



## **DEPARTMENT OF LABOR**

### **Office of Labor-Management Standards**

#### **29 CFR Parts 403**

#### **RIN 1245-AA09**

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

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

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

**SUMMARY:** The Department of Labor proposes to promulgate a rule that establishes a form to be used by labor organizations to file trust annual financial reports with the Department's Office of Labor-Management Standards ("OLMS"), provides appropriate instructions, and revises relevant sections relating to such reports. The Department makes the proposed changes pursuant to section 208 of the Labor-Management Reporting and Disclosure Act ("LMRDA"). The proposed rule would apply prospectively.

**DATES:** The Department will consider all written comments submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In addition to filing comments on any aspect of this proposed rule directly with the agency, interested parties may submit comments under the Paperwork Reduction Act (PRA) regarding the information collections in this proposed rule and an accompanying Information Collection Request (ICR) to the Office of Management and Budget. The opportunity to comment to OMB is limited to the information collections

only and comments to OMB must be submitted on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] and reference OMB control number 1245-0003 in order to ensure proper consideration.

**ADDRESSES:** You may submit comments, identified by RIN 1245-AA09, only by the following method: Internet—Federal eRulemaking Portal. Electronic comments may be submitted through <http://www.regulations.gov>. To locate the proposed rule, use key words such as “Labor-Management Standards” or “Labor Organization Annual Financial Reports” to search documents accepting comments. Follow the instructions for submitting comments. Please be advised that comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Submit comments under the Paperwork Reduction Act by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL-OLMS, Office of Management and Budget, Room 10235, 725 17th Street, N.W., Washington, DC 20503; by Fax: 202-395-5806 (this is not a toll-free number); or by email: [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov). Commenters are encouraged, but not required, to send a courtesy copy of any such comments to OLMS.

**FOR FURTHER INFORMATION CONTACT:** Andrew Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123 (this is not a toll-free number), (800) 877-8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:**

## **I. Statutory Authority**

The Department's statutory authority is set forth in section 208 of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. 438. Section 208 of the LMRDA provides that the Secretary of Labor "shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under [the Act] and such other reasonable rules and regulations . . . as he may find necessary to prevent the circumvention or evasion of such reporting requirements."

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

## **II. Background**

### *A. Introduction*

The Department proposes to establish a Form T-1 to capture financial information pertinent to "trusts in which a labor organization is interested" ("section 3(l) trusts"). Historically, this information has largely gone unreported despite the significant impact such trusts have on labor organization (hereinafter "labor organization" and "union" are used interchangeably) financial operations and their members' own interests. This proposal is part of the Department's continuing effort to better effectuate the reporting requirements of the LMRDA.

The LMRDA's various reporting provisions are designed to empower labor organization members by providing them the means to maintain democratic control over their labor organizations and ensure a proper accounting of labor organization funds. Labor organization members are better able to monitor their labor organization's financial affairs and to make informed choices about the leadership of their

labor organization and its direction when labor organizations disclose financial information as required by the LMRDA. By reviewing a labor organization's financial reports, a member may ascertain the labor organization's priorities and whether they are in accord with the member's own priorities and those of fellow members. At the same time, this transparency promotes both the labor organization's own interests as a democratic institution and the interests of the public and the government.

Furthermore, the LMRDA's reporting and disclosure provisions, together with the fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization's funds from depletion by improper or illegal means. Timely and complete reporting also helps deter labor organization officers or employees from embezzling or otherwise making improper use of such funds.

The proposed rule helps bring the reporting requirements for labor organizations and section 3(l) trusts in line with contemporary expectations for the disclosure of financial information. Today, labor organizations are more complex in their structure and scope than labor organizations of the past. In response to an increasingly complicated and sophisticated global marketplace, unions are hiring professional staffs and leveraging their financial capital to hire external economic, financial, legal, political, and public relations expertise not traditionally and, even now, not readily available to them internally. For example, 2010 data from a long-term survey-based study of union administrative practices indicate that 34% of unions relied on outside economic analysis services, 37% on outside financial planning services, and 49% on outside public relations services.<sup>1</sup>

Labor organization members, no less than consumers, citizens, or creditors, expect access to relevant

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<sup>1</sup> See a BLS summary of the study and its findings at <https://www.bls.gov/opub/mlr/2016/article/pdf/evolution-of-administrative-practices-in-american-unions.pdf>.

and useful information in order to make fundamental investment, career, and retirement decisions; evaluate options; and exercise legally guaranteed rights.

