 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 proposal, 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 just cause right. 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.

The Department specifically invites comments on this approach, including whether transactions involving a section 3(l) trust would pose a genuine risk to a labor organization’s organizing or negotiating strategy. The Department seeks comments on whether to narrow, clarify, or remove the confidentiality exception from the Form T-1 instructions. For example, comments are requested on whether all transactions greater than \$10,000 should be identified by amount and date on the report, permitting, however, labor organizations, where acting in good faith and on reasonable grounds, to withhold information that otherwise would be reported, in order to prevent the divulging of information relating to the labor organization’s prospective organizing or negotiation

strategy.

## 6. Exemptions and alternative means of compliance

The Department proposes to except from the labor organization's Form T-1 reporting requirement a trust that is established as a PAC or an organization exempt under Internal Revenue Code section 527 (section 527 political organization) if the trust files timely, complete and publicly available reports with federal or state agencies, as required by federal or state law. The Department also proposes a partial exception where an independent audit of the trust has been conducted in accordance with proposed standards discussed below and the audit is filed with OLMS along with page 1 of Form T-1. The purpose of limiting the filing requirements in this way is to minimize any overlapping reporting obligations that exist under certain other laws where such reports are publicly available and provide information roughly comparable to that required by the Form T-1. Additionally, an audit that satisfies the proposed standards and that is submitted along with page 1 of the Form T-1 similarly would be an acceptable substitute. Each of these alternative methods for meeting the labor organization's Form T-1 obligation provides significant, timely financial information about the trust that is updated on a regular basis (for PAC and section 527 reports, typically more frequently than the Form T-1) and

requires the itemization of receipts and expenditures.<sup>7</sup> These reports provide a level of transparency similar to the proposed Form T-1.

The Department proposes that the audit must meet the requirements (modeled on section 103 of ERISA, 29 U.S.C. 1023, and 29 CFR 2520.103-1 (relating to annual reports and financial statements required to be filed under ERISA)) described in the Form T-1 instructions. The Department recognizes that the audit option may not provide the same detail as required by the Form T-1, but it believes that this approach is an acceptable trade-off for reducing the overall reporting burden on the labor organization and the section 3(l) trust. The Department invites comments on this proposed alternative. Under the audit alternative, a labor organization need only complete the first page of the Form T-1 (Items 1-15 and the signatures of the organizations' officers) and submit a copy of an audit of the trust that meets all the following standards:

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<sup>7</sup> Significantly, these forms set the itemization threshold below the \$10,000 amount proposed for the Form T-1. They require aggregation of receipts and disbursements; itemization is required for any receipts from or disbursements to an individual or entity that total \$200 or more during prescribed reporting cycles. See Federal Election Commission, *Instructions for FEC Form 3X and Related Schedules*, available at [http://www.fec.gov/pdf/forms/fecfrm3xi\\_06.pdf](http://www.fec.gov/pdf/forms/fecfrm3xi_06.pdf) (last visited Nov. 8, 2007); IRS, *Instructions for Form 8872*, available at <http://www.irs.gov/pub/irs-pdf/i8872.pdf> (last visited Nov. 8, 2007).

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

Under the earlier proposal and rules, a labor organization was not required to file a Form T-1 for a section 3(l) trust if the trust was part of an employee benefit plan required under ERISA to file a Form 5500. Although the Department acknowledged that this option would not provide labor organization members and the public with all the information required by the Form T-1, it appeared that the disclosure purposes of the LMRDA could be satisfied under this approach. After further consideration, the Department has determined that the use of the Form 5500 as a substitute for the Form T-1 would not meet these purposes, and thus this proposal does not include the filing of the Form 5500 covering the section 3(1) trust as an exemption to the Form T-1 filing requirement.

The Form 5500 Annual Return/Report is a system of forms and schedules filed by employee benefit plans subject to ERISA. A common misconception is that Form 5500 reports are filed for all section 3(l) trusts. They are not. Since there is no uniform filing obligation under ERISA for section 3(1) trusts, labor organization members, the public, and OLMS investigators would have to expend considerable time and resources to

determine whether a section 3(l) trust has filed the Form 5500 and, if so, whether it filed all the information and schedules required of it under ERISA.

Although a section 3(1) trust may form part of an “employee pension benefit plan” or “employee welfare benefit plan” subject to ERISA, the ERISA statute does not apply to all section 3(1) trusts. Strike funds, recreational plans, and hiring hall arrangements are examples of funds in which labor organizations participate that fall outside ERISA coverage. *See* 29 CFR 2510.3-1. Further, under the Department’s ERISA regulations, some section 3(1) trusts that are part of employee benefit plans subject to ERISA are not required to file the Form 5500 or are allowed to file abbreviated financial schedules. *See* 29 CFR 2520.104-20 (simplified reporting for plans with fewer than 100 participants) and 29 CFR 2520.104-22 (conditional exemption for apprenticeship and training plans). For general information on ERISA’s Form 5500 annual reporting requirements, *see* U.S. Department of Labor, *Reporting and Disclosure Guide for Employee Benefit Plans*, (reprinted 2004) available at <http://www.dol.gov/ebsa/pdf/rdguide.pdf> (last visited Nov, 8, 2007)).

Moreover, the focus of the financial reporting required on the Form T-1 and the Form 5500 are not identical. As noted above, the Form T-1 implements section 201 of the LMRDA, which requires covered labor organizations to file annual, public reports with the Department, detailing the labor organization’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 labor organization; direct or indirect loans (in excess of \$250 aggregate) to any officer, employee, or member; loans (of any amount) to any business enterprise; and other disbursements. Although there may be some overlap with the Form T-1 in cases where a section 3(1) trust is part of an employee benefit plan required to file a Form 5500 with detailed financial schedules a Form 5500 filing would not include the itemization of disbursements or receipts required by the Form T-1.

Further, the Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year and must cover the section 3(1) *trust's most recent fiscal year, i.e.,* the fiscal year ending on or before the closing date of the labor organization's own fiscal year. This requirement is mandated by the LMRDA's requirement that a labor organization file its financial reports within 90 days of the close of the labor organization's fiscal year. 29 U.S.C. 437(b). The Form 5500 is not due, by comparison, until the end of the seventh month following the end of the plan's fiscal year, with an available extension of up to an additional two and one half months. In the case of a labor organization and a section 3(1) trust that have the same fiscal year, the Form T-1 would be due well in advance of the Form 5500 due date. On the other hand, if a trust's fiscal year ends three months after the labor organization's fiscal year, the Form T-1 will not be due until twelve months after the end of the trust's fiscal year. It should be noted, however, that the trust's *fiscal year* is established by the trust and will be the same for both Form T-1 and Form 5500 reporting purposes.

The persons required to sign the Form T-1 and Form 5500 also are not identical. Under the proposed Form T-1, the form must be signed by the president and treasurer, or corresponding principal officers, of the labor organization. By comparison, the Form 5500 filed for an employee benefit plan that includes a section 3(1) trust is signed by the plan's "administrator," as defined in section 3(16) of ERISA.<sup>8</sup> For these reasons, the Form 5500 does not appear to be an adequate substitute for the Form T-1.

The Department invites comments on

- whether any labor organizations now require section 3(l) trusts to provide reports to the labor organization, on a regular basis, at least annually and in comparable or greater detail to the Form T-1, including an itemization of receipts and disbursements, and, if so
  - whether the itemization threshold is higher or lower than \$10,000; and
  - whether the report is mailed to each member or made publicly available to members by other means;

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<sup>8</sup> Section 3(16)(A) of ERISA, 29 U.S.C. 1002 (3)(16)(A), defines the term "administrator" to mean: "(i) the person specifically so designated by the terms of the instrument under which the plan is operated; (ii) if an administrator is not so designated, the plan sponsor; or (iii) in the case of a plan for which an administrator is not designated and a plan sponsor cannot be identified, such other person as the Secretary may by regulation prescribe."



- whether documents provided for internal use by the trustees of a section 3(l) trust, if publicly disclosed, would adequately meet the disclosure requirements of the LMRDA;
- whether the proposed rule enables labor organizations and section 3(l) trusts sufficient time to compile and report on information needed to complete the Form T-1 in those instances where the labor organization and the trust have the same fiscal year, *i.e.*, where the Form T-1 must be filed within 90 days of the close of the trust's fiscal year; and
- if the proposed rule will impose substantial difficulties for labor organizations and trusts in the instances discussed in the preceding bullet point, and, if so, how these difficulties may be ameliorated in a way that ensures the timely receipt of information about such trusts by members of labor organizations and the public.

Labor organizations or other members of the public are encouraged to submit representative copies of any such reports or other documents of the type described.

7. Each labor organization with annual receipts of at least \$250,000 participating in a section 3(l) trust with other labor organizations must file a Form T-1

The proposal does not differentiate among the reporting obligations of labor organizations contributing to the same trust. Any labor organization that satisfies the reporting threshold will have to submit the Form T-1, even though the labor

organization's share may only represent a relatively small portion of the total contributions made to the trust by labor organizations.

In response to the Department's 2002 proposal, an international labor organization explained that it was not uncommon for several locals to participate in an apprenticeship and training fund that would be funded by payments from employers pursuant to negotiated agreements providing for "a cents per hour" contribution for hours worked by each of their employees. As an example, the labor organization discussed a fund with annual contributions over \$300,000 in which seven locals participated. The contributions from, or on behalf of, each local ranged from about \$10,000 to about \$100,000. The fund had four management and four labor trustees; three from different locals contributing to the trust and a fourth from the labor organizations' parent organization. The labor organization also explained that it is common for local labor organizations in different crafts (affiliated with different parent bodies) to participate in a fund. It explained that in these instances, it would be unusual for a single craft or local to represent a majority of the labor organization trustees. It stated that in such circumstances it is unrealistic to suggest that any single labor organization or craft controls the trust.

