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[Proposed Rules]
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Part III

Department of Labor

Office of Labor-Management Standards

29 CFR Parts 403 and 408

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-AB34

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.

SUMMARY: The Department of Labor's Employment Standards Administration (ESA) is proposing to revise forms LM-2, LM-3, and LM-4, which are used by labor organizations to file the annual financial reports required under title II of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act) with ESA's Office of Labor-Management Standards (OLMS). The purpose of this reform is to improve the transparency and accountability of labor organizations to their members, the public, and the government; to increase the information available to members of labor organizations; and to make the data disclosed in such reports more understandable and accessible. The Department invites comment on this proposed rule and the revised forms, as well as on the instructions for filling out the forms.

Some of the reforms proposed include requiring form LM-2 filers to file reports electronically (unless the labor organization claims a temporary hardship exemption or applies for and is granted a continuing hardship exemption), to identify ``major'' receipts and disbursements,

and to allocate disbursements among several categories provided on the form. The proposal would also require all covered labor organizations to report the assets, liabilities, receipts, and disbursements of organizations with annual receipts of \$200,000 or more that meet the statutory definition of a ``trust in which a labor organization is interested'' in order to ensure meaningful disclosure to union members and prevent the circumvention of the reporting requirements of title II. Finally, the proposal would make conforming changes, as described below, to the other labor organization annual financial reporting forms, form LM-3 and form LM-4, which are affected in limited ways. The Department invites comments with respect to the benefits of these changes, the ease or difficulty with which labor organizations will be able to comply, and whether the information that would be provided to union members, the public, and the government if these changes were implemented would be meaningful, useful, and in accordance with the purposes of the Act.

DATES: Comments must be received on or before February 25, 2003.

ADDRESSES: Comments should be sent to Victoria A. Lipnic, Assistant Secretary for Employment Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5605, Washington, DC 20210.

All commenters are advised that U.S. mail delivery in the Washington, DC area has been slow and erratic due to the ongoing concerns involving anthrax contamination. All commenters must take this into consideration when preparing to meet the deadline for submitting comments. As a convenience to commenters, comments may be transmitted by e-mail to FormLM2-comments@dol-esa.gov or by facsimile (FAX) machine to (202) 693-1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for fax receipt by OLMS.

It is recommended that you confirm receipt of your comment by contacting (202) 693-0122 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

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

FOR FURTHER INFORMATION CONTACT: Victoria A. Lipnic, Assistant Secretary for Employment Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S-2321, Washington, DC 20210, olms-mail@dol-esa.gov, (202) 693-0122 (this is not a toll-free number). Individuals with hearing impairments may call 1-800-877-8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

Over the course of the last century, there have been tremendous changes in the American workplace. Not only has the size of the American workforce increased dramatically--roughly six-fold--but the ``composition of the labor force shifted from industries dominated by primary production occupations, such as farmers and foresters, to those dominated by professional, technical, and service workers.'' Report on the American Workforce, U.S. Department of Labor, 2001, p. 3. The way in which American workers are compensated has also changed considerably. In 1966, over 80% of total compensation consisted of

wages and salaries, with less than 20% representing benefits. By 2000, wages dropped to 73% of total compensation and benefits grew to 27% of the compensation package. Id. at p. 76, 87. Today's workforce--which is better educated, more empowered, and more familiar with financial data and transactions than ever before--expects relevant and useful information in order to make fundamental career decisions, evaluate options and exercise legally guaranteed rights. American workers rightly expect to receive such information not only from their government and their employers, but also from labor organizations that represent them or seek to represent them in the workplace.

Labor organizations also have changed tremendously since the enactment of the LMRDA in 1959. There are now far fewer small, independent unions and more large unions affiliated with a national or international body. In 2000, 5,426 unions, including 141 national and international unions, reported \$200,000 or more in total annual receipts--the threshold at which a labor organization must use form LM-2 to file the annual financial report required by the LMRDA. In fact, many large unions today resemble modern corporations in their structure, scope and complexity. A large number of them manage full-featured benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, offer multiple compensation opportunities to their senior executives and officials, operate revenue-producing subsidiaries, conduct extensive government lobbying, and participate in foundations and charitable activities.

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, which has remained significantly unchanged, has become a barrier to the full and transparent reporting intended by the Act. 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 union members. If the members of labor organizations had more complete, understandable information about their unions' financial

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transactions, investments and solvency, they would be in a much better position than they are today to protect their personal financial interests and exercise their democratic rights of self-governance.

In light of the changes in the American workplace, the availability of technical improvements, and the increasing complexity of many union financial activities reported under the LMRDA, the Department believes that reasonable changes must be made to the forms required under title II, and the means by which they are filed. First, the most efficient way to provide meaningful access to this information by interested members of the public is to require that the reports filed by the largest labor organizations be filed in electronic form. In response to requests from union members, the media, members of Congress, and other interested parties for Internet access to reports filed by unions under the LMRDA, OLMS has recently inaugurated a new website

(<http://www.union-reports.dol.gov>

) where individuals may now view union annual financial reports and conduct data searches, displaying the results in a number of preformatted listings, free of charge. In order to provide

this access, however, OLMS currently must scan each report that is filed in paper format--a process that is expensive and time-consuming. Requiring form LM-2 reports to be filed electronically using software provided by OLMS, and making them available on the website, will decrease the number of requests for reports that must be handled manually, freeing OLMS staff for other compliance assistance and enforcement work. Finally, requiring electronic filing of form LM-2 reports will provide OLMS with data that can be used more effectively for enforcement and compliance assistance purposes.

In addition, the Department is proposing a number of changes in the form LM-2 itself, including a requirement that disbursements and receipts not otherwise identified be reported in specific categories that provide union members with more detailed information about the activities of their unions. The proposed revision of form LM-2 will provide union members and the public with information about the identity of individuals and entities who receive major disbursements of union funds and from whom unions receive major receipts not otherwise identified. This change is necessary to ensure that the information required is reported in such a way as to meet the objectives of the statute by providing union members with useful data that will enable them to be responsible and effective participants in the democratic governance of their unions. While it is recognized that changes in the form LM-2 may impose some burden on the largest unions, the burden of the proposed changes will dramatically diminish after the first year and the use of electronic filing proposed by this rulemaking will alleviate much of the burden on filers.

The Department considered raising the threshold at which unions are required to file form LM-2 as a way of limiting the burden of requiring electronic filing in greater detail. The threshold was raised to its current level of \$200,000 in 1994. Adjusting for inflation, that amount would be approximately \$245,000 today. Raising the threshold to \$250,000 in annual receipts would relieve 654 unions, with combined receipts of approximately \$150,000,000 per year, of the obligation to use the proposed form LM-2. Taking such action, however, would impact the amount of information available to more than 950,000 members. Since it is unclear whether such action would substantially affect the burden imposed without compromising the objective of increasing transparency, it was decided to specifically request comments on whether the current \$200,000 threshold for form LM-2 filers should be raised to \$250,000 or some other amount, or, instead, whether it should be left unchanged.

The LMRDA is effective only if union members and the government are given the information they need to determine how members' dues are being spent. As Representative Robert P. Griffin, a cosponsor of the bill, stated,

* * * the effectiveness of the Act will surely depend upon the Secretary of Labor, who bears a great responsibility for its enforcement. However, in a larger sense, the effectiveness of the Act will depend also upon the rank-and-file union members themselves. For in the last analysis, it is they who must make the law meaningful by taking hold of the tools of democracy and using them to clean corruption out of their unions and to keep them clean.

Robert P. Griffin, Symposium on the Labor-Management Reporting and Disclosure Act of 1959, edited by Ralph Slovenko, Baton Rouge, Claiborne's Bookstore Publishers, Tulane University School of Law, 1961, pp. 30-31. The LMRDA was passed with wide bipartisan support, and

placed responsibility for enforcing its provisions jointly on the Department of Labor and rank-and-file union members. AFL-CIO President George Meany offered his support for the Act, stating ``if the powers conferred [in the LMRDA] are vigorously and properly used, the reporting requirements will make a major contribution towards the elimination of corruption and questionable practices.'' George Meany, Testimony before the House Labor Committee, June 1959. In light of the changes discussed above, the purposes of the Act could be better accomplished if the information that the statute requires labor organizations to report was provided in a more useful format and ``in such detail'' as necessary to provide union members with a more accurate picture of their union's ``financial condition and operations.'' 29 U.S.C. 431(b).

The Department developed reporting forms to complement its enforcement responsibilities shortly after the enactment of the LMRDA, but those forms have remained substantially unchanged for four decades, and simply have not kept pace with changes in financial practices and with the growth in size of unions and their financial transactions. Major changes were attempted in 1992. 57 FR 49282 (October 30, 1992). Pursuant to that rule, unions were required to report total disbursements in eight categories and then to allocate those disbursements among six ``functional'' categories. The Department, however, rescinded this rule on December 21, 1993. 58 FR 67594.

Since 1993, significant improvements in the software available to facilitate accounting make it possible to make a new attempt to change the form LM-2 in ways that will provide additional useful information to union members and the public without unduly burdening reporting unions. Accordingly, in the process of making changes to take advantage of advances in electronic recordkeeping, filing and disclosure technology, it is appropriate to consider changes that will enable union members to obtain more accurate information about the financial operations of their unions. For example, union members currently have no meaningful way to evaluate the appropriateness of large expenditures for generalized purposes. Recent form LM-2 reports filed with the Department disclosed, for example, expenditures of \$7,805,827 for ``Civic Organizations,'' \$3,927,968 for ``Sundry Expenses,'' and \$7,863,527 for ``Political Education.'' Amounts reported as ``Other Disbursements'' and described generally have been equally difficult to identify. For example, recent reports disclosed disbursements of \$68,712,248 for grants to joint projects with state and local affiliates; \$22,991,729 for financial

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assistance paid to local and district lodges; and \$19,322,938 for organizing and servicing. While the activities described appear to be those for which a union might be expected to spend money, the current form does not require the union to disclose the identity of the recipient of the funds, making it difficult to determine whether these amounts were actually spent for the described activities.

The large dollar amount and vague description of such entries make it essentially impossible for members to determine whether or not their dues were spent appropriately, which is precisely the reason that the statute requires reporting. The Senate Report on the version of the bill later enacted as the LMRDA stated clearly, ``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.'" Senate Report No. 187 on S. 1555, submitted by Senator John F. Kennedy from the Committee on Labor and Public Welfare, 86th Cong., 1st Sess., reprinted in 1959 U.S. Code Cong. & Admin. News 2318, pp. 2324 & 2318.

Technological advances have made it possible to provide the level of detail necessary to give union members a more accurate picture of their union's financial condition and operations without imposing an unwarranted burden on reporting unions. Although no specific data exist regarding the extent to which unions have already embraced the technology necessary to provide reports in electronic form, OLMS staff who review the filed reports and provide compliance assistance have determined that the vast majority of unions required to file form LM-2 use computerized recordkeeping systems. Several OLMS field offices have noted that even smaller unions that file form LM-3 keep electronic books. In addition, in the first year in which software was available to prepare the current forms for filing, approximately 40% of all filers (forms LM-2, LM-3 and LM-4) have used the software. Information regarding the burden imposed by making the proposed changes and the benefit to be gained is most likely to be obtained by proposing the changes for comment so that unions who file these reports, union members, and other groups that represent workers can express their views.