### *B. The LMRDA's Reporting and Other Requirements*

In enacting the LMRDA in 1959, a bipartisan Congress made the legislative finding that in the labor and management fields “there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.” 29 U.S.C. 401(b). The statute was designed to remedy these various ills through a set of integrated provisions aimed at labor organization governance and management. These include a “bill of rights” for labor organization members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for labor organization democracy, *see* 29 U.S.C. 411–415; financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies, *see* 29 U.S.C. 431–436, 441; detailed procedural, substantive, and reporting requirements relating to labor organization trusteeships, *see* 29 U.S.C. 461–466; detailed procedural requirements for the conduct of elections of labor organization officers, *see* 29 U.S.C. 481–483; safeguards for labor organizations, including bonding requirements, the establishment of fiduciary responsibilities for labor organization officials and other representatives, criminal penalties for embezzlement from a labor organization, a prohibition on certain loans by a labor organization to officers or employees, prohibitions on employment by a labor organization of certain convicted felons, and prohibitions on payments to employees, labor organizations, and labor organization officers and

employees for prohibited purposes by an employer or labor relations consultant, *see* 29 U.S.C. 501–505; and prohibitions against extortionate picketing, retaliation for exercising protected rights, and deprivation of LMRDA rights by violence, *see* 29 U.S.C. 522, 529, 530.

The LMRDA was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of labor organization racketeering and corruption; and its findings of financial abuse, mismanagement of labor organization funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. *See generally* Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851, 851–55 (1960).

During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local labor organizations and employers (and labor consultants aligned with the employers) whose employees were represented by the labor organizations in question or might be organized by them. Similar arrangements were also found to exist between labor organization officials and the companies that handled matters relating to the administration of labor organization benefit funds. *See generally* *Interim Report of the Select Committee on Improper Activities in the Labor or Management Field*, S. Report No. 85–1417 (1957); *see also* William J. Isaacson, *Employee Welfare and Benefit Plans: Regulation and Protection of Employee Rights*, 59 COLUM. L. REV. 96 (1959).

Financial reporting and disclosure were conceived as partial remedies for these improper practices. As noted in a key Senate Report on the legislation, disclosure would discourage questionable practices (“The searchlight of publicity is a strong deterrent.”), aid labor organization governance (labor organizations will be able “to better regulate their own affairs” because “members may vote out of office

any individual whose personal financial interests conflict with his duties to members”), facilitate legal action by members against “officers who violate their duty of loyalty to the members”, and create a record (“the reports will furnish a sound factual basis for further action in the event that other legislation is required”). S. Rep. No. 187 (1959) 16 reprinted in 1 NLRB LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959 412.

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

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

The reports are public information. 29 U.S.C. 435(a). The Secretary is charged with providing for the inspection and examination of the financial reports, 29 U.S.C. 435(b). For this purpose, OLMS

maintains: (1) A public disclosure room where copies of such reports filed with OLMS may be reviewed and; (2) an online public disclosure site, where copies of such reports filed since the year 2000 are available for the public's review.

### *C. History of the Form T-1*

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

To conform to the statutory requirement that trust reporting is “necessary to prevent the circumvention or evasion of [the LMRDA’s] reporting requirements,” the 2003 Form T-1 rule developed the “significant trust in which the labor organization is interested” test. It did so by utilizing the section 3(l) statutory definition of “a trust in which a labor organization is interested” and an administrative

determination of when a trust is deemed “significant.” 68 FR at 58477–78. The LMRDA defines a “trust in which a labor organization is interested as:

A trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries. *Id.* (quoting 29 U.S.C. 402(l)).

The 2003 Form T-1 rule set forth an administrative determination that stated that a “trust will be considered significant” and therefore subject to the Form T-1 reporting requirement under the following conditions:

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

The portions of the 2003 rule relating to the Form T-1 were vacated by the D.C. Circuit in *AFL–CIO v. Chao*, 409 F.3d 377, 389-391 (D.C. Cir. 2005). The court held that the form “reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union’s contribution of funds to an independent organization could circumvent or evade union reporting requirements by, for example, permitting the union to maintain control of the funds.” *Id.* at 389. The court also held that the significant trust test failed to establish reporting based on

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

However, the court recognized that reports on trusts that reflect a labor organization’s financial condition and operations are within the Department’s rulemaking authority, including trusts “established by one or more unions or through collective bargaining agreements calling for employer contributions, [where] the union has retained a controlling management role in the organization” and also those “established by one or more unions with union members’ funds because such establishment is a reasonable indicium of union control of that trust.” *Id.* The court acknowledged that the Department had made findings in support of its rule of particular situations where reporting about trusts would be necessary to prevent evasion of the related labor organizations’ own reporting obligations. *Id.* at 387–88. One example included a situation where “trusts [are] funded by union members’ funds from one or more unions and employers, and although the unions retain a controlling management role, no individual union wholly owns or dominates the trust, and therefore the use of the funds is not reported by the related union.” *Id.* at 389. In citing these examples, the court explained that “absent circumstances involving dominant control over the trust’s use of union members’ funds or union members’ funds constituting the trust’s predominant revenues, a report on the trust’s financial condition and operations would not reflect on the related union’s financial condition and operations.” *Id.* at 390. For this reason,

while acknowledging that there are circumstances under which the Secretary may require a report, the court disapproved of a broader application of the rule to require reports by any labor organization simply because the labor organization satisfied a reporting threshold (a labor organization with annual receipts of at least \$250,000 that contributes at least \$10,000 to a section 3(l) trust with annual receipts of at least \$250,000). *Id.*