As suggested by the Department's proposal and the apprenticeship and training fund just discussed, it is not uncommon for multiple labor organizations to participate in a section 3(l) trust without any single labor organization contributing a majority of the trust's revenues. In some trusts, such as strike funds, labor organizations may be the sole contributors to the fund; in others, such as Taft-Hartley trusts, the trust will be funded by

employers, but such funds are established through collective bargaining agreements and the employer contributions are made for the benefit of the members of the participating labor organizations or their beneficiaries.

Trusts in which several labor organizations participate typically will consist solely of funds that are contributed on behalf of their members. In many instances, none of the participating labor organizations contributes a majority of the trust's revenues. Thus, unless a reporting obligation is imposed on one or more of the labor organizations on some basis other than majority contributions, no labor organization members will receive any information on the trust's finances. In its 2002 proposal, the Department illustrated the need for reporting on section 3(l) trusts with four examples in which labor organizations had evaded their reporting obligations through their involvement with such trusts. (These same examples are discussed in this proposal.) One of these examples involved the improper diversion of funds from a strike fund in which no single labor organization held a controlling interest. The absence of any labor organization reporting obligations facilitated the improper disposition of thousands of dollars (over \$60,000 per month) from the strike fund. As discussed above, a single labor organization may circumvent its Form LM-2 reporting obligations when it retains a controlling management role or financially dominates a trust; there is no basis to conclude that a group of labor organizations is not equally capable of doing so. Disbursements from a trust of pooled labor organization money reflect the contributing labor organizations' financial conditions and operations as clearly as the disbursements from a trust funded by a single labor organization. A rule directed to preventing a single labor organization

from circumventing or evading the law should not permit the same conduct when it is undertaken by more than one labor organization.

Under the proposal, multiple labor organizations may be required to report on a single trust. In fashioning this proposal, the Department considered two alternatives: fixing the obligation on the labor organization with the greatest stake in the trust; or allowing one of the participating labor organizations to voluntarily take on this responsibility. While these alternatives may provide an appropriate basis for fairly and roughly allocating the reporting burden, each suffers from the same basic infirmity -- labor organization members are not likely to view reports filed by other labor organizations when searching for information on the financial activities of their own labor organization and its trusts. Members of other labor organizations participating in the trust would have more difficulty obtaining information no less vital to their interests than the information provided to members of the reporting labor organization. Furthermore, this reporting gap could allow some labor organizations and individuals to evade their reporting obligations under the LMRDA.

Improper payments would be much easier to conceal if the Form T-1 were filed only by some of the participating labor organizations (some vendors or contributors to the section 3(l) trust may only be known by members of a particular labor organization). For these reasons, the Department has determined that where multiple labor organizations appoint a majority of the members of the trust's governing board, or their contributions constitute greater than 50 percent of the trust's annual revenues, each will be required to file a Form

T-1. In making this determination, the Department recognizes that the section 3(l) trust, not the reporting labor organizations, will compile most of the necessary information and that this information, in large part, will be identical for each participating labor organization. This will operate to allocate the reporting costs among the labor organizations, as determined by the trust, and will keep their total costs only marginally higher than if a Form T-1 was required to be filed by only one of the participating labor organizations.

In earlier rulemaking efforts, several commenters expressed concern that a section 3(l) trust could refuse to provide the information needed to complete the Form T-1. Several commenters expressed concern about a labor organization's liability for failure to file a timely report, given that the trust might refuse to provide the information and the labor organization may be unable to compel production. The Department acknowledges that this may remain a possibility under this proposal. However, given that the reporting obligation under the proposal only arises where a labor organization, alone or in combination with other labor organizations, maintains management control or financial domination over a trust, the possibility of such intransigence appears remote. The Department's view is supported by the public comments received about the 2002 proposal. No comment suggested that any administrator of a section 3(l) trust had expressed an intention to withhold from a labor organization information required to complete the Form T-1. Further, although there were some statements that a trust would be bound by its own fiduciary obligations in determining whether to make the information available, there was no suggestion that any trust held the view that it would

violate such duty by providing the information required by the form. Thus, the Department expects that trusts will routinely and voluntarily comply in providing such information to reporting labor organizations. Nevertheless, in those rare instances where a trust balks at providing the necessary information, the labor organization may request that the Department use its available investigatory authority to assist the reporting labor organization to obtain information necessary to complete the Form T-1. The Department expects that labor organizations and labor organization officials will take timely, reasonable, and good faith actions to obtain the necessary information from section 3(l) trusts and, where they have done so, the Department will not assert a willful and knowing violation of the filing requirement against the labor organization, its president, or secretary-treasurer.

#### 8. Requirement of electronic filing

For several years, and with Congressional urging and financial assistance, the Department has pursued the development and implementation of electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. See *H.R. Conf. Rep. 105-390*, 1997 U.S.C.C.A.N. 2061; *H.R. Conf. Rep. 105-825*; *H.R. Conf. Rep. 106-419*; *H.R. Conf. Rep. 106-479*; *H.R. Conf. Rep. 106-1033*; *H.R. Conf. Rep. 107-342*, 2002 U.S.C.C.A.N. 1690; *H.R. Conf. Rep. 108-10*, 2003 U.S.C.C.A.N. 4.

The Department has had in place systems for electronic submission and disclosure since 2001 (the systems were later augmented for submissions under the 2003 final rule).

There have been no significant problems with the system. Where minor problems have arisen, the Department has taken steps to successfully resolve the problems. Moreover, the existing system was originally designed for the submission of both Form LM-2 and Form T-1.

This proposal will utilize this existing system for electronic submissions, minimizing any difficulty by labor organizations in submitting the reports electronically. This system will allow the Department to make the reports available for electronic disclosure, and enable labor organization members and others to search and otherwise utilize data in the Department's Form T-1 database. Despite the familiarity of users with the existing system, the Department recognizes that some labor organizations nonetheless may encounter some temporary problems in electronically submitting the Form T-1. Thus, under the proposal, a labor organization that must file a Form T-1 may assert a temporary hardship exemption or apply for a continuing hardship exemption to prepare and submit the report in paper format. If a labor organization files both Form LM-2 and Form T-1, the exemption must be separately asserted for each report, although in appropriate circumstances the same reasons may be used to support both exemptions. As proposed, 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. The key aspects of the proposed hardship exemption follow:

#### Temporary Hardship Exemption:

- If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic 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. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of the OLMS Division of Interpretations and Standards.
- The applicant must comply with special instructions for submitting the Form T-1 in paper format.
- If neither the paper filing nor the electronic filing is received in the timeframe specified, the report will be considered delinquent.

#### Continuing Hardship Exemption:

- A labor organization may apply in writing for a continuing hardship exemption if Form T-1 cannot be filed electronically without undue burden or expense. Such written application shall be received at least thirty days prior to the required due date of the report(s). The written application shall include, but not be limited to, the following: (1) the justification for the requested time period of the exemption; (2) the estimated burden and expense that the labor organization would incur if it was required to make an electronic submission; and (3) the reasons for not



submitting the report(s) electronically. The applicant must specify a time period not to exceed one year.

- The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due date.
- If the request is granted, the labor organization shall submit the report(s) in paper format by the date prescribed by OLMS. The applicant must comply with special instructions for submitting the Form T-1 in paper format.
- The filer may be required to submit Form T-1 in electronic format upon the expiration of the period for which the exemption is granted.
- If neither the paper filing nor the electronic filing is received in the timeframe specified, the report will be considered delinquent.

#### 9. Effective date

The Department proposes to provide labor organizations significant lead time to prepare for submitting the initial Form T-1. Under the proposal, the final rule will take effect no less than 30 days after its publication in the Federal Register. Furthermore, at the earliest, no report will be due until 15 months after the rule's effective date. Thus, labor organizations whose fiscal years begin after the rule's effective date will have more than 15 months before their initial Form T-1 is due. As stated in the proposal:

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 recent fiscal year, *i.e.*, the fiscal year ending on or before the closing date of the labor organization's own fiscal year.

Under the proposal, 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's most recent fiscal year reported to the labor organization by the trust or from a qualifying audit. The Department's intention in permitting a labor organization to file Form T-1 within ninety days after the labor organization's fiscal year ending date, rather than requiring it to be filed within ninety 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. The Department intends to include 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.

### III. REGULATORY PROCEDURES

## **Executive Order 12866**

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

## **Unfunded Mandates Reform**

For purposes of the Unfunded Mandates Reform Act of 1995, this proposed rule does not include a federal mandate that might result in increased expenditures by state, local, and

tribal governments, or increased expenditures by the private sector of more than \$100 million in any one year.

### **Executive Order 13132 (Federalism)**

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

### **Initial Regulatory Flexibility Analysis**

The Regulatory Flexibility Act of 1980 ("RFA"), 5 U.S.C. 601 *et seq.*, requires agencies to prepare an initial regulatory flexibility analyses in drafting regulations that will have a significant economic impact on a substantial number of small entities.