Software to be provided by the Department will facilitate use of the proposed revised form LM-2. The software will offer filers two options to complete and submit the form. A union that chooses the first option will be able to ``copy and paste,'" or manually type, information from their own record keeping system directly into the form using a commercial off-the-shelf form filler application. A union that chooses the second option will use technical standards provided by the Department to make adjustments to their own accounting programs that will enable them to seamlessly export data from the union's accounting system into the form. Once the data reconfiguration is complete, the union will simply use the reconfigured format for its normal bookkeeping. This method will be particularly helpful to larger form LM-2 filers inasmuch as each transaction will not have to be reentered by hand. Whether the union enters the information by hand into the form, or exports data at the end of the year to the filing software, the software provided by the Department will check for typographical and mathematical errors, and other discrepancies, which must be corrected before the union may file the report electronically.

OLMS case files demonstrate that union members would also benefit from changes in the way financial information is reported by the largest labor organizations on form LM-2 since the availability of more detailed information would provide a deterrent to fraud and embezzlement by corrupt officials. Over the past five fiscal years (FY 1998 to FY 2002), OLMS investigations of alleged fraud and embezzlement by union officials and related parties resulted in over 640 criminal convictions. Although courts ordered the responsible officials to pay \$15,446,896 in restitution, in addition to debarring them from union service for a combined total of almost ten thousand years, unions and their members lost far more money as a result of this criminal activity than could be recovered by the Department on behalf of aggrieved members. In many of the serious cases investigated by OLMS, the broad aggregated categories on the existing forms made it possible to hide embezzlements, self-dealing, overspending and financial mismanagement.

For example, accountants recently pled guilty to criminal charges related to the falsification of form LM-2 reports filed by an international union. In order to avoid detailed reporting, officials had shifted disbursements from the "Office and Administrative Expenses" category, which has a supporting schedule that requires some detail, to the "Educational and Publicity Expense" category, in which expenses are reported as a single aggregated total with no description. Although the fraudulent reporting was ultimately uncovered, the lack of supporting detail in the latter category enabled the officials to hide in excess of \$1.5 million in personal dining, drinking and entertainment expenses from 1992 to 1999. This case demonstrates that detailed reporting can be an effective deterrent, and that more detail throughout the form LM-2 would further discourage malfeasance.

The foregoing changes will be made only to the form LM-2, which must be filed by the largest labor organizations. An additional change, which is needed to ensure that union members the government, and the public can obtain information on organizations affiliated with unions, as the statute requires, will apply to all labor organizations. The current forms LM-2 and LM-3 require that unions report "subsidiary" organizations and define such organizations as "wholly owned, wholly controlled, and wholly financed by the reporting union." Because unions may also have substantial financial dealings with, or through, funds or organizations that are not wholly owned, but that meet the statutory definition of a "trust in which a labor organization is interested," the proposed revision will require all unions to report the assets, liabilities, receipts, and disbursements of all such other organizations that have annual receipts of \$200,000 or more on a new form T-1 (Trusts Annual Report) in order to fulfill the purpose of the statutory reporting requirements.

These separate organizations 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. The proposed reform would substantially improve transparency of significant organizations that are financially connected to reporting labor organizations. Currently, if a union transfers funds to another organization, but does not disclose disbursements made by that organization, union members may have no way to determine whether the funds in question were actually spent for the benefit of members. Union members have a similar interest in obtaining information about funds provided for the benefit of members by employers pursuant to collective bargaining agreements, even if those funds are provided to a separate, jointly administered account rather than

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directly to the union. Since the money an employer contributes to such a "trust" for union members' benefit might otherwise have been paid directly to workers 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.

However, if annual audits or financial reports providing the same information and a similar level of detail are otherwise available for organizations that meet the statutory definition of a trust, the only additional information a union would be required to report on form LM-2

is a statement that such a report or audit has been filed and is freely available on demand, and where it can be obtained. Thus, if reports are filed pursuant to 26 U.S.C. 527, or the requirements of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1023 (ERISA), or if annual audits are available under Sec. 302(c)(5)(B) of the Labor Management Relations Act, 29 U.S.C. 186(c)(5)(B) (LMRA), or if the organization files publicly available reports with a Federal or state agency as a Political Action Committee (PAC), no form T-1 will be required. The reporting labor organization will be required to state where the specific alternative reports are available for inspection, however. Only those reports listed in the Instructions as satisfying the disclosure requirement will be considered sufficient to relieve a union of the obligation to file a form T-1 for a trust in which a labor organization is interested that meets the reporting threshold. The Department invites comments on whether these reports, or others, provide sufficient information to dispense with the requirement that the labor organization also file a form T-1 for a trust or other fund in which it is interested.

Members have a direct financial interest in obtaining detailed, reliable information on significant trusts' financial operations, so they can determine whether funds are being spent in ways that benefit the members for whom they were created. There have been reports, for example, that joint training funds have been used to pay union officials supplementary salaries or host extravagant parties for trustees. Without adequate financial disclosure, it is impossible for union members to assess these trusts and fully exercise their self-governing democratic membership rights.

OLMS case files also indicate that there are a number of organizations about which union members have requested information without success because the organizations were not wholly owned by the union and, therefore, the union was not required to report the organization as a subsidiary. In one example, OLMS found that 29 local unions contributed an average of \$62,000 per month to a statewide strike fund. Although union members are likely to have an interest in how such funds are invested and spent, no single union wholly owned the fund, and therefore no union was required to report disbursements made by the fund. Strike funds typically fall within the statutory definition of a ``trust in which a labor organization is interested,`` but may not be required to report under ERISA or the LMRA. Under the proposed revision, each union that contributes \$10,000 or more to such a fund will be required to file a form T-1 with respect to the fund, if the strike fund has annual receipts of \$200,000 or more, thereby providing union members much more information about the financial activities of their union and the fund in which it has an interest.

In another case, local union officials had established a building fund financed partly with union members' pension funds. The union was not required to report financial information about the building fund, because the union did not wholly own it; part of the building fund's financing was provided by the union's pension fund. Whether or not the separate contributions made by the pension fund are required to be reported under ERISA, the building fund itself is a ``trust in which a labor organization is interested`` under the definition in the LMRDA. The proposed revision of form LM-2 will require that information for such entities be reported on form T-1, if the union's contribution during the reporting year is \$10,000 or more and the entity's annual receipts from all sources total \$200,000 or more.

A third case illustrates the current barriers to disclosure: one

union local accounted for 97% of the funds on deposit at a credit union; membership in the credit union was limited to members of the Local and two other union locals, and all of the credit union directors were Local officials and employees. The credit union made large loans, many near \$20,000, to union officials, employees and their family members. Four loan officers, three of whom were officers of the Local, received 61% of the credit union's loans. Union members did not have ready access to information about these loans because the Local did not wholly own the credit union. Again, the members had an interest in the financial operations of the organization in question but, under the existing rules, their union was not required to report these activities in its form LM-2. Under the proposed reform, a credit union established by a union primarily for the benefit of its members is an organization that meets the statutory definition of a "trust in which a labor organization is interested" and the union will be required to report financial information for the benefit of members on form T-1.

These reforms will provide union members, the public, and the government the information they need to properly ensure union democracy, fiscal integrity and transparency in a manner consistent with the intent of Congress in enacting the LMRDA. The revised form LM-2 will provide detailed information about financial transactions of labor organizations in an easily understood format. The new reports will be usefully organized according to the services and functions provided to union members and the members will be able to identify major receipts and disbursements for a variety of activities. The new form LM-2 strengthens enforcement of the LMRDA by giving members, the government, and the public a full account of their union's financial operations, which is made much more feasible and less costly by technological advances that enable electronic recordkeeping, filing and disclosure of financial information. Because the information will be provided electronically and in more detail than the current forms require, the proposed revision will substantially enhance the Department's ability to review the information provided and to enforce other provisions of the LMRDA. Finally, the proposed reform will also require additional reporting by all unions for trusts in which a labor organization is interested, providing substantially more information than is now available to union members, the public, and the government.

II. Authority

A. Legal Authority

The legal authority for the notice of proposed rule-making is sections 201, 208, and 301 of the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), 29 U.S.C. 431, 438, and 461.

B. Departmental Authorization

Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under title II of the Act and

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such other reasonable rules and regulations as she may find necessary

to prevent the circumvention or evasion of the reporting requirements. Secretary's Order 4-2001, issued May 24, 2001, and published in the Federal Register on May 31, 2001 (66 FR 29656), continued the delegation of authority and assignment of responsibility to the Assistant Secretary for Employment Standards in Secretary's Order 5-96 of those functions to be performed by the Secretary of Labor under the LMRDA.

III. Overview of the Revised Form LM-2 and Instructions

This is a ``section-by-section'' discussion of the sections, items and schedules of the form LM-2 and instructions to which significant revisions are proposed:

Section I. Who Must File: The instructions to form LM-2 adopt the recent holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, 294 F.3d 1114 (2002), interpreting section 3(j) of the LMRDA, because that interpretation gives full meaning to the plain language of the statute. In that case, the Court ruled that an intermediate labor organization that has no dealings itself with private employers and no members who are employed in the private sector may nevertheless be a labor organization engaged in commerce within the meaning of section 3(j) of the LMRDA if the intermediate body is ``subordinate to a national or international labor organization which includes a labor organization engaged in commerce.'' Accordingly, the Instructions will clarify that any ``conference, general committee, joint or system board, or joint council'' that is subordinate to a national or international labor organization will be required to file an annual financial form if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA.

Section IV. How to File: This section replaces Section IV. Where to File in the existing form LM-2 instructions to implement mandatory electronic filing. Mandatory electronic filing will minimize the burdens for unions that file form LM-2, and increase efficiency for the Department of Labor as it processes the reports and makes the reports available to union members and the public. The software necessary to record information in the form will be provided by the Department to all reporting unions. A union will be permitted to file a paper format form LM-2, however, if it claims a temporary hardship exemption or applies for and is granted a continuing hardship exemption. The hardship exemption procedures are modeled after the procedures used by the Securities and Exchange Commission (17 CFR 232.201-202) and are explained in the instructions to the form that accompany this notice. The Department invites comments regarding whether the hardship exemption procedures are appropriate and whether there are any alternative procedures that might better address legitimate problems without permitting unions to avoid electronic filing where it is feasible for them to file electronically.

Section X. Trusts in Which a Labor Organization is Interested: Labor organizations must disclose certain financial information of a significant trust in which the labor organization is interested in order to fulfill and prevent the circumvention of the statutory reporting requirements. Similarly, financial information concerning significant funds placed under a labor organization's control, for the benefit of its members, must be made available to members if they are to have a complete and reliable picture of the organization's financial

condition and operation.