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

The Department issued a proposed rule for a revised Form T-1 on March 4, 2008. 73 FR 11754 (Mar. 4, 2008). After notice and comment, the 2008 Form T-1 final rule was issued on October 2, 2008. 73 FR 57412. This rule attempted to remedy the failings of the Department’s 2003 and 2006 efforts in implementing a Form T-1. 73 FR at 57413. The 2008 Form T-1 rule took effect on January 1, 2009. Under this rule, Form T-1 reports would be filed no earlier than March 31, 2010, for fiscal years that began no earlier than January 1, 2009.

Pursuant to *AFL-CIO v. Chao*, the 2008 Form T-1 rule stated that labor organizations with total annual receipts of \$250,000 or more must file a Form T-1 for those section 3(l) trusts in which the labor organization, either alone or in combination with other labor organizations, had management control or

financial dominance. 73 FR at 57412. For purposes of the rule, a labor organization had management control if the labor organization alone, or in combination with other labor organizations, selected or appointed the majority of the members of the trust's governing board. Further, for purposes of the rule, a labor organization had financial dominance if the labor organization alone, or in combination with other labor organizations, contributed more than 50 percent of the trust's receipts during the annual reporting period. Significantly, the rule treated contributions made to a trust by an employer pursuant to a collective bargaining agreement as constituting contributions by the labor organization that was party to the agreement.

Additionally, the 2008 Form T-1 rule provided exemptions to the Form T-1 filing requirements. No Form T-1 was required for a trust: established as a political action committee (PAC) fund if publicly available reports on the PAC fund are filed with Federal or state agencies; established as a political organization for which reports are filed with the IRS under section 527 of the Internal Revenue Code; required to file a Form 5500 under ERISA; or constituting a federal employee health benefit plan subject to the provisions of the FEHBA. Similarly, the rule clarified that no Form T-1 was required for any trust that meets the statutory definition of a labor organization and files a Form LM-2, Form LM-3, or Form LM-4 or is from an entity that the LMRDA exempts from reporting, such as an organization composed entirely of state or local government employees or a state or local central body.

In the Spring 2009 and Fall 2009 Regulatory Agendas, the Department notified the public of its intent to initiate rulemaking proposing to rescind the Form T-1 and to require reporting of wholly owned, wholly controlled, and wholly financed ("subsidiary") organizations on their Form LM-2 or LM-3 reports. *See* <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200904&RIN=1215-AB75> and <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200904&RIN=1215-AB75>.

Due to the proposed rescission, on December 3, 2009, the Department issued a notice of proposed extension of filing due date to delay for one calendar year the filing due dates for Form T-1 reports required to be filed during calendar year 2010. 74 FR 63335. On December 30, 2009, following comment, the Department published a rule extending for one year the filing due date of all Form T-1 reports required to be filed during calendar year 2010. 74 FR 69023.

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

### **III. Proposal**

#### *A. Introduction*

Congress has determined that labor organization members should have access to information about the financial condition and operation of their labor organizations, and has established reporting obligations accordingly. 29 U.S.C. 431(b). Occasionally, however, such labor organizations establish and maintain trusts primarily to provide benefits to the members and/or their beneficiaries that are not themselves

subject to reporting obligations. 29 U.S.C. 402(l). These trusts, commonly referred to as section 3(l) trusts or “trusts in which a labor organization is interested,” are created for myriad purposes; common examples include credit unions, strike funds, redevelopment or investment groups, training funds, apprenticeship programs, building funds, and educational funds. These trusts are funded in a number of different ways. Some may be funded with employer contributions and jointly administered by trustees appointed by labor organizations and employers. While these trusts can serve valid purposes, they can also be used to circumvent the reporting requirements for labor organizations. Thus, Congress authorized the Secretary to issue rules “prescribing reports concerning trusts in which a labor organization is interested” where the Secretary finds such reports are necessary to prevent the circumvention or evasion of the labor organization reporting requirements. 29 U.S.C. 438.