In the 2003 and 2006 Form T-1 rules, the Department undertook regulatory flexibility analyses, utilizing the Small Business Administration's ("SBA") "small business" standard for "Labor Unions and Similar Labor Organizations.". Specifically, the

Department used the \$5 million standard established in 2000 (as updated in 2005 to \$6.5 million) for purposes of its regulatory flexibility analyses. *See* 65 FR 30836 (May 15, 2000); 70 FR 72577 (Dec. 6, 2005). This same standard has been used for the Department's initial regulatory flexibility analysis in this proposed rule.

The Department recognizes that the SBA has not established fixed, financial thresholds for "organizations," as distinct from other entities. *See A Guide for Federal Agencies: How to Comply with the Regulatory Flexibility Act*, Office of Advocacy, U.S. Small Business Administration at 12-13, available at [www.sba.gov](http://www.sba.gov). The Department further recognizes that under SBA guidelines, the relationship of an entity to a larger entity with greater receipts is a factor to be considered in determining the necessity of conducting a regulatory flexibility analysis. In this regard, the affiliation between a local labor organization and a national or international labor organization, a widespread practice among labor organizations subject to the LMRDA, presents a unique circumstance in determining whether and, if so, how, receipts of labor organizations should be aggregated, if at all, in assessing whether a regulatory flexibility analysis is required and how it should be conducted. It is the Department's view, however, that it would be inappropriate, given the past rulemaking concerning the Form T-1 and the Form LM-2, to depart from the \$6.5 million receipts standard in preparing this initial regulatory flexibility analysis. Comments are invited to address this question of whether the use of the \$6.5 million figure, without aggregation among affiliated labor organizations, is appropriate and if not, to suggest alternative approaches for this purpose. Accordingly,

the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

All numbers used in this analysis are based on 2005 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.

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

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

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

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

Under the Department's former rule (superseded by the revised 2003 Form LM-2), a reporting obligation concerning section 3(l) trusts would arise only if the trust was a "subsidiary" of the reporting labor organization and met other requirements previously set by the Department. *See* Form LM-2 instructions in effect prior to the 2003 final rule; *see also* 68 FR 58413. Thus, the former rule, which was crafted shortly after the Act's enactment, required reporting by only a portion of the labor organizations that contributed to section 3(l) trusts. During the intervening decades, the financial activities of individuals and organizations have increased exponentially in scope, complexity, and interdependence. 67 FR 79280-81. For example, many labor organizations manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-

producing subsidiaries, and participate in foundations and charitable activities. 67 FR 79280. The complexity of labor organization financial practices, including business relationships with outside firms and vendors, increases the likelihood that labor organization officers and employees may have interests in, or receive income from, these businesses. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for labor organization officers and employees who may operate, receive income from, or hold an interest in such businesses. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between labor organizations, labor organization officials, employers, and other entities, including section 3(l) trusts.

Such trusts “pose the same transparency challenges as ‘off-the-books’ accounting procedures in the corporate setting: large scale, potentially unattractive financial transactions can be shielded from public disclosure and accountability through artificial structures, classification and organizations.” 67 FR 79282. The Department’s former rule required labor organizations to report on only a subset of such trusts. This approach allowed a gap in the reporting of financial information concerning these trusts. The trust funds, if they had been retained by the labor organization, would have appeared on the labor organization’s Form LM-2. Despite the close relationship between the labor organization and the trust and the purpose of the funds to benefit the members of the labor organization, transparency ended once the funds left the labor organization and thereby limited accountability. Thus, Form T-1 would essentially follow labor



organization funds that remain in closely connected trusts, but which would otherwise go unreported. As a result of non-disclosure of these funds, members have long been denied important information about labor organization funds that were being directed to other entities, ostensibly for the members' benefit, such as joint funds administered by a labor organization and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. *See* 67 FR 79285. The Form T-1 is necessary to close this gap, prevent certain trusts from being used to evade the Title II reporting requirements, and provide labor organization members with information about financial transactions involving a significant amount of money relative to the labor organization's overall financial operations and other reportable transactions. 68 FR 58415. The proposed 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 be able to determine whether the business and the labor organization official have made required reports. The purpose of the LMRDA disclosure requirements is to prevent financial malfeasance of labor organization money. 67 FR 79282-83. This purpose is demonstrably frustrated when existing reporting obligations fail to disclose, for example, opportunities for fraud. (Examples of situations where money in section 3(l) trusts was being used to circumvent or evade the reporting requirements can be found in the preamble and at 67 FR 79283.)

As explained in the preamble, additional trust reporting is necessary to ensure, as intended by Congress, the full and comprehensive reporting of a labor organization's

financial condition and operations, including a full accounting to labor organization members from whose work the payments were earned. 67 FR 79282-83. The proposed rule will prevent circumvention and evasion of these reporting requirements by providing labor organization members with financial information concerning their labor organization's trusts when the labor organization, alone or in combination with other labor organizations, selects the majority of the directors or provides the majority of the funds.

## 2. Legal Basis for Rule

The legal authority for the notice of proposed rule-making 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 she may find necessary to prevent the circumvention or evasion of the reporting requirements. Section 3(l) of the Act, 29 U.S.C. 402(l), defines a "trust in which a labor organization is interested."

## 3. Number of Small Entities Covered Under the Rule

The Department estimates that of the 4,452 labor organizations subject to this proposed rule, 4,228 of these, or 94.7 percent of the total will have receipts less than \$6.5 million, the SBA small business size standard for "Labor Unions and Similar Labor

Organizations.” These labor organizations have annual average receipts of \$1.3 million. The Department estimates that only some of these 4,228 labor organizations will have to file Form T-1 reports; the Department estimates that these organizations will file approximately 2,077 reports annually (on average about .49 reports per labor organization).

The affiliation among labor organizations may have an impact on the number of organizations that should be counted as “small organizations” under section 601(4) of the RFA, 5 U.S.C. 601(4). Section 601(4) provides in part: “the term ‘small organization’ means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” However, for purposes of analysis here and for ready comparison with the RFA analyses in its earlier Form T-1 rulemakings, the Department has used the \$6.5 million receipts test for “small businesses,” rather than the “independently owned and operated and not dominant” test for “small organizations.” Application of the latter test likely would reduce the number of labor organizations that would be counted as small entities under the RFA. We are seeking comment on the accuracy of this assumption.<sup>9</sup>

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<sup>9</sup> As discussed in greater detail in the PRA analysis, the primary impact of this proposed rule will be on the largest labor organizations, defined as those that have \$250,000 or more in annual receipts. Based on information in its electronic labor organization reporting system (“e.LORS”), the Department estimates that there are approximately 4,452 labor organizations of this size that have \$250,000 or more in annual receipts (just 18.5 percent of the 24,065 labor organizations covered by the LMRDA).

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

To the extent that there are federal rules that duplicate, overlap, or conflict with this proposed rule, a specific exemption from the requirements of this rule has been provided. It should be noted, however, that some section 3(1) trusts, *i.e.*, those that are part of employee benefit plans subject to ERISA coverage and disclosure requirements, are currently required to report some similar information to the Employee Benefits Security Administration on an annual report Form 5500. However, this information does not include certain information captured by the proposed Form T-1 that is specifically focused on disclosures under section 201 of the LMRDA.

#### 5. Differing Compliance or Reporting Requirements for Small Entities

Under the proposal, 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. Only the largest filers, those that have annual receipts in the millions, are likely to have multiple trusts which will require substantial changes in their accounting practices in order to report these trusts on the new form. Labor organizations with receipts of between \$250,000 and \$2 million, which account for over 3,441 of the 4,452 Form LM-2 filers, are likely to have fewer trusts for which they will have to file a Form T-1 than the organizations with greater annual receipts.

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

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

OLMS will provide compliance assistance for any questions or difficulties that may arise from using the reporting software. A 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 having to file an amended report. The error summaries provided by the software, combined with the speed and ease of electronic filing, will also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

## 7. The Use of Performance Rather Than Design Standards

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

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

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

#### 8. Reporting, Recording and Other Compliance Requirements of the Rule<sup>10</sup>

This analysis only considers unions within Tier I and a portion of the unions within Tier II. There is no analysis of Tier III unions because all unions within Tier III are outside the coverage of the Regulatory Flexibility Act. This proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary

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<sup>10</sup> The estimated burden on labor organizations is discussed in detail in the section concerning the Paperwork Reduction Act. The figures discussed in the text are derived from the figures explained in that section.

economic impact of the proposed rule will be the cost of obtaining and reporting required information.

The Department assumes that each Tier I labor organization (those with between \$250,000 and \$499,999 in annual receipts) will spend, on average, about .75 hours contacting all the section 3(l) trusts listed on their Form LM-2s to determine whether a Form T-1 is required.<sup>11</sup> The Department estimates that this will cost each Tier I labor organization, on average, \$11.92 a year or .003 percent of annual receipts. Each Tier II labor organization that is a “small entity” (those with between \$500,000 and \$6.5 million in annual receipts) will spend approximately 1.5 hours contacting all the section 3(l) trusts listed on their LM-2 to determine whether a Form T-1 is required. This will cost each Tier II labor organization on average \$52.79 a year or .003 percent of annual receipts. Of those trusts contacted, only some will meet the Form T-1 filing

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<sup>11</sup> This assumption is premised on the following: only some labor organizations will have any section 3(l) trusts; some of those labor organizations will not need additional information to determine a particular trust’s coverage under the proposed rule; the number of inquiries will be proportional to the estimated number of trusts for the three tiers of labor organizations based on the amount of their annual receipts; and typically only a telephone call or email will be needed to make the coverage inquiry with the trust. The costs are based on the wage rates for labor organizations. See Table 4. Comments are invited on the methodology and assumptions underlying this assumption and other assumptions and estimates utilized in the Department’s burden analysis.



requirements. For those that meet the filing requirements, the labor organizations will incur the recordkeeping and reporting burden associated with the Form T-1.