A trust in which a labor organization is interested is defined by statute as

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

29 U.S.C. 402(1). This definition of a trust in which a labor organization is interested may include, but is not limited to: joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions created for the benefit of union members, and redevelopment or investment groups established by the union for the benefit of its members. The determination of whether a particular entity is a trust in which a labor organization is interested must be based on the facts in each case. A trust will be considered significant, and therefore must be reported, if it has annual receipts of \$200,000 or more.

In some instances, a union may have a limited interest in a trust, but not extensive control over the trust, or complete information regarding all of the financial transactions of the trust. For example, some smaller unions may provide limited funding for a training center or other enterprise created by other, larger unions. Those smaller unions may not, therefore, be in a position to require the entity to provide information necessary on the financial operations of the trust. In such circumstances, provided that a union's financial contribution to a trust, or a contribution made on the union's behalf or as a result of a negotiated agreement to which the union is a party, is less than \$10,000 during the union's reporting year, the union need only report the existence of the trust and the amount of the contribution. A labor organization that is providing significant funds to a trust, on the other hand, should be able to require the trust to provide a more detailed accounting of the trust's financial activities. Accordingly, if the contribution of the reporting union, or the contribution made on the union's behalf or as a result of a negotiated agreement to which the union is a party, to the trust is \$10,000 or more during the union's reporting year, the labor organization will be required to report certain financial information of the trust on the proposed new separate form (form T-1), if the trust has annual receipts of \$200,000 or more.

Form T-1 must be filed within 90 days of the end of the trust's fiscal year. The Department welcomes comments regarding alternative deadlines for filing the trust report.

Form T-1 contains various types of financial information that is intended to discourage circumvention or evasion of the reporting requirements in title II while imposing minimal burden. In particular, the reporting union will be required to report the amount of its contribution and of any contribution made on its behalf, as well as the total receipts and liabilities of the trust. Unions will be required to separately identify any individual or entity from which the trust receives \$10,000 or more during the reporting year, any individual disbursement of \$10,000 or more during the reporting period, as well as any entity or individual that received disbursements that aggregate to \$10,000 or more from the trust during the reporting period.

Consideration was given to requiring a union to file separate form LM-2 reports for trusts or other organizations in which it has an interest or to require a union to separately identify disbursements in the same amounts as ``major'' disbursements that unions themselves are required to report. In order to reduce the burden on unions that may not have as ready access to trust records as to their own, it was decided to place the reporting threshold sufficiently high that a union might be

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expected to require its trusts or other organizations to provide it with information about financial transactions in these amounts. The Department invites comments on whether a union that contributes \$10,000 to an organization meeting the statutory definition of a trust should be required to file a form T-1 or whether the necessary information regarding trusts will be disclosed if such a report is required only if the amount contributed by or on behalf of the reporting union is a significant percentage (for example, 5%, 10% or 25%) of the total receipts of the organization. The Department also invites comments on whether the threshold for separately identifying receipts and disbursements of trusts is placed at the appropriate level.

No separate report will be required for Political Action Committee (PAC) funds if publicly available reports on the PAC funds are filed with a Federal or State agency, or for a political organization for which reports are filed with the Internal Revenue Service pursuant to 26 U.S.C. 527, or for a fund described in sections 302(c)(5) through (9) of the LMRA, 29 U.S.C. 186(c)(5) through (9), or for a plan that filed complete annual financial reports, returns and schedules pursuant to the requirements of ERISA, 29 U.S.C. 1023 and 29 CFR 2520.103-1, for the plan year ending with or within the year preceding the year covered by the reporting union's LM-2, LM-3 or LM-4, or if annual audits are made freely available on demand for inspection by interested persons under section 302(c)(5)(B) of the LMRA, 29 U.S.C. 186(c)(5)(B)).

The Department invites comments with respect to whether the procedures for reporting trusts are appropriate and sufficient, and whether there are alternate or additional means to achieve full disclosure while minimizing the burden on reporting entities. In particular, the Department has considered whether information about the immense numbers of financial transactions that currently go unreported, but in which union members have a substantial personal interest, could be better obtained by expanding the definition of subsidiaries for which unions are required to report assets, liabilities, receipts, and disbursements. Under the current rule, labor organizations are required to report on the finances of only those subsidiary organizations that are 100% owned, controlled and financed by the labor organization. Commenters are invited to comment on whether information that is useful to union members, the government, and the public might be more readily obtained if unions were required to report the assets, liabilities, receipts, and disbursements of entities that are dominated or controlled by the labor organization to such a degree that assets, liabilities, receipts and disbursements of the entity effectively are those of the union itself. Whether the putatively reporting entity is, in fact, a ``single entity'' with the union would be determined by the degree to which there is common ownership, common directors and/or officers, de facto exercise of control, unity of personnel policies emanating from a common source, and dependency of operations. Under

this analysis, unions would be required to report financial information for any entity with respect to which there is such a substantial degree of integration of operations and common management. Similar analyses are used to determine whether multiple companies constitute a ``single entity'' pursuant to Executive Order 11246 (See, e.g., *Beverly Enterprises, Inc. v. Herman*, 130 F. Supp. 2d 1, 22 (D.D.C. 2000)), and to determine whether two or more companies constitute a single employer for the purpose of imposing obligations under the National Labor Relations Act (See, e.g., *N.L.R.B. v. Browning-Ferris Industries of Pennsylvania, Inc.*, 691 F.2d 1117 (3d Cir. 1982); *Local 627, Int'l Union of Operating Engineers v. N.L.R.B.*, 518 F.2d 1040, 1045-46 (D.C. Cir. 1975), aff'd on this issue sub nom. *South Prairie Construction Co. v. Local 627, Int'l Union of Operating Engineers*, 425 U.S. 800 (1976)).

Commenters are invited to address, in particular, whether requiring unions to report the financial activities of entities that meet a ``single entity'' test would provide better information to union members than the requirement to report the financial activities of trusts in which unions have an interest, and whether it would be easy for a union to identify entities that meet such a test. Commenters addressing this issue may also wish to comment on the fact that since assets and receipts of a ``single entity'' with the union would be reportable as assets and receipts of the union itself (rather than assets of an organization in which the union has an interest), unions that might not otherwise have \$200,000 in receipts would have to use the proposed form LM-2 to file their annual report if their receipts plus those of the organization with which the union is determined to be a ``single entity'' exceed \$200,000.

Section XI. Completing form LM-2. Information items 1 through 24.

Item 3. Amended, Hardship Exempted, or Terminal Report: This item was revised to include a new box that must be checked for labor organizations filing a report according to the hardship exemption procedures, and to eliminate the box for ``subsidiary organizations.'' The new entry will help union members and members of the public discern whether a report filed after the deadline was delinquent or was filed according to the hardship exemption procedures. It will also help OLMS process the reports. The subsidiary box was eliminated because subsidiary organizations are replaced by trusts in the new form LM-2.

Schedules 1 Through 12: Discussion of the new and revised schedules follows.

Schedule 1--Accounts Receivable Aging Schedule: This new schedule, which does not exist in the current form LM-2, requires labor organizations to report: (1) The individual accounts that are valued at \$1,000 or more and that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and (2) the total aggregated value of all other accounts (that is, those that are less than \$1,000) that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period. The threshold of \$1,000 eliminates the burden of individually reporting routine collections of dues and other fees.

This schedule will provide information to union members regarding how effectively the union collects debts owed to the union. For example, union members have an interest in knowing whether their union continues to do business with an entity or individual that does not pay its debts. The Department specifically invites comments regarding the question whether \$1,000 is an appropriate level at which to require that such accounts be individually reported.

Schedule 5--Investments Other Than U.S. Treasury Securities: This revised schedule, which is schedule 2 of the current form LM-2, changes the thresholds for reporting the book value of individual marketable securities and other investments from those that have a book value of at least \$1,000 and exceed 20% of the total book value of all marketable securities or other investments of the labor organization to \$5,000 and 5% respectively. The change is necessary because \$1,000 can now be considered a de minimis amount and 20% of book value is unreasonably high. It would be possible for unions to invest a significant amount of money and still not exceed 20% of the total book value of the union's investments. For example, an international union with

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\$20 million in investments may own \$1 million in stock of a certain company, which would be 5% of the total book value of the union's investments. Under the existing requirements, the investment would not be reported because it does not exceed 20% of the total book value, and yet \$1 million is certainly a significant investment of union members' assets. The dollar threshold was raised to prevent unnecessary reporting of small investments that might be picked up as a result of lowering the percentage threshold to 5%. The Department invites comments with respect to whether the thresholds for reporting the value of investments are appropriate.

Schedule 8--Accounts Payable Aging Schedule: This new schedule, which does not exist in the current form LM-2, requires labor organizations to report: (1) The individual accounts that are valued at \$1,000 or more that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and (2) the total aggregated value of all other accounts (that is, those that are less than \$1,000) that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period.

This schedule will provide critical information to union members regarding the solvency and financial reliability of their union. OLMS case files reveal that when a union local falls behind in paying its debts, it is often having cash flow problems and these problems may be due to embezzlement, overspending or mismanagement. In one case, an international union reported that an intermediate body was placed in trusteeship because the union had repeatedly failed to pay its per capita tax. An OLMS investigation subsequently found that the intermediate union was delinquent on a wide range of accounts because an officer of the union had been embezzling funds. Under the new schedule, these accounts would have been disclosed, in detail, on the annual report and the problem may have been discovered and addressed before the international was forced to put the local in trusteeship. The Department believes this new schedule is a vital 'early warning system' to help union members assess the financial viability of their union and detect cases of mismanagement and malfeasance in time to prevent substantial and unrecoverable losses of union members' funds. The Department invites comments regarding whether \$1,000 is an appropriate level at which to require that such accounts be individually reported.

Schedule 11--All Officers and Disbursements to Officers: There are two significant changes to this schedule in the new form LM-2: (1) The reporting union will be required to estimate the percentage (rounded to

the nearest 10%) of time spent performing duties related to the categories listed in schedules 15 through 22, and to allocate the relevant percentage of the total disbursement to that officer to the appropriate category; and (2) the categories of disbursements to officers are broadened so that all withholdings will be allocated to the disbursement schedules with the relevant percentage of the net salary of the officer. The time allocated among the categories for each officer should total 100% of that officer's time. The existing forms list the compensation for each officer of the union, but there is no indication of what services the officer provided for the members of the union.

Salary and other forms of compensation to officers are often a significant percentage of the total disbursements of the union and, as fiduciaries of the union, the officers take an active role in the services provided by the union to its members. Union members should therefore be able to find out from the form LM-2 how their elected officers are spending their time, so they can be held properly accountable to the interests and priorities of the members. These changes will give union members much more useful and detailed information on the services performed by the union and the operations of the union during the reporting period.

This proposal varies significantly from the rule promulgated in 1992 and rescinded in 1993 in that labor organizations are not required to determine with precision what portion of each officer's time is spent on each activity. Rather, the reporting labor organization need only estimate, to the nearest 10%, the time spent by each officer on duties that fall within one of the categories and to allocate the appropriate percentage of the officer's gross salary to that category. This proposal does not present the difficulties inherent in the 1992 rule with respect to determining how to allocate the "incidental" activities in which union officers might engage on their own time or while spending the major portion of a workday on activities that fall within a different category, since the amount of time spent on each activity is estimated and reported only as a percentage of total salary.