As explained in more detail below, this proposal is an exercise of that authority and will serve the overall purposes of the LMRDA. By requiring that labor organizations file the Form T-1, labor organization members and the public will receive the same benefit of transparency they now receive under the Form LM-2. Any labor organizations or trust officials who place their own personal financial interests above their duty to the labor organization and the trust—and third parties complicit with these officials—will find it more difficult to circumvent and evade their legal obligations.

The Department proposes to require a labor organization with total annual receipts of \$250,000 or more to file a Form T-1, under certain circumstances, for each trust of the type defined by section 3(l) of the LMRDA, 29 U.S.C. 402(l) (defining “trust in which a labor organization is interested”). Such labor organizations would trigger the Form T-1 reporting requirements where the labor organization during the reporting period, either alone or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust’s governing board, or (2) contributes more than 50

percent of the trust's receipts. When applying this financial or managerial dominance test, contributions made pursuant to a collective bargaining agreement shall be considered the labor organization's contributions. As explained further below, this test is consistent with the court's holding in *AFL-CIO v. Chao*, 409 F.3d at 389-391, as well as the 2008 final Form T-1 rule.

The proposed Form T-1 uses the same basic template as prescribed for the Form LM-2. Both forms require the labor organization to provide specified aggregated and disaggregated information relating to the financial operations of the labor organization and the trust. Typically, a labor organization will be required to provide information on the Form T-1 explaining certain transactions by the trust (such as disposition of property by other than market sale, liquidation of debts, loans or credit extended on favorable terms to officers and employees of the trust, etc.) and identifying major receipts and disbursements by the trust during the reporting period.

The proposed Form T-1, however, is shorter and requires less information than the Form LM-2. As proposed, the Form T-1, unlike the Form LM-2, does not require that receipts and disbursements be identified by functional category. The proposed Form T-1 includes: 14 questions that identify the trust; six yes/no questions covering issues such as whether any loss or shortage of funds was discovered during the reporting year and whether the trust had made any loans to officers or employees of the labor organizations at terms below market rates; statements regarding the total amount of assets, liabilities, receipts, and disbursements of the trust; a schedule that separately identifies any individual or entity from which the trust receives \$10,000 or more, individually or in the aggregate, during the reporting period; a schedule that separately identifies any entity or individual that received disbursements that aggregate to \$10,000 or more, individually or in the aggregate, from the trust during the reporting period and the purpose of disbursement; and a schedule of disbursements to officers and employees of the trust who received more than \$10,000.

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

The proposal includes a number of exemptions. These exemptions include trusts organized as political action committees ("PAC") or political organizations (the latter within the meaning of 26 U.S.C. 527), that submit timely, complete, and publicly available reports required by federal or state law with government agencies; federal employee health benefit plans subject to the provision of the Federal Employees Health Benefits Act (FEHBA); and any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843. Similarly, no Form T-1 is required for any trust that meets the statutory definition of a labor organization and files a Form LM-2, Form LM-3, or Form LM-4 or is from an entity that the LMRDA exempts from reporting, such as an organization composed entirely of state or local government employees<sup>2</sup> or a state or local central body.<sup>3</sup> Consistent

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<sup>2</sup> Note: the Department has stated, in its Fall 2018 Regulatory Agenda, its proposal to return to its 2003 interpretation that intermediate bodies that are subordinate to a national or international labor organization that includes a labor organization are covered by the LMRDA. See: <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1245-AA08>.

<sup>3</sup> A "state or local central body" is defined in 29 CFR 451.5 as:

(a) The definition of "labor organization" in section 3(i) and the examples of labor organizations deemed to be engaged in an industry affecting commerce in section 3(j)(5) both except from the term "labor organization" a "State or local central body." As used in these two sections, the phrase *State or local central body* means an organization that:

- (1) Is chartered by a federation of national or international unions; and
- (2) Admits to membership local unions and subordinate bodies of national or international unions that are affiliated with the chartering federation within the State or local central body's territory and any local unions or subordinate bodies directly affiliated with the federation in such territory; and

with the 2008 rule, but in contrast to the 2003 and 2006 rules, the Department's proposal also includes an exemption for section 3(l) trusts that are part of employee benefit plans that file a Form 5500 Annual Return/Report under the Employee Retirement Income Security Act of 1974 ("ERISA"). And a partial exemption is provided for a trust for which an audit was conducted in accordance with prescribed standards and the audit is made publicly available. A labor organization choosing to use this option must complete the first page of the Form T-1 and file it along with a copy of the audit.