The first year cost of the proposed Form T-1 (including first year non-recurring implementation costs) for the estimated 1,347 labor organizations with annual receipts between \$250,000 and \$499,999 who actually file a T-1 is \$1,139.31, or 0.32 percent of average annual receipts (see Table 1).<sup>12</sup> The first year cost of the proposed Form T-1 (including first year non-recurring implementation costs) for the estimated 2,881 labor organizations with annual receipts between \$500,000 and \$6,500,000 who actually file a Form T-1 is \$2,523.12, or 0.15 percent of total annual receipts (see Table 1). Further, under the Department’s analysis, the costs fall during the second and third year as the reporting infrastructure is completed and filers become more familiar with the form. The Department estimates a 52.72 percent reduction in the second year and another 10.32 percent reduction in the third year. Filing costs in the third year for labor organizations with between \$250,000 and \$499,999 in annual receipts are estimated to be \$483.06 or .13 percent of their average annual receipts. Filing costs in the third year for labor organizations with between \$500,000 and \$6,500,000 in annual receipts are estimated to be \$1,069.78 or .06 percent of their average annual receipts.

<b>Table 1 – Summary of T-1 Regulatory Flexibility Analysis</b>		
	Total Burden Hours per Respondent	Total Cost per Respondent
For Labor organizations that Meet the SBA Small Entities Standard	—	—

<sup>12</sup> The burden hours and costs are identified in the Paperwork Reduction Act section that follows.

First Year Cost of Proposed Form T-1		
for Labor organizations with \$250,000 to \$499,999 in Annual Receipts	71.7	\$ 1,139.31
Percent of Average Annual Receipts	n.a.	0.32%
Second Year Cost of Proposed Form T-1		
for Labor organizations with \$250,000 to \$499,999 in Annual Receipts	33.9	\$ 538.67
Percent of Average Annual Receipts	n.a.	0.15%
Percentage Reduction in Cost From Previous Year	n.a.	52.72%
Third Year Cost of Proposed Form T-1		
for Labor organizations with \$250,000 to \$499,999 in Annual Receipts	30.4	\$ 483.06
Percent of Average Annual Receipts	n.a.	0.13%
Percentage Reduction in Cost From Previous Year	n.a.	10.32%
First Year Cost of Proposed Form T-1		
for Labor organizations with \$500,000 to \$6,500,000 in Annual Receipts	71.7	\$ 2,523.12
Percent of Average Annual Receipts	n.a.	0.15%
Second Year Cost of Proposed Form T-1		
for Labor organizations with \$500,000 to \$6,500,000 in Annual Receipts	33.9	\$ 1,192.94
Percent of Average Annual Receipts	n.a.	0.07%
Percentage Reduction in Cost From Previous Year	n.a.	52.72%
Third Year Cost of Proposed Form T-1		
for Labor organizations with \$500,000 to \$6,500,000 in Annual Receipts	30.4	\$ 1,069.78
Percent of Average Annual Receipts	n.a.	0.06%
Percentage Reduction in Cost From Previous Year	n.a.	10.32%

As noted in section 3 above, the proposed rule will apply to 4,228 labor organizations that meet the SBA standard for small entities, or just 17.6 percent of the 24,065 labor organizations that must file an annual financial report under the LMRDA. The proposed rule is not expected to have a significant economic impact on these entities. For the estimated 1,347 labor organizations with annual receipts between \$250,000 and \$499,999 that actually file a Form T-1 under the proposed rule, the first year costs (including first year non-recurring implementation costs) are \$1,139.31, or 0.32 percent of average annual receipts (*see* Table 1).<sup>13</sup> For the estimated 2,881 labor organizations with annual receipts between \$500,000 and \$6,500,000 that actually file a Form T-1 under the proposed rule, the first year costs (including first year non-recurring implementation costs) are \$2,523.12, or 0.15 percent of total annual receipts (*see* Table 1). Therefore, the

<sup>13</sup> The burden hours and costs are identified in the Paperwork Reduction Act section that follows.

Department has decided that the proposed rule will not have a significant economic impact on a substantial number of small entities.

### **Paperwork Reduction Act**

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (“PRA”). *See* 5 CFR 1320.9. As discussed in the preamble to this proposed rule, the analysis under the Regulatory Flexibility Act, and the analysis that follows, 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 in the preamble are written in plain language that will be understandable by reporting labor organizations; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping 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).

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. This helps to ensure that the public understands the Department’s collection instructions, respondents can provide the requested data in the desired format, the reporting burden (time and financial resources) is minimized, and the Department can properly assess the impact of collection requirements on respondents.

In this proposed rulemaking, the Department has sought to improve the usefulness and accessibility of information to members of labor organizations subject to the LMRDA. The LMRDA reporting provisions were devised to protect the basic rights of members of labor organizations and to guarantee the democratic procedures and financial integrity of labor organizations. The 1959 Senate report on the version of the bill later enacted as the LMRDA stated clearly that “the members who are the real owners of the money and

property of the organization are entitled to a full accounting of all transactions involving their property.” A full accounting was described as “full reporting and public disclosure of union internal processes and financial operations.”

As labor organizations have become more multifaceted and have created hybrid structures for their various activities, the form used to report financial information with respect to these activities had until recently remained relatively unchanged and had become a barrier to the complete and transparent reporting of labor organizations’ financial information intended by the LMRDA. Moreover, just as in the corporate sector, there have been a number of financial failures and irregularities involving pension funds and other member accounts maintained by labor organizations. These failures and irregularities result in direct financial harm to members of labor organizations. If members had more complete, understandable information about their labor organizations’ financial transactions, investments, and solvency, they would be in a much better position than they are today to protect their personal financial interests and to exercise their rights of self-governance. The purpose of the proposed rule is to provide them with such information. The information collection achieved by this proposed rule is integral to this purpose. The paperwork requirements associated with the rule are necessary to enable workers to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; prevent the circumvention or evasion of the statutory reporting requirements; and strengthen the effective and efficient enforcement of the LMRDA by the Department.

As discussed in the preamble, 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 collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. The proposed Form T-1 is necessary to close this gap, prevent labor organizations from using certain trusts to evade the Title II reporting requirements, and provide labor organization members with information about financial transactions involving a significant amount of money relative to the labor organization'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 labor organization's financial condition and operations, including a full accounting to labor organization members for payments to the trust, payments made because of the work of these members. Trust reporting is also necessary to prevent circumvention and evasion of the reporting requirements imposed on officers and employees of labor organizations and on employers.

The proposed Form T-1 is designed to take advantage of technology that reduces the burden of providing detailed information, while at the same time making it easier to file and publish the contents of the reports. Members of labor organizations thus will be able to obtain a more accurate and complete picture of their organization's financial condition and operations without imposing an unwarranted burden on respondents. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain, assemble, and produce such

documentation in the event of an inquiry from a member of a labor organization or an audit by an OLMS investigator.

Based upon the analysis presented below, the Department estimates that the total first year burden to comply with the proposed Form T-1 will be 183,361 hours. The total first year compliance costs associated with this burden is estimated to be \$6,172,047.

Therefore, this proposed rule will not be a major economic rule. Both the burden hours and the compliance costs associated with Form T-1 decline in subsequent years. The Department estimates that the total burden averaged over the first three years to comply with the Form T-1 to be 117,995 hours per year. The total compliance costs associated with this burden averaged over the first three years are estimated to be \$2.6 million per year.

#### A. Overview of Form T-1

The Form T-1 in this proposed rule is identical to the form promulgated at 71 FR 57116, but as discussed in the preamble the scope of the reporting requirement has been narrowed in order to conform the rule with the D.C. Circuit's decision in *AFL-CIO v. Chao*, 409 F.3d 377 (2005). The proposed rule reiterates the Department's determination that no Form T-1 will be required if the trust files a report pursuant to 26 U.S.C. 527, or if the organization files publicly available reports with a Federal or state agency as a PAC. Additionally, a labor organization may substitute an audit that meets the criteria set forth

in the Form T-1 instructions for the financial information otherwise reported on a Form T-1.

Form T-1 consists of 14 questions that identify the labor organization and 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 at terms below market rates; four summary numbers for total assets, liabilities, receipts, and disbursements; a schedule for itemizing all receipts of \$10,000 or more, individually or in the aggregate, from any entity or individual; a schedule for itemizing all disbursements of \$10,000 or more, individually or in the aggregate, to any entity or individual; and a schedule for listing all officers of the trust and payments to them and all employees of the trust who received more than \$10,000 from the trust.

Form T-1 and its instructions, which are modified to reflect the proposed filing criteria, are published as an appendix to this proposed rule.

#### B. Methodology for the Burden Estimates

The figures used here by the Department are derived from the Department's computations based on assumptions, rounded to the nearest hundredth, published in the 2003 rule, 68 FR 58433, and the 2006 rule, 71 FR 57116. For this proposed rule, baselines and other estimates (such as whether a labor organization, trust, or outside



personnel will complete the form) for the Form T-1 are assumed to parallel those of the current Form LM-2. Filers of Form T-1 will be a subset of the Form LM-2 filers, *i.e.*, those Form LM-2 filers that participate in a section 3(l) trust will be required to file the Form T-1 when other criteria, as explained above, are met. In reaching its estimates, the Department considered both the one-time and recurring costs associated with the proposed rule. Separate estimates are included for the initial year of implementation as well as the second and third years. For filers, the Department included separate estimates, based on the relative size of labor organizations as measured by the amount of their annual receipts.