The Department invites comments regarding whether the allocation of salaries based on estimated time spent on activities provides sufficient information or whether there is an alternative means of allocating the salaries of officers that would provide as much or more information to union members without imposing undue burden on the filers. In particular, the Department invites comments on whether labor organizations should be required to exactly calculate the time spent by officers in performing duties related to specific categories in order to provide information that is useful to members, rather than rounding to 10% estimates.

Schedule 12--Disbursements to Employees: This schedule is used to report the salaries, allowances, and disbursements to each employee of the labor organization who received more than \$10,000 in the aggregate, during the reporting period, from the labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization. There are two primary changes to this schedule in the new form LM-2: (1) The reporting union will be required to estimate the percentage (rounded to the nearest 10%) of time spent performing duties related to the categories listed in schedules 15 through 22, and to allocate the relevant percentage of the total disbursement to that employee to the appropriate category; and (2) the categories of

disbursements to employees are broadened so that all withholdings will be allocated to the disbursement schedules with the relevant percentage of the net salary of the employee. The time allocated among the categories for each employee should total 100% of that employee's time. The existing forms list the compensation for each employee of the union who earned \$10,000 or more during the reporting period, but there is no indication of what services the employee provided for the members of the union.

The reasons for this change are essentially the same as in schedule 11. Salary and other forms of compensation to employees are often a significant percentage of the total disbursements of the union, and union employees take an active role in the services provided by the union to its members. Union members should therefore be able to find out from the form LM-2 how the union's employees are spending their time, so the employees can be held accountable to the members' interests and priorities. These changes are an integral part of providing reports to union members that reflect the services performed by the union and further

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explain the operations of the union during the reporting period.

This proposal varies significantly from the rule promulgated in 1992 and rescinded in 1993 in that labor organizations are not required to determine with precision what portion of each employee's time is spent on each activity. Rather, the reporting labor organization need only estimate, to the nearest 10%, the time spent by each employee on duties that fall within one of the categories and to allocate the appropriate percentage of the employee's gross salary to that category. This proposal does not present the difficulties inherent in the 1992 rule with respect to determining how to allocate the ``incidental'' activities in which union employees might engage on their own time or while spending the major portion of a workday on activities that fall within a different category, since the amount of time spent on each activity is estimated and reported only as a percentage of total salary.

The Department invites comments regarding whether the allocation of salaries based on estimated time spent on activities provides sufficient information or whether there is an alternative means of allocating the salaries of union employees that would provide as much or more information to union members without imposing undue burden on the filers. In particular, the Department invites comments on whether labor organizations should be required to exactly calculate the time spent by employees in performing duties related to specific categories in order to provide information that is useful to members, rather than rounding to 10% estimates.

Schedule 13--Membership Status Information: This new schedule requires that unions report the total number of union members by type of membership. The membership categories include active members, inactive members, associate members, apprentice members, retired members, other members, and agency fee payers. Unions will enter ``0'' or ``N/A'' for any category in the schedule that does not apply. The existing forms do not provide a breakdown of any kind, and the definition of ``member'' in the instructions is too broad to ensure consistency. ``Member'' is currently defined as ``all categories of members who pay dues.'' Consequently, a union member has no way of knowing what criteria the union is using to define ``member,'' and

there is no way to discern the demographics of the membership or to compare these statistics to other unions. The new schedule will provide specific information to union members who want to know the breakdown of the union's membership by specific categories.

A detailed breakdown of membership will help union members obtain a clear understanding of the financial condition and operations of the union, and enable members to assess the union's financial stability today and in the future. For example, it would be useful for union members to know if the union has a high percentage of retired members compared to active members, because this may be indicative of the union's future financial viability. The number of apprentice members may provide a useful prospective on how many new members the union acquired. This can be critical information because a union with few new members may be less likely to prosper; therefore members might want their union to allocate more resources to recruit new members. It is also important to know how many members are inactive due to seasonal unemployment or layoffs, which are often affected by the terms of a collective bargaining agreement. Associate members are similar to retired members in that they pay dues but are not represented by the union in a collective bargaining agreement; however, they do represent a category of dues-paying member and may exercise influence in a union. Finally, agency fee payers are not members of the union, but the union represents them in the collective bargaining process and they make payments to the union for that representation. Accordingly, agency fee payers are not included in the total number of members of the union but they are an important source of revenue, and the schedule would be incomplete if it omitted the number of such individuals. Each category provides unique information that will help union members determine the current position of the union, its relative member interests and influence, and its likely future directions, in a way that is not clear by simply examining current financial data.

In rescinding the 1992 rule, the Department asserted that ``it would be burdensome and confusing to attempt to require labor organizations to clarify the reported information by eliminating certain categories or breaking the total number of dues paying members into component parts.'' 58 FR 67598. No support was provided for this assertion, however, and it seems to be at odds with the fact that unions must already track this information in order to collect dues, conduct union elections, and calculate per capita taxes. All unions must currently know who can vote on a new contract or in a union election, and voting status may vary by type of membership. Most local unions must pay per capita tax to a parent body, and per capita tax rates may vary by type of membership. In each case, the union must already track membership information by categories.

The Department invites comments regarding the question whether this information should be required and whether certain membership categories should be included or excluded from the list. The Department also invites comments on the question whether a labor organization should also be required to report the total amount of dues paid by each of the various categories of members and fee payers and the amount that the union paid or received in per capita for each category.

Schedules 14 Through 22: Schedules 14 through 22 will greatly improve the quality and quantity of information provided to union members regarding the financial operation of their union.

Schedule 14 requires labor organizations to report the total amount of ``other'' receipts during the reporting period (``other receipts'' are all receipts other than those that must be reported elsewhere in

statement B of form LM-2). The labor organization will also be required to separately identify any ``major'' receipts during the reporting period. A ``major'' receipt includes: (1) Any individual receipt of \$5,000 or more; or (2) total receipts from any single entity or individual that aggregate to \$5,000 or more during the reporting period.

Schedules 15 through 22 require labor organizations to report the total amount of disbursements made during the reporting period for each of the following categories: Contract negotiation and administration; organizing; political activities; lobbying; contributions, gifts and grants; benefits; general overhead; and other disbursements. Labor organizations will also be required to separately identify all ``major'' disbursements during the reporting period in the various categories. A ``major'' disbursement includes: (1) Any individual disbursement of a certain amount, which should be from \$2,000 to \$5,000; or (2) total disbursements to any single entity or individual that aggregate to the same amount during the reporting period. The Department requests comments on the actual amount, in the \$2,000 to \$5,000 range, at which a disbursement should be considered ``major.'' If an entity or individual receives a number of payments from the union during the reporting period that are properly allocated to separate

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categories, the union need only separately identify those payments of the specified amount (\$2,000-\$5,000) or more in the specific category. For example, if a union pays a total of \$10,000 to a printer during the reporting year and determines that \$9,000 of that bill should be allocated to lobbying costs, that amount must be identified in schedule 18. If the remaining \$1,000 paid to the same printer over the course of the year was attributable to contract administration expenses, that amount will be reported in the total under schedule 15, but need not be separately identified.

The Department specifically invites comments regarding whether the definition of a ``major'' receipt, as an individual receipt that is \$5,000 or more, or receipts from the same entity or individual that aggregate to \$5,000 or more during the reporting period, is either too high or too low. The Department also specifically invites comments regarding the exact threshold, within the \$2,000 to \$5,000 range, that should be used to determine whether a disbursement is ``major,'' either as an individual disbursement, or with respect to disbursements to the same entity or individual that aggregate to a certain amount during the reporting period. The Department also requests comments on the question whether a union should be required to separately identify disbursements that, in the aggregate, total less than that threshold amount in a particular category to an individual or entity once the threshold has been reached either in another category or in a combination of categories.

This individual identification of receipts and disbursements will enable union members to meaningfully assess the financial operations of the union, but will not require unnecessary reporting of all minor receipts and disbursements. The existing forms provide only aggregate totals of receipts and disbursements that offer an unhelpful and vague picture of the financial condition and operations of the union. The new form LM-2 will organize these receipts and disbursements in useful categories that more accurately reflect the services provided to the members by the union. Moreover, this form of reporting is facilitated

by modern developments in electronic recordkeeping, filing, and disclosure that will increase the accountability and responsiveness of unions to their members. Because electronic recordkeeping is now relatively simple and the software required is inexpensive, it is used routinely even by very small organizations. Based on the experience of OLMS field offices, it is expected that unions large enough to be required to report using the form LM-2 already perform most, or all, financial recordkeeping electronically.

As explained above and in the Instructions for filling out form LM-2, unions will be able to choose either to type in or copy and paste disbursements manually or to seamlessly export financial data from the union's recordkeeping system by using software that will be made available by OLMS. The Department assumes that labor organizations with annual receipts of \$200,000 follow standard business practices and keep track of the purposes for which money is spent. The Department, therefore, has endeavored to identify specific categories that are likely to describe the most common important purposes for which unions spend money and that are likely to be useful and meaningful to the labor organization and to its members. The Department does not believe that this requirement will impose any undue burden on reporting labor organizations because this sort of allocation is consistent with standard business practices and is already required to some degree in the existing forms. Unions must already track the purpose for each disbursement in order to appropriately aggregate them into the categories on the current form. Unions are also required to categorize disbursement in order to complete Internal Revenue Service form 990 or form 990-EZ, which all labor organizations that file form LM-2 are also required to file if they are exempt from taxation under 26 U.S.C. 501(c) (5).

The proposed new categories are reflected in the following new disbursement schedules:

Schedule 15--Contract Negotiation and Administration: The proposed schedule for contract negotiation and administration will include preparation for, and participation in, the negotiation of collective bargaining agreements and the administration and enforcement of collective bargaining agreements, including the administration and arbitration of union member grievances.

Schedule 16--Organizing: The proposed schedule for organizing will include disbursements for efforts to become the exclusive bargaining representative for any unit of employees, or to keep from losing a unit in a decertification election or to another labor organization, or to recruit new members. The Department is sensitive to the anticipated concerns of labor organizations that the disclosure of information regarding amounts spent in specific organizing campaigns may be detrimental to the union in those or future campaigns. At the same time, if no itemization were required with respect to such a major category of expenditures by unions, the category could easily become susceptible to abuse. Because unions are expected to spend large amounts for organizing, it would be relatively easy to hide fraud and embezzlement within the lump sum reported for organizing disbursements. In addition, the fact that union members should expect their unions to spend money on organizing does not diminish their interest in knowing how that money is spent. In order to minimize any impact of reporting on the success of organizing efforts, however, neither the name of the employer nor the specific bargaining unit that is the subject of the organizing activity need be identified. The Department invites comments regarding any other means by which unions' legitimate interests may be

safeguarded while at the same time advancing the twin goals of enhanced enforcement and complete transparency.

Schedule 17--Political Activities: The proposed schedule for political activities will include political disbursements or contributions that are intended to influence the selection, nomination, election, or appointment of anyone to a Federal, State, or local executive, legislative or judicial public office, or office in a political organization, or the election of Presidential or Vice Presidential electors, and support for or opposition to ballot referenda. It does not matter whether the attempt succeeds. Included are disbursements for political communications with members (or agency fee paying nonmembers) and their families, registration, get-out-the-vote and voter education campaigns, the expenses of establishing, administering and soliciting contributions to union segregated political funds (or PACs), and other political disbursements.