The Department proposes two additional exemptions not included in the 2008 rule. First, the Department proposes to exempt unions from reporting on the Form T-1 concerning their subsidiary organizations, retaining the requirement that unions must report their subsidiaries on the union's Form LM-2 report. *See* Part X of the Form LM-2 instructions (that defines a "subsidiary organization" as "any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization."). Second, the Department proposes that only the parent union (*i.e.*, the national/international or intermediate union) would need to file the Form T-1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test.<sup>4</sup> The affiliates would continue to identify the trust in their Form LM-2 report, and, under the proposal, would also state in their Form LM-2 report that the parent union will file a Form T-1 report for the trust.

The Department invites comment on any aspect of its proposal.

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(3) Exists primarily to carry on educational, legislative and coordinating activities.

(b) The term does not include organizations of local unions or subordinate bodies (1) of a single national or international union; or (2) of a particular department of a federation or similar association of national or international unions.

<sup>4</sup> If the purported trust actually constitutes a subsidiary of the parent union, then the parent union would need to include the subsidiary within its Form LM-2 report, pursuant to Part X of the Form LM-2 Instructions. *See* [OLMS Interpretative Manual](#) §215.200 (Holding of Stock by District Council and Member Locals) and 215.300 (Holding of Stock by Member Locals).

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

The proposed Form T-1 closes a reporting gap whereby labor organizations are required to report only on the funds that they exclusively control, but not those funds over which they exercise domination.

The proposed rule thus helps prevent the circumvention or evasion of the LMRDA's reporting requirements by making it more difficult for a labor organization to avoid, simply by transferring money from the labor organization's books to the trust's books, the basic reporting obligation that would apply if the funds had been retained by the labor organization. Further, Form T-1 disclosure of employer funds given to Taft-Hartley trusts may also prevent the circumventing or evading of LMRDA employer and union officer/employee reporting requirements.

In preventing this circumvention, the proposed rule ensures that labor organization members have access to a proper accounting of how funds are invested or otherwise expended by the trust. Labor organization members have an interest in obtaining information about funds provided to a trust for the members' particular or collective benefit whether solely administered by labor organizations or a separate, jointly administered governing board. Such disclosure helps deter fraud and corruption involving such trusts.

Although the proposal will not require a Form T-1 to be filed for all section 3(I) trusts in which a labor organization participates, it will be required where a labor organization, alone or in combination with other labor organizations, appoints or selects a majority of the members of the trust's governing board or where contributions by labor organizations, or pursuant to a collective bargaining agreement, represent greater than 50 percent of the revenue of the trust. The proposed rule thus follows the conclusion in *AFL-CIO v. Chao* that the Secretary had shown that trust reporting was necessary to prevent evasion or

circumvention where “trusts [are] established by one or more unions with union members’ funds because such establishment is a reasonable indicium of union control of the trust,” as well as where there are characteristics of “dominant union control over the trust’s use of union members’ funds or union members’ funds constituting the trust’s predominant revenues.” 409 F.3d at 389, 390.

Moreover, Form T-1 disclosure of employer funds given to Taft-Hartley trusts may also prevent the circumventing or evading of LMRDA employer and union officer/employee reporting requirements. While the LMRDA’s primary reporting obligation (Forms LM-2, LM-3, and LM-4) applies to labor organizations as institutions, other important reporting obligations under the LMRDA apply to officers and employees of labor organizations (Form LM-30), requiring them to report any conflicts between their personal financial interests and the duty they owe to the labor organization they serve, and to employers and labor relations consultants who must report payments to labor organizations and their representatives (Form LM-10). *See* 29 U.S.C. 432 and 433. Requiring labor organizations to report the information requested by the Form T-1 rule provides an essential check on these individual reporting requirements. The new form would allow both labor organization members and the Department to ensure that labor organizations, their officials, and employers accurately and completely fulfill their reporting duties under the Act, obligations that can more easily be ignored without fear of detection if reports related to trusts are not required.

As an illustration of how this check will work, consider an instance in which a Form T-1 identifies a \$15,000 payment from the trust to a company for printing services. Under the proposal, the labor organization must identify the company and the purpose of the payment. With this information, coupled with information about a labor organization official’s “personal business” interests in the company, a labor organization member or the Department will be able to identify any failure of the official to

accurately report this payment on a Form LM-30. Additional information from the labor organization's Form LM-2 might allow a labor organization member or the government to ascertain whether the trust and the labor organization have used the same printing company and whether there was a pattern of payments by the trust and the labor organization from which an inference could be drawn that duplicate payments were being made for the same services. Upon further inquiry into the details of the transactions, a member or the government might be able to determine whether the payments masked a kickback or other conflict-of interest payment, and, as such, reveal an instance where the labor organization, a labor organization official, or an employer may have failed to comply with their reporting obligations under the Act. Furthermore, the proposal will provide a missing piece to one part of the Department's crosscheck system that correlates reported holdings and transactions by party, description, and reporting period and thereby help identify any deviations in the reported details, including instances where the reporting obligation appears reciprocal, but one or more parties have not reported the matter.