This NPRM will affect the largest labor organizations, defined as those that have \$250,000 or more in annual receipts, subject to the Act. Such labor organizations that are interested in a section 3(l) trust must file a Form T-1 when: the labor organization, alone or in combination with other labor organizations, (A) appoints a majority of the members of the trust's governing board, or (B) contributes more than 50 percent of the trust's annual receipts. Contributions made on behalf of the organization or its members shall be considered contributions by the labor organization. The Department assumes that each Form LM-2 filer will spend approximately 1.31 hours contacting all the section 3(l) trusts listed on their Form LM-2 to determine whether a Form T-1 is required. It should be noted that it is unlikely that labor organizations will need to contact each trust listed on its Form LM-2 as some obviously will or will not meet the filing threshold. For fiscal year 2005, the Department received approximately 4,452 Form LM-2 reports. Therefore, the Department estimates that there are 4,452 reporting labor organizations with receipts

of \$250,000 or more.<sup>14</sup> The Department estimates that for these 4,452 labor organizations, 2,476 Form T-1s will be filed. This cohort represents 18.5 percent of all labor organizations covered by the LMRDA. See Table 2. These figures differ from the Department's 2003 estimates where it was assumed that 2,769 Form T-1s would be filed annually. 68 FR 58435. The differences between today's estimates and those used in the 2003 rule reflect the narrower reach of this rule.

Today's estimates, like the 2002 NPRM and the 2003 and 2006 rules, are based on a three-tier analysis of labor organizations organized by receipt size. The Department first assumed that 10 percent of the 1,317 labor organizations with annual receipts of \$250,000 to \$499,999.99 (Tier I) would file one Form T-1. Second, it was assumed that 25 percent of the 3,083 labor organizations with annual receipts of \$500,000 to \$49.9 million (Tier II) would file on average two Form T-1s. Third, it was assumed that 100 percent of the 52 labor organizations with annual receipts of \$50 million or more (Tier III) would file an average of four Form T-1 reports each. The implementation of a tier system is based on the underlying assumption that the size of a labor organization, as measured by the amount of its annual receipts, will affect its recordkeeping and reporting burden for Form T-1. Larger labor organizations have more trusts for which to account:

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<sup>14</sup> These estimates for the total number of labor organizations and the number of labor organizations by tier are somewhat higher than the numbers reflected in the 2006 analysis. The difference is due to natural variations in the universe of filers. As economic conditions change the number of labor organizations as a whole and the number of labor organizations within each tier varies.

the three tiers are constructed to differentiate these relative burdens among those labor organizations with \$250,000 or more in receipts (68 FR 58433).<sup>15</sup>

**Table 2: Tier System Based on FY 2005 Figures and Assumptions in 2006 Rule**

Total Labor Organizations with 250,000 or more in receipts: 4,452.

Tier I (\$250,000 – 499,999 receipts): 1,317 x 10 percent = (# filers) x 1 (# reports) = 132

Tier II (\$500,000 – 49.9 mil receipts): 3,083 x 25 percent = (# filers) x 2 (# reports) = 1,542

Tier III (\$50 mil and higher receipts): 52 x 100 percent = (# filers) x 4 (# reports) = 208

Estimated Annual Form T-1 Filings 1,882

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**Tier System Based on FY 2005 Figures and Assumptions Based on Changes in This Proposal**

Total Labor Organizations with \$250,000 or more in receipts: 4,452.

Tier I (\$250,000 – 499,999 receipts): 1,317 x 13 percent = (# filers) x 1 (# reports) = 171

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<sup>15</sup> Comments are invited on the methodology and assumptions underlying the Department's burden analysis. Because labor organizations have not previously been required to report on most section 3(l) trusts, the Department particularly invites comment on the number of section 3(l) trusts for which a particular labor organization will have to file a Form T-1 under the proposal and whether that number is likely to be consistent for labor organizations within the same tier as the commenting labor organization. Additionally, comments are requested on the assumption, discussed in the next paragraph of the text, relating to the burden that some labor organizations may face in obtaining information about the need to file a Form T-1 for some section 3(l) trusts.

Tier II (\$500,000 – 49.9 mil receipts):  $3,083 \times 33 \text{ percent} = (\# \text{ filers}) \times 2 (\# \text{ reports}) = 2,035$

Tier III (\$50 mil and higher receipts):  $52 \times 100 \text{ percent} = (\# \text{ filers}) \times 5.2 (\# \text{ reports}) = 270$   
Estimated Annual Form T-1 Filings 2,476

These numbers are higher than the estimates in the 2003 and 2006 rulemaking. In the current paperwork clearance (OMB # 1215-0188), the Department estimated 1,664 Form T-1s would be filed under the requirements published in 2006. Under the proposed requirements, the Department estimates that 2,476 reports will have to be filed.<sup>16</sup> This estimate was obtained by taking the assumptions from the 2006 final rule, adjusting these assumptions by the number of current Form LM-2 filers and then increasing by 30 percent per tier the anticipated number of Form T-1s that would be filed. This increase is due to the elimination of the receipts thresholds for filing and the filing exemption for the ERISA Form 5500 that was found in the previous rulemakings. These changes are reflected in the estimated percentage of filers, which are higher in the second data set in Table 2.

The Department's cost estimates include costs for both labor and equipment that will be incurred by filers. The labor costs reflect the Department's assumption that labor organizations and trusts will rely upon the services of some or all of the following positions (president, secretary-treasurer, accountant, bookkeeper, computer programmer, lawyer, consultant) and the compensation costs for these positions, as measured by wage

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<sup>16</sup> The difference between the 2003 and 2006 estimates was due to the narrower reach of the 2006 rule, *i.e.*, its adoption of the majority control rule embodied in the 2006 rule and continued in this proposal.

rates and employer costs published by the Bureau of Labor Statistics or derived from data in the Department's Electronic Labor Organization Reporting System database ("e.LORS"), which stores and automatically culls certain information, such as labor organization officer and employee salaries, from annual reports submitted by labor organizations. The Department also made assumptions relating to the time that particular tasks or activities would take. The activities generally involve only one of the three distinct "operational" phases of the rule: first, tasks associated with modifying bookkeeping and accounting practices, including the modification or purchase of software, to capture data needed to prepare the required reports; second, tasks associated with recordkeeping; and third, tasks associated with completing the report and all appropriate levels of review and signature. Where an estimate depends upon the number of labor organizations subject to the LMRDA or included in one of the tier groups, the Department has relied upon data in the e.LORS system (for the years stated for each example in the text or tables).

The relative burden associated with the rule will correspond to the following predictable stages: determining whether a section 3(1) trust meets the filing requirements; review of the instructions and forms; adjustments to or acquisition of accounting software and computer hardware; changing accounting structures and developing, testing, reviewing, and documenting accounting software queries as well as designing query reports; training officers and employees involved in bookkeeping and accounting functions; the actual recordkeeping of data; and additional review by trust officials and the reporting labor organization's president and secretary-treasurer. As those labor organizations that will be

required to file Form T-1 already are required to file Form LM-2, which requires the use of digital signatures, Form T-1 filers will not incur an additional cost or burden associated with the need to affix a digital signature to the Form T-1.

Burden can be categorized as recurring or non-recurring, with the latter primarily associated with the initial implementation stages. Recordkeeping burden, as distinct from reporting burden, will predominate during the first months of implementation. Burden can be reasonably estimated to vary over time with the greatest burden in the initial year, decreasing in later years as filers gain experience. Estimates for each of the first three years and a three-year average will provide useful information to assess the burden.

Burden can be usefully reported as an overall total for all filers in terms of hours and cost. The estimated burden associated with the current LM forms is the appropriate baseline for estimating the burden and cost associated with the Form T-1 because only a subset of those labor organizations which file Form LM-2 will be required to file Form T-1. As the Form T-1 will be filed only by labor organizations with \$250,000 or more in receipts, which is the dollar threshold for the Form LM-2, it is presumed that many of the same labor organization and/or outside personnel will be performing the recordkeeping and responding duties. Therefore, these estimates are used as the Form T-1 baseline.

For each of the three tiers, the Department estimated burden hours for the nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three-year annual average for the nonrecurring and recurring burden hours similar to the way it has previously estimated the burden hours

when updating financial disclosure forms required by the LMRDA. The Department estimates that under the proposal, on average, each labor organization will spend approximately 1.31 hours each year determining whether it has any section 3(l) trusts listed on its Form LM-2 that meet the Form T-1 filing requirements. As shown on Table 3, the Department estimates the burden required for filing the Form T-1 for all three tiers to be 2.4 hours to provide the trust with information about the Form T-1, 4.3 hours for reviewing the form and instructions, and 8.0 non-recurring (first year) hours for installing, testing, and reviewing acquired software/hardware and/or implementing recordkeeping and/or reporting procedures. The time required to read and review the form and instructions is estimated to decline to 2.0 hours the second year and 1.0 hour the third year as labor organizations and trusts become more familiar with the form.