Schedule 18--Lobbying: The proposed schedule for lobbying will include dealing with the executive and legislative branches of the Federal, State, and local governments and with independent agencies and staffs to advance the repeal of existing laws, or the passage or defeat of new legislation, or the promulgation of rules or regulations (including litigation expenses). It does not matter whether the lobbying attempt succeeds.

Schedule 21--General Overhead: The proposed schedule for general overhead will include disbursements for overhead that do not support a specific function, such as support personnel at the union's

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headquarters, and that, therefore, cannot be reasonably allocated to the other disbursement schedules.

The Department invites comments on the question whether the categories added to form LM-2 by the proposed revision would provide information to union members that will be useful and will assist them in participating in the governance of their unions. In addition, the Department invites comments on whether other categories should be added to, or whether any categories should be eliminated from, form LM-2.

Statement B--Receipts and Disbursements: Cash Disbursements:

Item 65. Strike Benefits: The proposed category of strike benefits will include all disbursements made to the members (or agency fee paying nonmembers) of the labor organization associated with strikes (including recognitional strikes), work stoppages and lockouts, including payments to or on behalf of members and others.

IV. Overview of the Revised Form LM-3 and Instructions

Section I. Who Must File: The instructions to form LM-3 also adopt the recent holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, 294 F.3d 1114 (2002), interpreting section 3(j) of the LMRDA. Accordingly, the Instructions will clarify that any "conference, general committee, joint or system board, or joint council" that is subordinate to a national or international labor organization will be required to file an annual financial form if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA.

The only other change that is proposed to the form LM-3 used by labor organizations that have gross annual receipts of between \$10,000

and \$200,000 is the elimination of the question whether they have a wholly owned, controlled, or financed subsidiary. Instead, such a union will be required to report financial information for any significant trust in which it has an interest. If the reporting union contributes \$10,000 or more to the trust during the union's reporting year, or a contribution of \$10,000 or more is made on the union's behalf or as a result of a negotiated agreement to which the union is a party during the union's reporting year, and the trust has annual receipts of \$200,000 or more, the union will be required to file a form T-1 for the trust. According to year 2000 report data, 545 unions with receipts less than \$200,000 that filed a form LM-3 reported having an interest in a trust, but were not required to quantify their interest, or to report any financial information with respect to these entities. Commenters are invited to comment on the question whether the Department's proposal strikes an appropriate balance between the need for transparency with respect to the financial relationships that involve significant amounts of union funds and the burden on smaller unions.

V. Overview of the Revised Form LM-4 and Instructions

Section I. Who Must File: The Instructions to form LM-4 also adopt the recent holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, 294 F.3d 1114 (2002), interpreting section 3(j) of the LMRDA. Accordingly, the Instructions will clarify that any ``conference, general committee, joint or system board, or joint council'' that is subordinate to a national or international labor organization will be required to file an annual financial form if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA.

The only other change that is proposed to the form LM-4 used by labor organizations that have gross annual receipts of less than \$10,000 is the addition of a question whether the union created or participated in the administration of a trust, as defined above and in the instructions. Such a labor organization will also be required to file a form T-1 for any trust in which it has an interest that has annual receipts of \$200,000 or more if it contributes \$10,000 or more to the trust during the union's reporting year, or a contribution of \$10,000 or more is made on the union's behalf or as a result of a negotiated agreement to which the union is a party during the union's reporting year. Since unions that qualify to file a form LM-4 have less than \$10,000 in annual receipts, it is unlikely that such a union would contribute \$10,000 to a trust in which they have an interest, although \$10,000 might be contributed on their behalf by another organization. Commenters are invited to comment on the question whether form LM-4 filers should be required to file a form T-1 for any trust in which they have an interest.

VI. Effective Date

In order to provide sufficient time to develop and test the required software, as well as enhancements to the Electronic Labor Organization Reporting System (e.LORS), and to assist all labor organizations in making any necessary adjustments to their own bookkeeping systems that may be required to use the new software, the Department proposes to make the use of revised forms LM-2, LM-3, and

LM-4 and form T-1 mandatory for reports for fiscal years that commence after the publication of a final rule revising the form. If a final rule revising these forms were published on May 30, 2003, for example, no union would be required to use the revised form for any report that is due before August 29, 2004. For purposes of example, Table 1 shows when unions with specific filing due dates would be required to use the revised form if the final rule were published on May 30, 2003. Similarly, a reporting union will be required to file a form T-1 for any significant trust in which it has a qualifying interest for fiscal years of the trust that commence after the publication of a final rule.

Table 1

End of union's fiscal year dates for the union's first report using the revised form LM-2, LM-3, or LM-4	Due dates for filing using the current form LM-2, LM-3, or LM-4	Due
March 31, 2003.....	June 29, 2003 & June 29, 2004.	June 29, 2005.
June 30, 2003.....	September 28, 2003.....	
September 28, 2004.		
September 30, 2003.....	December 29, 2003.....	
December 29, 2004.		
December 31, 2003.....	March 31, 2004.....	March 31, 2005.

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The Department invites comments on whether one year is an appropriate time period before labor organizations are required to use the new form and whether labor organizations should be required to use the revised form to report information for a fiscal year that begins within 30 days of the date that a final rule is issued.

VII. 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; or (3) materially alter the budgetary impact of entitlements, grants,

user fees, or loan programs or the rights and obligations of recipients thereof. 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.

Small Business Regulatory Enforcement Fairness Act

For similar reasons, the Department has concluded that this proposed rule is not a ``major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.). It will not likely result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than \$100 million in any one year.

Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the 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, 5 U.S.C. 601 et seq., requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Small Business Administration (SBA) determined, in a regulation that became effective on October 1, 2000, that the maximum annual receipts allowed for a labor union or similar labor organization and its affiliates to be considered a small organization or entity under section 601(4), (6) of the Regulatory Flexibility Act was \$5 million. 13 CFR 121.201 (Code Listing 813930). This amount was adjusted for inflation to \$6 million by a regulation that became effective on February 22, 2002. Thus, while most of the changes proposed by this rule will apply to only the largest labor organizations, which are required to file form LM-2, it is estimated that many of these labor organizations would be classified as small entities under the SBA

regulation because nearly all have annual receipts of between \$200,000 and \$6 million.

It does not appear that any party has challenged the SBA determination that labor organizations with receipts of over \$200,000 a year should be considered ``small,' nor does it appear that any party has requested that the SBA make an individualized inquiry into the appropriateness of that standard. The Department believes that the \$6 million standard set by the SBA seems unreasonably high since approximately 80% of all labor organizations in the United States have annual receipts of less than \$200,000 a year. In fact, the largest unions--those that have over \$1 million in annual receipts--control over 83.7% of the total receipts of all unions; 92.9% of the total dollar receipts reported by all labor organizations in 2000 were received by labor organizations that filed their annual report on form LM-2. It would seem more accurate to characterize the approximately 21,000 labor organizations that have less than \$200,000 in annual receipts and, therefore, are not required to use form LM-2 as ``small'' organizations. Nevertheless, the Department determined that performing a regulatory flexibility analysis with respect to this proposed rule is a better use of Department resources than proceeding with a formal request to change the SBA standard determination. Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

(1) Reasons Why Action by Agency Is Being Considered

The Department is proposing to revise the forms labor organizations use to file the annual financial reports required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act). This proposed rule modifies form LM-2, which is the report required to be filed by the largest labor organizations, and makes minor changes to forms LM-3 and LM-4, which are used by smaller labor organizations. All of these forms are prescribed by the Secretary of Labor to implement the Act and incorporated by reference in the applicable regulations.

Over the past 40 years, the functions and operations of unions have evolved while the forms used by unions to file annual financial reports required by the LMRDA have remained substantially unchanged. This has undermined the goal of the statute because the forms are insufficient to solicit information that is relevant in light of the financial complexity of modern unions. As noted previously, it is impossible for union members to evaluate in any meaningful way the management of their unions when the financial disclosure reports filed with OLMS simply report large expenditures (e.g., \$62 million) for broad, general categories like ``Grants to Joint Projects with State and Local Affiliates.' The large dollar amount and vague description of such entries make it essentially impossible for anyone to

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determine with any degree of specificity what their dues are spent on, which is precisely what the Act was intended to provide.

Today's union members, more than ever before, need relevant information provided in a usable format in order to make the decisions necessary to exercise their rights as members of democratic institutions. The Department is committed to maintaining accountability and promoting full and fair disclosure by labor organizations. Institutions, such as labor organizations, in which the public places its trust, should not be permitted to utilize technicalities of

structure to avoid disclosure. Providing additional detail on form LM-2 and requiring disclosure on the new form T-1 of trusts in which the labor organization has an interest is necessary to give union members an accurate picture of their labor organization's finances.

The revision of form LM-2 is also necessary to improve its usefulness as a deterrent to financial fraud and mismanagement. OLMS case files repeatedly demonstrate that this goal of the Act is not being met. Over the past five years, OLMS investigations resulted in over 640 criminal convictions. As a remedy, the courts ordered the responsible officials to pay \$15,446,896 in restitution, in addition to debarring them from union service for a combined total of almost ten thousand years. In many cases the broad aggregated categories on the existing forms enabled union officers to hide embezzlements and financial mismanagement. More detailed reporting of all financial transactions is likely to discourage and reduce corruption because it would be more difficult to hide financial mismanagement from members.

(2) Objectives of and Legal Basis for Rule

The legal authority for the notice of proposed rule-making is sections 201 and 208 of the LMRDA, 29 U.S.C. 431, 438. Section 201 requires labor organizations to file annual financial reports and to disclose certain financial information, including all assets, receipts, liabilities, and disbursements of the labor organization. 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.

The objective of this proposal is to require that labor organizations that use form LM-2 file their annual financial reports electronically unless they obtain a hardship exemption and to update and revise the LMRDA disclosure forms to take advantage of modern technology and to increase the transparency of union financial reporting for labor organizations with annual receipts of \$200,000 or more. This will enable workers to be responsible, informed, and effective participants in the governance of their unions; 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 OLMS.