In reviewing submitted Form LM-2 reports, the Department located several instances in which labor organizations disbursed large sums of money to trusts. As an example, one local disbursed over \$700,000 to one trust and over \$1.2 million to another of its trusts, in fiscal year 2017. In 2017, a national labor organization disbursed almost \$400,000 to one of its trusts. Several locals each reported on their FY 17 Form LM-2 reports varying ownership interests in a building corporation that owns the unions' hall. These disbursements are publicly known due to this reporting, but the trusts' ultimate uses of the funds are not. The Form T-1 would prevent the unions from circumventing or evading their reporting requirements, by establishing comparable reporting for their trusts, thus, ensuring financial transparency for all funds dominated by the unions.

The Form T-1 would also have the salutary benefit of deterring potential labor-management fraud and corruption. Labor organization officials and trustees both owe a fiduciary duty to their labor organization and the trust, respectively, but there are nonetheless examples of embezzlement of funds held by both labor organizations and their section 3(l) trusts.<sup>5</sup> The Form T-1, by disclosing information to labor organization members, the true beneficiaries of such trusts, will increase the likelihood that wrongdoing is detected and may deter individuals who might otherwise be tempted to divert funds from the trusts.

Many labor organizations now manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. 69 FR 79280, 79280 (December 27, 2002). As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for labor organization officers and employees who may operate, receive income from, or hold an interest in, such businesses. The labor organizations' business relationships with outside firms and vendors that provide benefits and financial services to the labor organization and its members also increase the possibility that labor organization officers and employees may have financial interests in these businesses that might conflict with fiduciary obligations they owe to the labor organization and its members. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between labor organizations, labor organization officials, employers, and other entities, including section 3(l) trusts.

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<sup>5</sup> The fiduciary duty of the trustees to refrain from taking a proscribed action has never been thought sufficient in and of itself to protect the interests of a trust's beneficiaries. Although a fiduciary's own duty to the trust's grantors and beneficiaries includes disclosure and accounting components, public disclosure requirements, government regulation, and the availability of civil and criminal process complement these obligations and help ensure a trustee's observance of his or her fiduciary duty. See Restatement (Third) of Agency § 8.01 (T.D. No. 6, 2005) *et seq.*; see also 1 American Law Institute, Principles of Corporate Governance § 1.14 (1994).

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

The enactment of ERISA has ameliorated many of the historical problems, but many section 3(l) trusts are not covered by ERISA. The most disconcerting example of the corruption and evasion of reporting that the Form T-1 would combat is the ongoing investigation of the company-funded United Auto Workers International Union (UAW)/Fiat Chrysler Detroit labor management **cooperation committee**, **established** under section 302(c)(9) of the Labor Management Relations Act of 1947 (LMRA), as

amended, 29 U.S.C. 186(c)(9).<sup>6</sup> In 2018, an investigation of auto industry corruption involving the UAW in Detroit, Michigan, and the city's automakers produced seven criminal convictions in the United States District Court for the Eastern District of Michigan. The investigations focused on a conspiracy involving Fiat Chrysler executives bribing labor officials to influence labor negotiations.<sup>7</sup> These convictions involved Fiat Chrysler officials illegally channeling funds from the UAW/Chrysler National Training Center, which like many other company-funded training centers would be covered by the Form T-1 reporting obligation, to the personal use of certain union officials and employees. This example provides compelling justification for the Form T-1, as the disclosure created by the form would help protect the financial integrity of union training centers and other union funds set up to benefit rank-and-file members.

The following examples illustrate other recent situations in which funds held in section 3(l) trusts have been misused<sup>8</sup>:

- In 2011, a former secretary for a union was convicted for embezzling \$412,000 from the union and its apprenticeship and training fund.<sup>9</sup>
- In 2015, an employee of a union pled guilty to embezzling over \$160,000 from a joint apprenticeship trust fund account that was used to train future union members.<sup>10</sup>

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<sup>6</sup> The Department's Employee Benefits Security Administration (EBSA), which administers ERISA, has determined that labor-management cooperation committees established under LMRA section 302(c)(9) that do not provide ERISA-covered benefits to participants or beneficiaries do not constitute an ERISA-covered employee benefit plans. Thus, they do not file the EBSA Form 5500. See: <https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2012-06a>.

<sup>7</sup> See [https://www.dol.gov/olms/regs/compliance/enforce\\_2018.htm](https://www.dol.gov/olms/regs/compliance/enforce_2018.htm).

<sup>8</sup> The trusts in these examples constitute apprenticeship and training funds established under LMRA section 302(C)(6), 29 U.S.C. 186(c)(6). EBSA does not require such funds to file the Form 5500. See 29 CFR 2520.104-22 (apprenticeship and training plans).