The Department estimates the average reporting burden required to complete pages one and two of the Form T-1 for each of the three tiers to be 6.1 hours and the average recordkeeping burden associated with the items on pages one and two to be 1.6 hours. The Department also estimates that trusts will spend 2.0 hours reviewing the form once it is completed. These estimates are proportionally based on the recordkeeping and reporting burden estimate for the first two pages of the current Form LM-4, which are very similar to the first two pages of the Form T-1. The first two pages of Form LM-4 have 21 items (8 questions that identify the labor organization, four yes/no questions, seven summary numbers for: maximum amount of bonding, number of members, total assets, liabilities, receipts, and disbursements, total disbursements to officers, and a space for additional information). The first two pages of Form T-1 have 25 items (14 questions

that identify the labor organization and trust, six yes/no questions, four summary numbers for total assets, liabilities, receipts, and disbursements, and a space for additional information).

For the receipts and disbursements schedules, the Department estimates that on average Form T-1 respondents will take 9.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel for each of the schedules. Further, the Department also estimates that on average Form T-1 respondents (a labor organization is counted as a respondent for each Form T-1 it files) will take 1.2 (recurring) hours to prepare and transmit the receipts schedule and 1.4 hours to prepare and transmit the disbursements schedule. The Department also estimates that on average Form T-1 respondents will take 8.3 hours (recurring) of recordkeeping burden for each schedule to maintain the additional information required by the rule.

For the Form T-1 disbursements to officers and employees of the trust schedule, the Department estimates that it will take respondents an average 2.8 hours (of nonrecurring burden) to develop, test, review, and document accounting software queries; design query reports; prepare a download methodology; and train personnel. Further, the Department estimates it will take on average 0.8 hours to prepare and transmit the schedule.

The Department also estimates that it will take 2.0 hours for the trust to review the Form T-1 and 1.0 hours for this information to be sent to the labor organization filer. In



addition, the Department estimates that the labor organization president and secretary-treasurer will take 4.0 hours to review and sign the form. The time for the president and secretary-treasurer to review and sign the form declines to 2.0 hours the second year and 1.0 hour the third year as they become more familiar with the form.

**Table 3: Summary of Average First Year Burden for Form T-1**

Reporting or Recordkeeping Requirement	Nonrecurring Burden Hours	Reporting Burden Hours	Recordkeeping Burden Hours
Information on Form T-1 Provided to Trust	0.0	2.4	0.0
Review Form T-1 and Instructions	0.0	4.3	0.0
Install, Test, and Review Software	8.0	0.0	0.0
Pages 1 and 2	0.0	6.1	1.6
Individually Identified Receipts	9.8	1.2	8.3
Individually Identified Disbursements	9.8	1.4	8.3
Disbursements to Officers and Employees	2.8	0.8	0.0
Review by Trust	0.0	2.0	0.0
Form/Information Sent to Labor Organization	0.0	1.0	0.0
President Review and Sign Off	0.0	2.0	0.0
Treasurer Review and Sign Off	0.0	2.0	0.0
Total First Year Burden for Form T-1	30.4	23.2	18.1

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Note: The burden for labor organization to determine whether a Form T-1 is required to be filed for its section 3(l) trusts is explained in the text preceding this table. This table displays the average burden associated with each Form T-1 that is actually filed.

Note also: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards.

The Department's cost estimates are based on wage-rate data obtained from BLS for personnel employed in service industries (*i.e.*, accountant, bookkeeper, etc.) and adjusted to be total compensation estimates based on the BLS Employer Cost data from the 2006 NCS.

The Department estimates that, on average, the completion by a labor organization of Form T-1 will involve an independent and/or in-house accountant, a bookkeeper or clerk, its president, and its secretary-treasurer. Based on the 2006 NCS<sup>17</sup>, an independent accountant/auditor earns on average \$27.22 per hour (accountants employed by labor organizations are presumed to make the same average salary). Based on reviewed annual labor organization reports (the latest reports on file), labor organization personnel earn on average the amounts listed below, separated by tier.

**Table 4: Labor Organization Wage Rates**

Position		Tier I	Tier II	Tier III
President		\$15.52	\$73.06	\$110.98
Secretary/Treasurer		\$15.36	\$58.83	\$94.29

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<sup>17</sup> National Compensation Survey: Occupational Wages in the United States, June 2006 (BLS July 2007, p. 5.). These amounts are higher than the estimates in the 2006 rule, which were based on 2004 NCS data.

Outside Accountant		\$27.22	\$27.22	\$27.22
Bookkeeper/Clerk		\$17.96	\$21.17	\$26.88
Weighted Average		\$15.89	\$35.19	\$36.74

Given the nexus between a trust and a labor organization for purposes of Form T-1, the Department believes that the salary rates of labor organization officers and employees are applicable to corresponding trust positions.

The Department estimates the average reporting and recordkeeping burden for Form T-1 to be 71.7 hours per respondent in the first year (including non-recurring implementation costs), 33.9 hours per respondent in the second year, and 30.4 hours per respondent in the third year. As stated above, the Department estimates that each Form LM-2 filer will spend, on average, approximately 1.31 hours each year determining whether it has any section 3(l) trusts listed on its Form LM-2 that meet the Form T-1 filing requirements.

The Department estimates the total annual burden hours on labor organizations to determine whether they must file a Form T-1 for any section 3(l) trust listed on their Form LM-2 to be approximately 5,832 hours. The Department estimates that labor organizations with trusts that meet the filing requirement, on average, will spend 71.7 hours in the first year (including non-recurring implementation costs), 33.9 hours in the second year, and 30.4 hours in the third year fulfilling the filing requirements for each of its qualifying trusts. The Department estimates the total annual burden hours for respondents who file Form T-1 to be 177,529 hours in the first year, 83,936 hours in the second year, and 75,270 hours in the third year (see Table 5). Under this proposed rule, only the estimated number of filers, not the form itself, has changed from the 2003 and 2006 rules; therefore, the current burden hour estimates, *per respondent*, are identical to the 2003 and 2006 estimates. See 68 FR 58446 and 71 FR 57116.

The Department estimates the average annual cost for the Tier I Form T-1 filers to be \$1,139.31 per Tier I respondent in the first year (including non-recurring implementation costs) ( $71.7 \times \$15.89 = \$1,139.31$ ); \$538.67 per Tier I respondent in the second year ( $33.9 \times \$15.89 = \$538.67$ ); and \$483.06 per Tier I respondent in the third year ( $30.4 \times \$15.89 = \$483.06$ ).

The Department estimates the average annual cost for the Tier II Form T-1 filers to be \$2,523.12 per Tier II respondent in the first year (including non-recurring implementation costs) ( $71.7 \times \$35.19 = \$2,523.12$ ); \$1,192.94 per Tier II respondent in the second year ( $33.9 \times \$35.19 = \$1,192.94$ ); and \$1,069.78 per Tier II respondent in the third year ( $30.4 \times \$35.19 = \$1,069.78$ ).

The Department estimates the average annual cost for the Tier III Form T-1 filers to be \$2,634.26 per Tier III respondent in the first year (including non-recurring implementation costs) ( $71.7 \times \$36.74 = \$2,634.26$ ); \$1,245.49 per Tier III respondent in the second year ( $33.9 \times \$36.74 = \$1,245.49$ ); and \$1,116.90 per Tier III respondent in the third year ( $30.4 \times \$36.74 = \$1,116.90$ ). These per respondent figures are also close to the 2003 and 2006 estimates (*see* 68 FR 58446 and 71 FR 57116).

The Department also estimates the total annual cost to respondents associated with Form T-1 to be \$6 million in the first year, \$2.9 million in the second year, and \$2.6 million in the third year. These estimates are similar to costs estimated in 2003 (\$5.5, \$2.6, and \$2.3 million), 68 FR 58466, but higher than the 2006 estimates (\$3.3, \$1.6, and \$1.4

million) due to the change in the trigger for filing the form. *See* 71 FR 57116 for 2006 estimates.

**Table 5: Reporting and Recordkeeping Burden Hours and Costs for Form T-1**

Form	Number of Responses	Reporting Hours per Respondent	Total Reporting Hours	Record-keeping Hours per Respondent	Total Record - keeping Hours	Total Burden Hours per Respondent	Total Burden Hours
Form T-1\ First Year	2,476	23.2	57,443	48.5	120,086	71.7	177,529
Second Year	2,476	15.8	39,121	18.1	44,816	33.9	83,936
Third Year	2,476	12.3	30,455	18.1	44,816	30.4	75,270
Three-Year Average	2,476	17.1	42,340	28.2	69,823	45.3	112,163

Note: The burden for labor organization to determine whether a Form T-1 is required to be filed for its section 3(l) trusts is explained in the text preceding Table 3. Each table displays the reporting and burden associated with each Form T-1 that is actually filed.

Note also: Some numbers may not add due to rounding.

Source: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards  
Appropriate information technology is used to reduce burden and improve efficiency and responsiveness. The current forms can be downloaded from the OLMS web site. OLMS has also implemented a system to require Form LM-2 and Form T-1 filers and permit Form LM-3 and Form LM-4 filers to submit forms electronically with digital signatures. Labor organizations are currently required to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form.

The OLMS Internet Disclosure site is available for public use. The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database on the information in each report that is searchable through the Internet. Form T-1 filings will be available on the Web site.