(3) Number of Small Entities Covered Under Rule

The primary impact of this notice of proposed rule-making will be on the largest labor organizations, defined as those that have \$200,000 or more in annual receipts. There are approximately 5,514 labor organizations of this size that are required to file form LM-2 reports under the LMRDA. Smaller unions that file form LM-3 or LM-4 will be affected only by the requirement to file a form T-1 for certain trusts in which they have an interest. The Department estimates that 490 labor organizations that are permitted to use form LM-3 to file their annual financial report will file a form T-1 and that 25 labor organizations that are permitted to use form LM-4 to file their annual financial report will file a form T-1.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

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. It establishes various

reporting requirements for labor organizations, labor organization officers, employers, and employer consultants pursuant to title II of the Act. Accordingly, the primary economic impact of the proposed rule will be the cost to reporting unions of compiling, recording, and reporting additional information. The proposed rule establishes a new set of reporting categories for those labor organizations with receipts of \$200,000 or more. In order to comply with the requirement that reports be filed electronically, reporting unions will be required to use software provided by OLMS. Reporting unions may also need to make adjustments in their bookkeeping procedures and, in some instances, to make changes in computing hardware or software. None of these expenses are expected to be substantial, in large part because labor organizations, like most small entities following standard business practices, already maintain records of their receipts and expenditures. Labor organizations may not now be estimating the percentage of time spent on various types of functions by officers and employees, as they will be required to do in order to complete the revised form LM-2. Although the estimation required is only a rough approximation, rounded to the nearest 10%, the Department has considered both the time that will be required to make this estimation, and additional training that may be necessary to do so, in calculating the burden that will likely be imposed by the use of the new form LM-2. Once the necessary adjustments have been made to existing accounting systems, the Department estimates that the average recordkeeping and reporting burden, and costs associated with such recordkeeping, will increase. See the following Paperwork Reduction Act section for greater detail. The changes may also have economic significance that is difficult to measure because increased transparency in union financial affairs will result in less embezzlement and financial mismanagement, and increased public trust.

(5) 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, with one exception. Labor organizations are currently required to report some similar information to the Internal Revenue Service on form 990 or form 990-EZ if they are exempt from taxation under 26 U.S.C. 501(c)(5). A copy of the labor organization's filed form LM-2 may currently be submitted in lieu of answering certain questions on form 990 or form 990-EZ. The Department anticipates that a similar arrangement will be possible with respect to the revised form LM-2. Aside from those areas of potential duplication mentioned in the notice of proposed rulemaking, there is no duplication of existing labor organization reporting requirements, nor is similar information required by any other federal agency or statute.

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(6) Differing Compliance or Reporting Requirements for Small Entities

The reporting, recordkeeping, and other compliance requirements apply equally to all labor organizations that are required to file a form LM-2 under the LMRDA. The Department expects that only the largest labor organizations will have to make significant changes in the level of detail with which financial activity is reported in order to comply with the requirements of the proposed rule. Differences between the smaller labor organizations that are large enough to be required to file form LM-2 and the largest labor organizations are more likely to

result from differences in the financial practices of the unions themselves. Only the largest filers, those that have annual receipts in the millions, are likely to have extensive financial transactions and will require substantial changes in their accounting practices in order to report these transactions on the new form. Unions with receipts of between \$200,000 and \$2 million, which account for over 4,400 of the 5,514 form LM-2 filers, are likely to have less difficulty using the revised form.

Smaller unions with total annual receipts of less than \$200,000 (79.5 percent of all LMRDA covered unions) can still elect to file a simplified report. Over 49% of all labor organizations may file either a form LM-2 or a form LM-3, a form that entails a lesser recordkeeping and reporting burden than form LM-2. The only change to form LM-3 made by the proposed rule is the elimination of the requirement that the union filing such a form report the existence of a subsidiary. In addition, form LM-3 filers will now have to file a form T-1 reflecting expenditures and receipts of any trusts or other organizations in which they have an interest, if \$10,000 or more is contributed to the trust or other organization on the reporting union's behalf during the reporting year, and if the trust has \$200,000 or more in annual receipts. The very smallest unions, with total annual receipts of less than \$10,000 (30.1 percent of all LMRDA covered unions), can elect to file an abbreviated report, form LM-4, which further reduces their recordkeeping and reporting burden. Although form LM-4 filers will also be required to file form T-1 for any significant trusts or other funds in which they have an interest, if \$10,000 or more is contributed to the trust or other fund on the reporting union's behalf during the reporting year, the Department expects that the number of form LM-4 filers that will be required to file these forms will be extremely small.

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

OLMS has developed an electronic labor organization reporting system (e.LORS) that utilizes electronic technology to collect, maintain, and disclose the information it collects. The objectives of e.LORS are: The electronic filing of forms LM-2, LM-3, and LM-4 via the Internet; LMRDA program enhancements to improve accuracy, completeness, and timeliness of forms LM-2, LM-3, and LM-4; and the public disclosure of reports with a searchable database via the Internet. Labor organizations are directed to use an electronic reporting format and are provided a CD-ROM disk by OLMS that will enable them to maintain financial information that can 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 software. A help desk is staffed during normal business hours and can be reached by calling a toll-free telephone number.

The use of electronic forms makes it possible to download information from previous 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.

(8) 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 change the existing forms LM-2, LM-3, and LM-4. This alternative was rejected because OLMS case files demonstrate that the goals of the Act are not being met and that the broad aggregated reporting categories on the existing forms enable some union officers to hide embezzlements and financial mismanagement. As noted above, it is impossible to quantify the actual amount of money that unions and their members lost as a result of criminal activity that might have been prevented, or discovered sooner, if form LM-2 provided more useful information than it currently does. Nor is it possible to accurately quantify the cost of having less transparency and accountability to union members and the impact on union democracy and the economy.

Another alternative would be to limit the new 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 far greater impact on and relevance to union members, particularly since such lower levels of union 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 union members. Of the 5,514 labor organizations that are required to file form LM-2, just 141 are national and international labor organizations. Limiting the new reporting requirements to these 141 labor organizations would save the other form LM-2 filers approximately \$14 million over three years. However, nearly all of the OLMS investigations cited above involve labor organizations other than the 141 that would be subject to the improved reporting requirements. Requiring only national and international organizations to file more detailed reports would not provide any deterrent to fraud and embezzlement by local and regional officials. The additional approximately \$14 million cost over three years of applying the new reporting requirements to all unions with annual receipts of \$200,000 or more should be offset by savings to union members as a result of this deterrent effect.

Another alternative could be to adjust the form LM-2 \$200,000 filing threshold for inflation since it was last adjusted in 1994. This would increase the threshold to approximately \$250,000 and exclude about 650 labor organizations from having to file the new form LM-2 (although they would still have to file a form LM-3). These 650 unions would save an annual average \$293 in reporting and recordkeeping costs, or a total of nearly \$190,000, by filing form LM-3 instead of the new form LM-2. The total difference in reporting and recordkeeping costs would be just 0.1 percent of their total annual revenue (assuming each union has \$225,000 in

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receipts). The Department has concluded that these relatively low cost-savings do not justify eliminating the availability of thorough financial information from these local labor organizations, which may have far greater impact on and relevance to union members, particularly given the typical role of such lower levels of union organizations in setting and collecting dues and providing representational and other

services for their members. Because the current reporting threshold significantly reduces the reporting burden for smaller unions, no change in the threshold is proposed at this time. The existing \$200,000 threshold exempts 79.5 percent of all labor organizations that file annual reports (forms LM-2, LM-3, and LM-4) from the requirement of filing the more detailed form LM-2. Moreover, the current \$200,000 threshold is already higher than the 1959 (\$20,000), 1962 (\$30,000), and 1981 (\$100,000) thresholds when those thresholds are adjusted for inflation. However, the Department requests public comments on what is the appropriate level of the dollar threshold for the largest unions that file form LM-2.

Another alternative would be to phase-in the effective date for the form LM-2 changes that would provide smaller form LM-2 filers with additional lead time to modify their recordkeeping systems to comply with the new reporting requirements. The Department has concluded that a one-year period for all form LM-2 filers to adapt to the new reporting requirements should provide sufficient time to make the necessary adjustments. OLMS also plans to provide compliance assistance to any labor organization that requests it. In addition, a review of the proposed revisions was undertaken to reduce paperwork burden for all form LM-2 filers and an effort was made during the review to identify ways to reduce the impact on small entities. The Department believes it has minimized the economic impact of the form revision on small unions to the extent possible while recognizing workers' and the Department's need for information to protect the rights of union members under the LMRDA.

Another alternative considered, and described in more detail above, was to retain the requirement that labor organizations report financial information for their subsidiaries, but redefine the term ``subsidiary'' in a broader manner more consistent with its use under other statutes. As explained above, this alternative was rejected, but comments have been requested concerning this alternative.

(9) Exemption From Coverage of the Rule for Small Entities

The current dollar threshold for form LM-2 excludes 79.5 percent of all labor organizations that file LMRDA annual reports with OLMS. As noted above, smaller unions with total annual receipts of less than \$200,000, but more than \$10,000, (49.4 percent of all LMRDA covered unions) can elect to file a simplified report (form LM-3) that would reduce their average recordkeeping and reporting burden by 69.6 percent, from 21.81 hours to 6.64 hours per respondent in the third year (even more the first two years the proposed form would be in effect). The very smallest unions with total annual receipts of less than \$10,000 (30.1 percent of all LMRDA covered unions) can elect to file an abbreviated report (form LM-4) that reduces their recordkeeping and reporting burden by 95.9 percent, from 21.81 hours to 0.90 hours per respondent.

Paperwork Reduction Act

Summary: This proposed rule modifies the annual reports required to be filed by the largest labor organizations, prescribed by the Secretary of Labor to implement the Act and incorporated by reference in the applicable regulations. The revised paperwork requirements are necessary to enable workers to be responsible, informed, and effective participants in the governance of their unions; 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.

Published at the end of this notice are four proposed forms and their instructions that will implement the new reporting requirements. One form is the revised form LM-2, one is the revised form LM-3, one is the revised form LM-4, and the other is a new form T-1 for unions to report the assets, receipts, liabilities, and disbursements of trusts in which a labor organization has an interest. The proposed revisions to form LM-2 are designed to take advantage of technology that makes it possible to increase the detail with which information required to be reported can be provided, while at the same time making it easier to file and publish the contents of the reports. Union members are thus able to obtain a more accurate picture of their union's financial condition and operations without imposing an unwarranted burden on reporting unions. Supporting documentation need not be submitted with the forms, but labor organizations are required to maintain, assemble, and produce such documentation in the event of an inquiry from a union member or an audit by an OLMS investigator.

The Department estimates the average reporting and recordkeeping burden for the revised form LM-2 to be 104.03 hours per respondent in the first year, 24.96 hours per respondent in the second year, and 21.81 hours per respondent in the third year. The Department estimates the average reporting and recordkeeping burden for the revised form LM-3 and revised form LM-4 to be 6.64 hours and 0.90 hours per respondent in all three years. The Department estimates the average reporting and recordkeeping burden for the new form T-1 to be 12.89 hours per respondent in the first year, 5.79 hours per respondent in the second year, and 5.15 hours per respondent in the third year. The Department estimates the annual cost to respondents for the revised form LM-2 to be \$14.618 million in the first year, \$3.281 million in the second year, and \$2.867 million in the third year. The Department estimates the annual cost to respondents for the revised form LM-3 and form LM-4 to be \$1.797 million and \$180,903 in all three years. The Department estimates the annual cost to respondents for the new form T-1 to be \$1.218 million in the first year, \$518,427 in the second year, and \$454,448 in the third year. The annualized federal cost associated with the revised form LM-2, LM-3, LM-4, and the new form T-1 is estimated to be \$7.187 million.

Pursuant to the Paperwork Reduction Act of 1995, the information collection requirements contained in this NPRM have been submitted to the Office of Management and Budget for approval.