<sup>9</sup> See [https://www.wilx.com/home/headlines/Former\\_Union\\_Secretary\\_Sentenced\\_for\\_Embellment\\_126151908.html](https://www.wilx.com/home/headlines/Former_Union_Secretary_Sentenced_for_Embellment_126151908.html), July 25, 2011.

<sup>10</sup> See <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/newsroom/criminal-releases/11-24-2015.pdf>, November 24, 2015.

- In 2017, a former business manager and financial secretary for a Rhode Island union local plead guilty to charges that he embezzled between \$250,000 and \$550,000 in union funds from an operational account and from an apprentice fund.<sup>11</sup>
- In 2018, a former trustee of a trust fund for apprentice and journeyman education and training was sentenced for submitting a false reimbursement request in connection with training events. In his plea, the former trustee admitted that the amount owed to the training fund totaled \$12,000.<sup>12</sup>

Under the proposed rule, each labor organization in these examples would have been required to file a Form T-1 because each of these funds is a 3(l) trust that meets the significant contribution test, as outlined in the 2008 rule. In each instance, the labor organization's contribution to the trust, including contributions made pursuant to a collective bargaining agreements, made alone or in combination with other labor organizations, represented greater than 50 percent of the trust's revenue in the one-year reporting period. The labor organizations would have been required to annually disclose for each trust the total value of its assets, liabilities, receipts, and disbursements. For each receipt or disbursement of \$10,000 or more (whether individually or in the aggregate), the labor organization would have been required to provide: the name and business address of the individual or entity involved in the transaction(s); the type of business or job classification of the individual or entity; the purpose of the receipt or disbursement; the date of the receipt or disbursement; and the amount of the receipt or disbursement. Further, the labor organization would have been required to provide additional information concerning any trust losses or shortages; the acquisition or disposition of any goods or property other than by purchase or sale; the liquidation, reduction, or write off of any liabilities without full payment of principal and interest; the extension of any loans or credit to any employee or officer of

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<sup>11</sup> See <https://www.justice.gov/usao-ri/pr/union-officer-plead-guilty-embezzlement-identity-theft>, November 27, 2017.

<sup>12</sup> See <https://www.dol.gov/newsroom/releases/ebsa/ebsa20180323>, March 23, 2018.

the labor organization at terms below market rates; and any disbursements to officers and employees of the trust.

These recent examples are not isolated incidents; the Department received additional examples in information submitted by the public during previous rulemakings in this area. In its comments on the 2006 proposal, for example, a labor policy group identified multiple instances where labor organization officials were charged, convicted, or both, for embezzling or otherwise improperly diverting labor organization trust funds for their own gain, including the following: (1) Five individuals were charged with conspiring to steal over \$70,000 from a local's severance fund; (2) two local labor organization officials confessed to stealing about \$120,000 from the local's job training funds; (3) an employee of an international labor organization embezzled over \$350,000 from a job training fund; (4) a local labor organization president embezzled an undisclosed amount from the locals' disaster relief fund; and (5) a former international officer, who had also been a director and trustee of a labor organization benefit fund, was convicted of embezzling about \$100,000 from the labor organization's apprenticeship and training fund. 71 FR 57716, 57722.

Although the comments received from labor organizations on previous proposals generally opposed any reporting obligation concerning trusts, many labor organization members recommended greater scrutiny of labor organization trust funds. For example, several members of an international labor organization expressed such concerns in comments on the Department's 2006 proposal. They explained that under the labor organization's collective bargaining agreements, the employer sets aside at least \$.20 for each hour worked by a member and that this amount was paid into a benefit fund known as a "joint committee." 71 FR 57716, 57722. The commenters asserted that some of the funds were "lavished on junkets and parties" and that the labor organization used the joint committees to reward political

supporters of the labor organization's officials. They stated that the labor organization refused to provide information about the funds, including amounts paid to "union staff." From the perspective of one member, the labor organization did not want "this conflict of interest" to be exposed. *Id.*

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

For all of these reasons, the Department finds that the proposed Form T-1 rule will add necessary safeguards to deter circumvention and evasion of the LMRDA's reporting requirements. In particular, with the Form T-1 in place, it will be more difficult for labor organizations, employers, and union officers and employees to avoid the disclosure required by the LMRDA. Further, labor organization members will be able to review financial information they may not otherwise have had, empowering them to better monitor their labor organization's officials and finances.