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

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

### C. Federal Costs Associated with Proposed Rule

The estimated annualized Federal cost of the proposed Form T-1 is \$228,682.28. This represents estimated operational expenses such as equipment, overhead, and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices that are involved with reporting and disclosure activities. These estimates include time devoted to: (a) receipt and processing of reports; (b) disclosing reports to the public; (c) obtaining delinquent reports; (d) obtaining amended reports if reports are determined to

be deficient; (e) auditing reports; and (f) providing compliance assistance training on recordkeeping and reporting requirements.

Currently, the Department is soliciting comments concerning the information collection request (“ICR”) for the information collection requirements included in this proposed regulation at § 403.2, Annual financial report which, when implemented will revise the existing OMB control number 1215-0188. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov website at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number) / email: [king.darrin@dol.gov](mailto:king.darrin@dol.gov). Please note that comments submitted in response to this notice will be made a matter of public record.

The Department hereby announces that it has submitted a copy of the proposed regulation to the Office of Management and Budget (“OMB”) in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;



- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submission of responses.

**Type of Review:** Revision of a currently approved collection.

**Agency:** Employee Standards Administration

**Title:** Labor Organization and Auxiliary Reports.

**OMB Number:** 1215-0188.

**Affected Public:** Private Sector: Not-for-profit institutions.

**Number of Annual Responses:** 33,333.

**Frequency of Response:** Annual for most forms.

**Estimated Total Annual Burden Hours:** 3,568,180.

**Estimated Total Annual Burden Cost:** \$70,491,590.

Potential respondents are hereby duly notified that such persons are not required to respond to a collection of information or revision thereof unless approved by OMB under the PRA and it displays a currently valid OMB control number. See 35 U.S.C. 3506(c)

(1)(B)(iii)(V). In accordance with 5 CFR 1320.11(k), the Department will publish a notice in the Federal Register informing the public of OMB's decision with respect to the ICR submitted thereto under the PRA.

**Executive Order 13045 (Protection of Children from Environmental Health Risks and Safety Risks)**

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the proposed rule on children. The Department has determined that the proposed rule will have no effect on children.

**Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)**

The Department has reviewed this proposed rule in accordance with Executive Order 13175, and has determined that it does not have "tribal implications." The proposed rule does not "have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

**Executive Order 12630 (Governmental Actions and Interference with Constitutionally Protected Property Rights)**

This proposed rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

#### **Executive Order 12988 (Civil Justice Reform)**

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The proposed rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

#### **Environmental Impact Assessment**

The Department has reviewed the proposed rule in accordance with the requirements of the National Environmental Policy Act (“NEPA”) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The proposed rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

#### **Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use)**

This proposed rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

### **List of Subjects in 29 CFR part 403**

Labor unions, Reporting and recordkeeping requirements.

### **Text of Proposed Rule**

Accordingly, the Department proposes to amend part 403 of 29 CFR Chapter IV as set forth below:

### **PART 403--LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS**

1. The authority citation for Part 403 is amended to read as follows:

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

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

#### **§ 403.2 Annual financial report.**

\*\*\*\*\*

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

The trust is of the type defined by section 3(l) of the LMRDA, *i.e.*, the trust was created or established by a labor organization or a 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) contributes revenues to the trust that exceed 50 percent of the trust's revenue during the trust's fiscal year;

and none of the exceptions discussed in paragraph (d)(2) of this section apply. For purposes of paragraph (d)(1)(B), contributions made on behalf of the labor organization or its members 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.

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, Form LM-3, or Form LM-4, nor should a report be filed for any entity that the LMRDA exempts from reporting. 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. An audit that meets the criteria specified in the instructions for Form T-1 may be substituted for all but page 1 of the Form T-1. 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 revising paragraph (d) to read as follows:

**§ 403.5. Terminal financial report.**

\*\*\*\*\*

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

4. In §403.8, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

**§ 403.8 Dissemination and verification of reports.**

\*\*\*\*\*

(c)(1) If a labor organization is required to file a report under this part using the Form T-1 and indicates that it has failed or refused to disclose information required by the Form T-1 concerning any disbursement or receipt to an individual or entity in the amount of \$10,000 or more, or any two or more disbursements or receipts that, in the aggregate, amount to \$10,000 or more, because disclosure of such information may be adverse to the organization's legitimate interests, then the failure or refusal to disclose the information shall be deemed "just cause" for purposes of paragraph (a) of this section.

(2) Disclosure may be adverse to a labor organization's legitimate interests under this paragraph if disclosure would reveal confidential information concerning the organization's organizing or negotiating strategy or individuals paid by the trust to work in a non-union facility 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.

(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.

Signed in Washington, DC, this 26th day of February, 2008.

Victoria A. Lipnic, Assistant Secretary for Employment Standards.

Don Todd, Deputy Assistant Secretary for Labor-Management Programs

## **Appendix**

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



# FORM T-1 TRUST ANNUAL REPORT

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.**

1. FILE NUMBERS UNION a) [ ][ ] - [ ][ ] TRUST b) [ ][ ] - [ ][ ]	2. PERIOD COVERED From [ ][ ] [ ][ ] Through [ ][ ] [ ][ ]	3. (a) AMENDED - If this is an amended report, check here: <input type="checkbox"/> (b) HARDSHIP - If filing under the hardship procedures, check here: <input type="checkbox"/> (c) TERMINAL - If this is a terminal report, check here: <input type="checkbox"/>	MO [ ][ ] DAY [ ][ ] YEAR [ ][ ] [ ][ ]
10. NAME OF TRUST			
5. DESIGNATION (Local, Lodge, etc.)		6. DESIGNATION NUMBER	
11. TAX STATUS OF TRUST			
12. PURPOSE OF TRUST			
13. MAILING ADDRESS OF TRUST (use capital letters)			
8. MAILING ADDRESS OF UNION (use capital letters)		Last Name	
First Name		Last Name	
P.O. Box - Building and Room Number (if any)			
Number and Street		P.O. Box - Building and Room Number (if any)	
City		Number and Street	
State		City	
Zip Code + 4		State	
Zip Code + 4		Zip Code + 4	
9. Are the union's records kept at its mailing address? (If "No," provide address in Item 25.) Yes <input type="checkbox"/> No <input type="checkbox"/>		14. Are the trust's records kept at its mailing address? (If "No," provide address in Item 25.) Yes <input type="checkbox"/> No <input type="checkbox"/>	
26. SIGNED: _____ PRESIDENT on ____ / ____ / ____ ( ) - ( ) Date Telephone Number _____		15. Will the labor organization be submitting an independent, certified audit in place of the remainder of Form T-1? Yes <input type="checkbox"/> No <input type="checkbox"/>	
27. SIGNED: _____ TREASURER on ____ / ____ / ____ ( ) - ( ) Date Telephone Number _____			

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.)

**COMPLETE ITEMS 16 THROUGH 25**

UNION FILE NUMBER (a): 


 - 


TRUST FILE NUMBER (b): 


 T 


 - 


16. During the reporting period did the trust discover any loss or shortage of funds or other property? (Answer "Yes" even if there has been repayment or recovery.) Yes  No
17. During the reporting period did the trust acquire or dispose of any goods or property in any manner other than by purchase or sale? Yes  No
18. During the reporting period did the trust liquidate, reduce or write-off any liabilities without full payment of principal and interest? Yes  No
19. Has the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates? Yes  No
20. During the reporting period did the trust liquidate, reduce or write-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest? Yes  No

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

21. Enter the total assets of the trust at the end of the reporting period.  \$
22. Enter the total liabilities (debts) of the trust at the end of the reporting period.  \$
23. Enter the total receipts of the trust during the reporting period.  \$
24. Enter the total disbursements of the trust during the reporting period.  \$

Please be sure to:

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

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

Item Number:	
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**SCHEDULE 1 - INDIVIDUALLY IDENTIFIED RECEIPTS**

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

UNION FILE NUMBER (a): 


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 -

TRUST FILE NUMBER (b): 


**T**


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**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			
<b>(J) Total of All Receipts with this Payer (Sum of (H) and (I))</b>			



**SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST**

UNION FILE NUMBER (a): [ ] [ ] [ ] [ ] - [ ] [ ] [ ] [ ]  
 TRUST FILE NUMBER (b): **T** [ ] [ ] [ ] [ ] - [ ] [ ] [ ] [ ]

Page 1 of [ ]

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

**CONTINUATION ITEMIZATION PAGE FOR RECEIPTS/DISBURSEMENTS SCHEDULES 1 and 2**

UNION FILE NUMBER (a):    

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TRUST FILE NUMBER (b):    

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**Continuation Itemization Page**

Schedule	Page Number	Total Number of Continuation Pages

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

(B) Type or Classification

**SCHEDULE 3 - DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST**

UNION FILE NUMBER (a): 

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TRUST FILE NUMBER (b): 

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**T** - 

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**Continuation Page**

Page \_\_\_\_\_ of \_\_\_\_\_

Full Name	(A) LAST, FIRST, MIDDLE INITIAL	Gross Salary Disbursements (before any deductions) (B)	Allowances (C)	Disbursements for Official Business (D)	Other Disbursements (E)	TOTAL (F)
1. Full Name	Treasurer, Trustee, Attorney, etc.					
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						
<b>10. Total of Lines 1 through 9</b>						

Form T-1 (2008)

Public reporting burden for this collection of information is estimated to average 72 hours per response in the first year, 34 hours per response in the second year, and 30 hours per response in the third year. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

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# INSTRUCTIONS FOR FORM T-1 TRUST ANNUAL REPORT

## GENERAL INSTRUCTIONS

contributes greater than 50% of the trust's revenues during the one-year reporting period.