Background: Every labor organization whose total annual receipts are \$200,000 or more and those organizations that are in trusteeship must file an annual financial report on form LM-2, Labor Organization Annual Report, within 90 days after the end of its fiscal year, to disclose its financial condition and operations for its preceding fiscal year. Form LM-2 is also used by labor organizations with total annual receipts of \$200,000 or more that cease to exist to file a terminal report.

The current form LM-2 consists of 24 questions that identify the labor organization and provide basic information (in primarily a yes/no format); a statement of 11 financial items on different assets and liabilities;

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a statement of receipts and disbursements; and 15 supporting schedules. The information that is reported includes: Whether the union has any

subsidiary organizations; whether the union has a political action committee; whether the union discovered any loss or shortage of funds; the number of members; rates of dues and fees; the dollar amount for seven asset categories such as accounts receivable, cash, and investments; the dollar amount for four liability categories such as accounts payable and mortgages payable; the dollar amount for 16 categories of receipts such as dues and interest; and the dollar amount for 18 categories of disbursements such as payments to officers and repayment of loans obtained. Five of the supporting schedules include a detailed itemization of loans receivable and payable, the sale and purchase of investments and fixed assets, and payments to officers. There are also 10 supporting schedules for receipts and disbursements that provide union members with more detailed information by general groupings or bookkeeping categories to identify their purpose.

In 2001, 5,932 labor organizations filed form LM-2 and the Department estimates the recordkeeping and reporting burden to average 15.25 hours per respondent for a total of 82,564 hours and \$1.784 million. In developing these estimates, the Department carefully considered the amount of time it takes to: (a) Read the reporting instructions; (b) gather books and records to complete the report; (c) organize the books and records to respond to various reporting requirements; (d) complete the form; and (e) check the responses. The recordkeeping requirements are minimal because the majority of financial books and records required to complete the reports are those that the reporting organizations maintain in the normal course of business and are, therefore, not factored into the burden hours. Moreover, any capital investment including computers and software that are usual and customary expenses incurred by persons in the normal course of their business are excluded from the regulatory definition of burden.

The Department's developed electronic reporting system, e.LORS, uses information technology to perform some of the administrative functions of the reporting system. The objectives of e.LORS are electronic filing of forms LM-2, LM-3, and LM-4, disclosure of reports via a searchable Internet database, improving the accuracy, completeness and timeliness of reports, and creating efficiency gains in the reporting system. Effective use of the system will reduce the burden on reporting organizations, provide increased information to union members, and enhance LMRDA enforcement by OLMS. The Department is working towards to integrating other LMRDA disclosure documents into e.LORS in the future. The OLMS Internet Disclosure site is available for public use. The site contains a copy of each labor organization's annual financial report as well as an indexed computer database on the information for each report that is searchable through the Internet.

To ease the transition to electronic disclosure, OLMS will include e.LORS information in its outreach program through the OLMS Help Desk and through formal group sessions conducted for union officials regarding compliance. The new and revised forms will be provided on CD-ROM discs at no cost to labor organizations. The electronic form will also be available from OLMS field offices and from the OLMS National Office. Unions will be required, however, to pay a minimal fee to obtain electronic signature capability for the two officers who sign the form. OLMS has implemented a system to permit union officers to sign electronically submitted forms with digital signatures. Information about this system can be obtained on the OLMS website at <http://www.dol.gov/esa/regs/compliance/olms/digital-signatures.htm>. Digital signatures ensure the authenticity of form LM-2 reports without

compromising efficiency.

Filing labor organizations will find several advantages to electronic filing. With e.LORS, information from previously filed reports and officer or employee information can be directly imported to form LM-2. Not only is entry of the information eased, the software also makes mathematical calculations and checks for errors or discrepancies. The efficiency gains from electronic submission will alleviate much of the burden of revised form LM-2's new information requirements.

Ready acceptance of the benefits of electronic filing is predictable based on experience with software that OLMS has developed and distributed to labor organizations for completing the current forms LM-2, LM-3, and LM-4. Approximately 40% of unions that currently file form LM-2, LM-3, and LM-4 take advantage of the ability to enter data electronically on a computerized form. Enhancements of e.LORS will make it possible for all labor organizations to submit the new and revised forms electronically, although it is expected that some labor organizations will obtain hardship exemptions and file paper form LM-2 reports while they update their bookkeeping procedures.

Overview of Changes to Form LM-2

The updated form LM-2 includes: Three fewer questions (21 instead of 24) that identify the labor organization and provide basic information (in the same general yes/no format); the same 11 financial items on assets and liabilities; an updated statement of receipts and disbursements that asks for information on fewer categories of receipts (13 instead of 16) and disbursements (17 instead of 18); and seven additional supporting schedules (22 instead of 15). The updated statement of receipts and disbursements also drops seven old categories of disbursements and adds six new categories that will provide more useful information to union members on the amount of union funds spent on contract negotiation and administration, organizing, strike benefits, general overhead, political activities, and lobbying.

Many of the supporting schedules are not changing; over half (8) of the 15 current supporting schedules are either unchanged (7) or have been dropped from the updated form (1). Four of the current supporting schedules have only minor changes involving information that is maintained in the normal course of business. For example, on the schedule for itemizing investments the reporting threshold has changed from \$1,000 and 20 percent of the total book value of the union's investments to \$5,000 and 5 percent of the total. On the two schedules for disbursements to officers and employees the reporting of gross salary is changing to net salary and two new dollar amounts for direct taxes withheld and other withheld amounts have been added. On the fourth schedule that currently itemizes all benefit disbursements, the reporting of name, description, and amount has been expanded to include address, purpose, and date of the disbursement.

One important change to form LM-2 is the addition of three new separate schedules. The new schedules require the reporting of (1) the name of any entity or individual with which the labor organization had an account payable valued at \$1,000 or more that was more than 90 days past due at the end of the reporting period or that was liquidated, reduced or written off during the reporting period; (2) the name of any entity or individual with which the labor organization had an account receivable valued at \$1,000 or more that was more than 90 days past due at the

end of the reporting period or that was liquidated, reduced or written off during the reporting period; and (3) the number of union members by seven different membership categories. The Department believes that all of this reported information is maintained in the normal course of business. While labor organizations have not previously been required to report all of this information, the development of electronic software that will permit unions that keep their records electronically to import data from their programs to the form LM-2 software should reduce the burden of the revised reporting requirement. Labor organizations that do not currently maintain electronic books, or that use accounting software that proves incompatible with the software developed by the Department will experience modest increased burden. Another important change to form LM-2 is the individual identification of various receipts and disbursements for three of the current supporting schedules and five of the new supporting schedules. Currently, three of these supporting schedules provide some detail about various receipts and disbursements by general groupings or bookkeeping categories to identify their purpose. The updated form LM-2 will require these eight supporting schedules to individually identify receipts of \$5,000 or more or total receipts from an entity or individual that aggregate to \$5,000 or more during the reporting period, and disbursements of a certain amount (\$2,000-\$5,000) or total disbursements to an entity or individual that aggregate to a certain amount (\$2,000-\$5,000) during the reporting period.

The last major change to form LM-2 will require unions to report the major receipts and disbursements of trusts in which the labor organization has an interest. If a union's financial contribution to a trust, or a contribution made on the union's behalf, is less than \$10,000, the union only has to report the existence of the trust and the amount of the union's contribution or the contribution made on the union's behalf. If the contribution is \$10,000 or more, the labor organization will be required to report the receipts and disbursements of the trust on the proposed new form T-1. Unions will be required to separately identify each amount received by a trust from the same entity or individual of \$10,000 or more during the reporting period, as well as receipts from the same entity or individual that aggregate to \$10,000 or more during the reporting period. Unions will also be required to separately identify any individual disbursement of \$10,000 or more during the reporting period, as well as any disbursements to the same entity or individual that aggregate to \$10,000 or more during the reporting period. If annual audits or financial reports are already made available for organizations that meet the statutory definition of a trust, the only additional information that a union will be required to report on form LM-2 is a statement that such a report or audit has been filed or is available, and where union members can obtain the information.

Technological advances have made it possible to provide the level of detail necessary for union members to have a more accurate picture of their union's financial condition and operations without imposing an unwarranted burden on reporting unions. OLMS staff who review the reports filed and provide compliance assistance have found that a majority of unions required to file form LM-2 use computerized recordkeeping systems and have embraced the technology necessary to provide reports in electronic form. Several OLMS field offices report

that even smaller unions that file form LM-3 reports keep electronic books. The development of electronic software that will permit unions that keep their records electronically to import data from their programs to the form LM-2 software should reduce the burden of reporting financial information with the specificity required by the proposed rule. While labor organizations have not previously been required to report all of this information, they have been required to make judgments regarding the appropriate characterization of expenditures in order to report those expenditures by category in the current form. Once the necessary adjustments have been made to electronic recordkeeping systems, no additional burden will be entailed by the need to make similar judgments with respect to fewer categories. Labor organizations that do not currently maintain electronic books, or that use accounting software that proves incompatible with the software developed by the Department, will experience an increased burden.

Finally, as noted previously, the instructions to form LM-2 adopt the recent holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, 294 F.3d 1114 (2002), and clarify that any "conference, general committee, joint, or system board, or joint council" that is subordinate to a national or international labor organization is itself a labor organization under the LMRDA and will be required to file an annual financial form if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA.

Overview of Changes to Forms LM-3 and LM-4

Changes proposed to forms LM-3 and LM-4 involve a single question on each form, and the additional requirement of filing a form T-1 under certain circumstances. The proposed revision of form LM-3 is simply the elimination of a question whether the union has a subsidiary. The proposed revision of form LM-4 is simply the addition of a question whether the union has created or participated in the administration of a trust, as defined in the Instructions, during the reporting year. The form T-1 filing requirement is the same for form LM-3 and form LM-4 filers as it is for form LM-2 filers.

The instructions to both form LM-3 and LM-4 also adopt the recent holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, 294 F.3d 1114 (2002), and clarify that any "conference, general committee, joint or system board, or joint council" that is subordinate to a national or international labor organization is itself a labor organization under the LMRDA and will be required to file an annual financial form if the national or international labor organization is a labor organization engaged in an industry affecting commerce within the meaning of section 3(j) of the LMRDA.

Overview of the New Form T-1

The new form T-1 is structured similarly to the revised form LM-2. It includes: 21 questions that identify the trust, provide basic information (in a yes/no format), and 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 during the reporting year; a schedule that separately identifies any entity or individual that received

disbursements that aggregate to \$10,000 or more from the trust during the reporting period; a schedule of disbursements to officers and employees of the trust; and a schedule of loans receivable.

Estimated Recordkeeping and Reporting Burden: The burden hour estimates associated with forms LM-2, LM-3, LM-4, and T-1 are based on the latest available data and OLMS staff

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estimates. In developing these estimates, the Department carefully considered the amount of time it takes to: (1) Read and review the new reporting instructions; (2) gather books and records to complete the report; (3) organize the books and records to respond to various reporting requirements; (4) complete the form; and (5) check the responses for each form. The Department has also allotted an average burden hour estimate associated with the first-year implementation of the electronic form LM-2 and the new form T-1 for each respondent. In developing this estimate, the Department accounted for the additional time in the first year to: (a) Install software; (b) test and review software; (c) implement electronic signatures; (d) modify current accounting systems; and (e) train employees. Although an OLMS survey of its district offices reveals that the large majority of form LM-2 respondents already keep their records electronically, the Department has allotted an average burden hour estimate associated with the first-year implementation of electronic recordkeeping and reporting.

As part of the ongoing e.LORS project, OLMS plans to develop and distribute to labor organizations software for form LM-2 that will electronically import data from their accounting systems into the form and then transmit it electronically to OLMS. The process will be similar to the popular off-the-shelf tax filing software packages that are widely used by businesses, accountants, and individuals. OLMS also plans to increase the staff available for its compliance assistance outreach efforts and to utilize its Help Desk and conferences to address any questions or difficulties filers may have using the software.

The on-going recordkeeping burden associated with both forms are minimal because most of the information and records that are required to complete the reports are maintained in the normal course of business by the reporting organizations. The time for normal recordkeeping functions are not factored into the burden hours except to estimate the time it would take an auditing clerk to make electronic entries regarding the reporting category for a disbursement and the source of non-dues receipts. Moreover, any capital investment that is a usual and customary expense incurred by persons in the normal course of their business, including computers and software, is excluded from the regulatory definition of burden.

Estimated Burden for Form LM-2: The Department estimates the time to complete form LM-2 will initially increase compared to previous years because of the implementation of the new reporting system. However, once the new reporting system is in place the Department anticipates that the burden will significantly decrease and will be marginally higher than the present estimated burden. The decrease in burden will be a direct consequence of the efficiencies gained using the OLMS electronic system for filing the forms.

The Department determined the burden hours by estimating the time required to complete each report and the recordkeeping hours associated with each report. First year burden hour and cost estimates are broken

out separately from ongoing burden hour and cost estimates. See Table 2 below for a summary of the burden hour estimates associated with revised form LM-2.

The number of responses for revised form LM-2 is based on the number of forms submitted in calendar year 2001 by labor organizations that submitted form LM-2 and the latest available data. For the revised form LM-2, the Department estimates an initial increase in burden associated with installing, testing, and reviewing software, as well as adapting existing recordkeeping systems to the new reporting categories. There also is an increase in reporting burden for the additional information associated with individually identifying receipts and disbursements and training officers and employees. These increases are partially offset by the timesaving features of the software. In the first year, the Department estimates an average 104.03 hours of reporting burden per respondent and 1.0 hours of recordkeeping burden per respondent. As noted above, the Department assumes that the information required to be reported is already maintained by labor organizations in the normal course of business. The Department's estimate of the recordkeeping burden includes only minimal time for keeping records regarding the calculation of the percentage of officers' and employees' salaries attributable to specific categories, which may not ordinarily be reflected in records already maintained, because that calculation is based only on an estimate and need not be demonstrated by actual records of time spent in each category.

The reporting burden decreases in the second year and continues to decrease significantly in the third year because of the time saved from electronic filing. The Department estimates the average reporting burden to be 24.96 hours per respondent in the second year and 21.81 hours per respondent in the third year. The average recordkeeping burden remains at 1.0 hour per respondent in each year because most records required to complete the reports are maintained in the normal course of business.

The Department estimates that 5 percent of form LM-2 filers will submit a Continuing Hardship Exemption Request in the first year and that it will take 1 hour to prepare this request. The Department further estimates that 3 percent of form LM-2 filers will submit a hardship request in the second year and that 1 percent will submit a request in the third year.

The Department also estimates the annualized cost to respondents to be \$14.618 million in the first year, \$3.281 million in the second year, and \$2.867 million in the third year. The average cost per respondent is estimated to be \$2,651 in the first year, \$595 in the second year, and \$520 in the third year. The cost estimates are based on wage-rate data obtained from the Department's Bureau of Labor Statistics for personnel employed in service industries (i.e. accountant, bookkeeper, etc.). The estimates used for salaries of labor organization officers and employees are obtained from the annual financial reports filed with OLMS.

The annualized federal cost associated with revised forms LM-2, LM-3, and LM-4 and the new form T-1 is estimated to be \$7.187 million. This includes 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. The estimate also includes the annualized cost for redesigning the forms, developing and implementing the electronic software, and implementing digital signature capability.

Estimated Burden for Forms LM-3 and LM-4: The Department estimates

a small decrease in burden associated with the elimination of the question on form LM-3 regarding whether the union has a subsidiary. The Department also estimates a small increase in burden associated with the addition of a question on form LM-4 regarding whether the union has created or participated in the administration of a trust, as defined in the instructions, during the reporting year, both because answering this question will take little time and because unions that are small enough to file a form LM-4 are unlikely to have an interest in many trusts. See Table 2, below, for a summary.

Estimated Burden for Form T-1: Like form LM-2, the time to complete form T-1 will initially be higher for the first year compared to the second and third years because of the implementation of the new reporting system and electronic

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filing. See Table 2 below for a summary of the burden hour estimates associated with the new form T-1.

For the new form T-1 five assumptions were made to estimate the number of responses. First, it was assumed that 10 percent of the 2,309 LM-2 filers with annual revenues of from \$200,000 to \$499,999 would file one form T-1. Second, it was assumed that 35 percent of the 3,162 form LM-2 filers with annual revenues of from \$500,000 to \$49.999 million would file an average of 2.3 form T-1s. Third, it was assumed that 100 percent of the 43 form LM-2 filers with annual revenues of \$50 million or more would file an average of five T-1 reports each. Fourth, it was assumed that 90 percent of the 545 form LM-3 filers that report having a trust, and that 90 percent of the estimated 50 intermediate labor organizations that will file form LM-3 as a result of the recent decision of the U.S. Court Appeals for Ninth Circuit in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, would have trusts that meet the \$10,000 contribution and \$200,000 annual receipt threshold reporting requirements. Finally, it was assumed that just 0.3 percent of form LM-4 filers would have trusts that meet the \$10,000 contribution and \$200,000 annual receipt threshold reporting requirements. Because labor organizations have not previously reported information regarding many entities that fall within the definition of trusts or funds in which they have an interest, it is difficult to estimate how many of such entities exist. Accordingly, the Department invites comment on these assumptions and the potential number of responses to the new form T-1.

For the new form T-1, the Department estimates a higher initial burden associated with installing, testing, and reviewing software, as well as adapting existing recordkeeping systems to the new reporting categories. There also is a reporting burden for the information associated with individually identifying receipts and disbursements of the trust. These burdens are partially offset by the timesaving features of the software. Finally, although a labor organization that is significantly involved in directing the operations of a trust or other fund in which it is interested is likely to maintain records regarding such a fund, other labor organizations may be required to obtain and maintain records that they have not previously kept. In the first year, the Department estimates an average 12.39 hours of reporting burden per respondent and 0.5 hours of recordkeeping burden per respondent.

The reporting burden decreases significantly in the second year and continues to decrease significantly in the third year because of the

time saved from electronic filing. The Department estimates the average reporting to be 5.29 hours per respondent in the second year and 4.65 hours per respondent in the third year. The average recordkeeping burden remains at 0.5 hours per respondent in each year because most records required to complete the reports are maintained in the normal course of business.

Table 2.--Reporting and Recordkeeping Burden Hours for Form LM-2 and Form T-1

Recordkeeping hours per respondent	Total recordkeeping hours	Total Number of burden responses hours	Reporting hours per respondent	Total reporting hours
Revised Form LM-2:				
1.00	5,514	5,514	104.03	573,621
1.00	5,514	5,514	24.96	137,629
1.00	5,514	5,514	21.81	120,260
Revised Form LM-3:				
0.25	3,323	13,290	6.39	84,923
0.25	3,323	13,290	6.39	84,923
0.25	3,323	13,290	6.39	84,923
Revised Form LM-4:				
0.03	270	8,108	0.87	7,054
0.03	270	8,108	0.87	7,054
0.03	270	8,108	0.87	7,054
New Form T-1:				
0.50	1,776	3,551	12.39	43,997
0.50	1,776	3,551	5.29	18,785
0.50	1,776	3,551	4.65	16,512

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 rule on children. The Department has determined that the final rule will have no effect on children.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this rule in accordance with Executive Order, and has determined that it does not have ``tribal implications.'' The 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 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 regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation 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.

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Environmental Impact Assessment

The Department has reviewed the final 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 final 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 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 Parts 403 and 408

Labor unions, Reporting and recordkeeping requirements.

Text of Proposed Rule

In consideration of the foregoing, the Office of Labor-Management Standards, Employment Standards Administration, Department of Labor hereby proposes to amend parts 403 and 408 of title 29 of the Code of

Federal Regulations as set forth below.

PART 403--LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

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

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4-2001, 66 FR 29656, May 31, 2001.

2. Section 403.2 is amended by:

a. Removing the words ``together with a true copy thereof'' at the end of paragraph (a) and removing the comma preceding those words.

b. Adding paragraph (d) to read as follows:

Sec. 403.2 Annual financial report.

* * * * *

(d) Every labor organization shall, except as otherwise provided, file a report on form T-1 for every trust in which the labor organization is interested, as defined in section 3(1) of the Act, 29 U.S.C. 402(1), that has gross annual receipts of \$200,000 or more, and to which \$10,000 or more was contributed during the reporting period by the labor organization or on the labor organization's behalf or as a result of a negotiated agreement to which the labor organization is a party. A separate report shall be filed on form T-1 for each such trust within 90 days after the end of the trust'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 need be filed for a trust if an annual audit or financial report providing the same information and a similar level of detail is otherwise available pursuant to federal or state law, as specified in the instructions accompanying form T-1. If, on the date for filing the annual financial report of such trust, such labor organization is in trusteeship, the labor organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in Sec. 408.5 of this chapter.

3. Section 403.5 is amended by:

a. In paragraph (a), removing the words ``and one copy'' and removing the commas preceding and following those words.

b. In paragraph (b), removing the words ``and one copy'' and removing the commas preceding and following those words.

c. Adding a new paragraph (d) to read as follows:

Sec. 403.5 Terminal financial report.

* * * * *

(d) If a trust in which a labor organization is interested loses its identity 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.

PART 408--LABOR ORGANIZATION TRUSTEESHIP REPORTS

4. The authority citation for part 408 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4-2001, 66 FR 29656, May 31, 2001.

Sec. 408.5 [Amended]

5. Section 408.5 is amended by:

- a. Adding the words ``and any form T-1 reports'' after the words ``on behalf of the subordinate labor organization the annual financial report'' and before the words ``required by part 403 of this chapter''.
- b. Removing the words ``together with one true copy thereof'' at the end of the section and removing the comma preceding those words.

Signed in Washington, DC, this 19th day of December, 2002.
Victoria A. Lipnic,
Assistant Secretary for Employment Standards.

Appendix

Note: This appendix, which will not appear in the Code of Federal Regulations, revises forms LM-2, LM-3, and LM-4, and proposes a new form T-1 and revises or provides instructions for each form, provided in part 403, to read as follows:

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[GRAPHIC] [TIFF OMITTED] TP27DE02.007

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