### 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:

Any contributions to the trust on behalf of the labor organization or its members of the labor organization shall be considered the labor organization's contributions for this purpose.

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

No Form T-1 should be filed for any trust that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is expressly exempted from reporting in the LMRDA. No report need be filed for a trust established as a Political Action Committee (PAC) if timely, complete, and publicly available reports on the PAC are filed with a Federal or state agency, or for a trust established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service. 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.

appoints or selects a majority of the members of the trust's governing board; or

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if annual audits are prepared according to the following



standards and a copy of the audit is filed with the Form T-1. The audit must be performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA). The audit must include notes to the financial statements that disclose, for the preceding twelve-month period: 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, for the preceding twelve-month period: a statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in \$10,000 or more of commerce and the total of the transactions with each party.

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

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 recent fiscal year, *i.e.*, the fiscal year ending on or before the closing date of the labor organization's own fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities and Penalties) of these instructions.

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

## III. HOW TO FILE

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

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

## HARDSHIP EXEMPTIONS

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

### TEMPORARY HARDSHIP EXEMPTION:

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

*Note: If either the paper filing or the electronic filing is not received in the*

*timeframe specified above, the report will be considered delinquent.*

## CONTINUING HARDSHIP

### EXEMPTION:

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

The application must be mailed to the following address:

U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW

Room N-5609

Washington, DC 20210-0001

Questions regarding the application

should be directed to the OLMS

Division of Interpretations and

Standards, which can be reached at the

above address, by e-mail at OLMS-

Public@dol.gov, by phone at 202-693-0123, or by fax at 202-693-1340.

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

(c) The continuing hardship exemption shall not be deemed granted until the Department notifies the applicant in writing. If the Department denies the application for an exemption, the labor organization shall file the report(s) in electronic format by the required due

date. If the Department determines that the grant of the exemption is appropriate and consistent with the public interest and the protection of labor organization members and so notifies the applicant, the labor organization shall follow the procedures set forth in paragraph (d).

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

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

#### **IV. PUBLIC DISCLOSURE**

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

U.S. Department of Labor  
Employment Standards Administration

Office of Labor-Management Standards  
200 Constitution Avenue, NW

Room N-1519

Washington, DC 20210-0001

## **V. OFFICER RESPONSIBILITIES AND PENALTIES**

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

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

## **VI. RECORDKEEPING**

The officers required to file Form T-1 are

responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents used to complete and file the report.

## **SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS**

### **VII. LABOR ORGANIZATIONS IN TRUSTEESHIP**

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the subordinate’s annual financial reports. This obligation includes the requirement to file Form T-1 for any trusts in which the subordinate labor organization is interested. A trusteeship is defined in section 3(h) of the LMRDA (29 U.S.C. 402) as “any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.”

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

### **VIII. COMPLETING FORM T-1**

#### **INTRODUCTION**

Upon opening the Form T-1, a Document

Status dialog box displays to briefly explain the special features of this document. Click on the “close” button to proceed.

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

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

## ITEMS 1 THROUGH 20

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

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

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

U.S. Department of Labor  
Employment Standards Administration  
Office of Labor-Management Standards  
200 Constitution Avenue, NW

Room N-5616

Washington, DC 20210-0001

For future filings, if the labor organization does not have the number on file and cannot obtain the number from the trust or from prior reports filed with the Department, information on obtaining the number can be found on the OLMS website at <http://www.olms.dol.gov>.

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

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

**3. AMENDED, HARDSHIP EXEMPTED, OR TERMINAL REPORT** — Do not complete this item unless this report is an amended, hardship exempted, or terminal report. Select Item 3(a) if the labor organization is filing an amended Form T-1 correcting a previously filed Form T-1. Select Item 3(b) if the labor organization is filing under the hardship exemption procedures defined in Section III. Select Item 3(c) if the trust has gone out of business by disbanding, merging into

another organization, or being merged and consolidated with one or more trusts to form a new trust, or if the labor organization's interest in the trust has ceased and this is the terminal report for the trust. Be sure the date the trust ceased to exist is entered in Item 2 (Period Covered) after the word "Through." See Section IX (Trusts That Have Ceased to Exist) of these instructions for more information on filing a terminal report.

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

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

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

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

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

**8. MAILING ADDRESS OF UNION** — Enter the current address where mail is

most likely to reach the labor organization as quickly as possible. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included.

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

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

This item cannot be edited. If the labor organization needs to change this information, contact the OLMS Division of Reports, Disclosure, and Audits by telephone at 202-693-0124, by e-mail at [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov), or by fax at 202-693-1345. Indicate that the subject of the inquiry is the Form T-1 pre-filled identifying information.

**11. TAX STATUS OF TRUST** — Select the tax status of the trust from the pull down menu.

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

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

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

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

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

**16. LOSSES OR SHORTAGES** — Answer “Yes” to Item 16 if the trust experienced a loss, shortage, or other discrepancy in its finances during the period covered. 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.

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.

## ITEMS 21 THROUGH 24

**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.

**23. RECEIPTS** — Enter the total amount of all receipts of the trust during the reporting period including, for example, interest, dividends, rent, money from the sale of assets, and loans received by the trust. 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.

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

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

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

**Example 3:** The trust made three payments of \$4,000 each to an office supplies vendor for office supplies during



the reporting period. The \$12,000 in disbursements to the vendor would be reported in Schedule 2 in line I of an Initial Itemization Page for that vendor.

Procedures for Completing Schedules 1 and 2

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

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

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

the full address, the city and state are sufficient.

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

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

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

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

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

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

The software will enter in Line (H) the total of all itemized transactions with this payee/payer (the sum of Lines (F) and (G)).

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

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

Special Instructions for Reporting Credit Card Disbursements

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

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

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

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

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

### Special Procedures for Reporting Confidential Information

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

- Information that would identify individuals paid by the trust to work in a non-union bargaining unit in order to assist the labor organization in organizing employees, provided that such individuals are not employees of the trust who receive more than \$10,000 in the aggregate in the reporting year from the trust. Employees receiving more than \$10,000 must be reported on Schedule 3;
- Information that would expose the reporting labor organization's prospective organizing strategy. The labor organization must be prepared to demonstrate that disclosure of the information would harm an organizing drive. Absent unusual circumstances information about past organizing drives should not be treated as confidential;
- Information that would provide a tactical advantage to parties with whom the reporting labor organization or an affiliated labor organization is engaged or will be engaged in contract negotiations. The labor organization must be prepared to demonstrate that disclosure of the information would harm a contract negotiation. Absent unusual circumstances information about past contract negotiations should not be treated as confidential;
- Information pursuant to a settlement that is subject to a confidentiality agreement, or that the labor organization or trust is otherwise prohibited by law from

disclosing; and,

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

With respect to these specific types of information, if the reporting labor organization can demonstrate that itemized disclosure of a specific major receipt or disbursement, or aggregated receipt or disbursement, would be adverse to the labor organization or trust's legitimate interests, the labor organization may exclude the transaction from Schedules 1 and 2. In Item 25 (Additional Information) the labor organization must identify each schedule from which any itemized receipts or disbursements were excluded because of an asserted legitimate interest in confidentiality. The notation must describe the general types of information that were omitted from the schedule, but the name of the payer/payee, date, and amount of the transaction(s) is not required.

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

Information that is withheld from full disclosure because of risk to an

individual's health or safety or where federal or state laws forbid the disclosure of the information is not subject to the *per se* disclosure rule.

### **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. 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.

Continuation pages can be generated if needed by clicking on the "Add More Disbursements To Members 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 each officer (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 each 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 each 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:

- 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 each 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.

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 officers or employees essentially for the officers or employees' 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 70 (Additional Information) why the president or treasurer did not sign the report. Forms must be signed with digital signatures. Information about digital signatures can be obtained on the OLMS Web site at <http://www.olms.dol.gov>.

## **IX. TRUSTS THAT HAVE CEASED TO EXIST**

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

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

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

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

- Enter the date the trust, or the labor organization's interest in the trust, ceased to exist in Item 2 after the word "Through."
- Select Item 3(c) indicating that the trust, or the labor organization's interest in the trust, ceased to exist during the reporting period and that this is the terminal Form T-1 for the trust from the labor organization.
- Enter "3(c)" in the Item Number column in Item 25 (Additional Information) and provide a detailed statement of the reason the trust, or the labor organization's interest in the trust, ceased to exist. If the trust ceased to exist, also report in Item 25 plans for the disposition of the trust's cash and other assets, if any. Provide the name and address of the person or organization that will retain the records of the terminated organization. If the trust merged with another trust, report that organization's name and address.

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

### ***If You Need Assistance***

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

Atlanta, GA  
Birmingham, AL  
Boston, MA  
Buffalo, NY  
Chicago, IL  
Cincinnati, OH  
Cleveland, OH  
Dallas, TX  
Denver, CO  
Detroit, MI  
Grand Rapids, MI

Guaynabo, PR  
Honolulu, HI  
Houston, TX  
Kansas City, MO  
Los Angeles, CA  
Miami (Ft. Lauderdale), FL  
Milwaukee, WI  
Minneapolis, MN  
Nashville, TN  
New Haven, CT  
New Orleans, LA  
New York, NY  
Newark (Iselin), NJ  
Philadelphia, PA  
Pittsburgh, PA  
St. Louis, MO  
San Francisco, CA  
Seattle, WA  
Tampa, FL  
Washington, DC

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

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

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

**<http://www.olms.dol.gov>**