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

##### 1. Determining Management Control or Financial Domination

Under this proposal, management domination or financial control is determined by looking at the involvement of all labor organizations contributing to or managing the trust. As discussed above, the Department's experience, as noted by the D.C. Circuit in its 2005 opinion, demonstrates that

participating labor organizations may “retain a controlling management role, [even though] no individual union wholly owns or dominates the trust.” *AFL-CIO v. Chao*, 409 F.3d at 389. This occurs, for example, where a trust is created from the participation of several labor organizations with common affiliation, industry, or location, but none alone holds predominant management control over or a majority financial stake in the trust. Absent the Form T-1, the contributing labor organizations, if so inclined, would be able to use the trust as a vehicle to expend pooled labor organization funds without the disclosure required by the Form LM-2, and the members of these labor organizations would continue to be denied information vital to their interests. If a single labor organization may circumvent its reporting obligations when it retains a controlling management role or financially dominates a trust, then a group of labor organizations may also be capable of doing so. A rule directed to preventing a single labor organization from circumventing the law must be similarly directed to preventing multiple labor organizations from also possibly evading their legal obligations.

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

In most cases, labor organizations already possess information to determine whether a Form T-1 is required for a particular section 3(l) trust. If a labor organization selects or appoints a member of the trust’s governing board, it could reasonably be expected to know how the other members are selected and whether the majority control prong of the reporting test is satisfied. In other situations, the section

3(l) trust in question will consist entirely of units of the same national or international labor organization. Here too, each labor organization participating in the trust will know whether the majority control prong of the test is satisfied and likely will possess information to determine whether the alternative financial domination prong of the test is met.

In some situations, the Department expects that labor organizations will have to contact the trusts to obtain information about whether the trust's "pooled receipts" from labor organizations constitute a majority of the trust's receipts during a reporting period. Such "pooled receipts" would include the total annual receipts of the trust, as the Department defines that term for purposes of the Form LM-2. The trust can determine whether labor organizations have financial dominance by examining their usual accounting records; a trust would add all income received from labor organizations within its most recent fiscal year, divide that sum by the figure representing Net Income from the Income Statement from its most recent fiscal year, and if the dividend is more than .50, then the trust has established that labor organizations have financial dominance.

Application of the financial or managerial dominance test does not require that the trust disclose individualized information related to voting or contributions. Therefore, the trust will not be required to release any confidential information pertaining to financial contributions or control. The Department expects that labor organizations that do not already possess the information to determine whether they need to file a Form T-1 will be able to obtain this information simply by contacting the trust.

## 2. Form T-1 Reporting Requirement Only Applies to the Largest Labor Organizations

The Department's proposal to require only labor organizations with annual receipts of at least \$250,000

to file a Form T-1 tracks the mandatory filing threshold for the Form LM-2. This proposal is consistent with the 2003, 2006, and 2008 rules and reflects feedback that the Department received on its 2002 proposed rule. In 2002, the Department had proposed that all labor organizations that contributed \$10,000 or more to a “significant” section 3(l) trust file a Form T-1 and had defined a “significant trust” as one having annual receipts of at least \$200,000. Thus, under the 2002 proposal it was the size of the trust, not the size of the labor organization, which triggered the reporting obligation. In this regard, the 2002 proposal departed from the model proposed for the Form LM-2, where only labor organizations with annual receipts of at least \$200,000 (\$250,000 in the final rule) would be obliged to provide the kind of detailed reporting comparable to the Form T-1.

Many commenters on the 2002 proposal expressed the view that the Form T-1 would impose a substantial burden on small labor organizations because they are usually staffed with part-time volunteers, with little computer or accounting experience and limited resources to hire professional services. In the 2003 rule, the Department explained that it had been persuaded by the comments that the relative size of a labor organization, as measured by its overall finances, would affect its ability to comply with the proposed Form T-1 reporting requirements. For this reason, the Department excused from the Form T-1 reporting obligation any labor organization with annual receipts of less than \$250,000 in the final rule. For the same reasons, the Department again proposes a Form T-1 filing threshold of \$250,000 in annual receipts for the labor organization.

### 3. Itemization of Receipts and Disbursements

The Department proposes that itemization should be required for “major disbursements” and “major receipts” of the section 3(l) trust. The Department defines “major disbursements” and “major receipts”

for Form T-1 purposes as \$10,000 or more. Thus, under the proposal a labor organization would report payments of \$10,000 or more from any individual or entity to the trust and payments of \$10,000 or more to any individual or entity from the trust. In completing the Form T-1, the labor organization would specify the amount of the receipt or disbursement, its purpose, and other information pertinent to the transaction, including the name and address of the entity or individual involved.

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

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

- The names of all the trust's officers and all employees making more than \$10,000 in salary and allowances and all direct and indirect disbursements to them;

- Any loans made at favorable terms by the trust to the labor organization's officers or employees, the amount of the loan, and the terms of repayment.

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

The proposed \$10,000 figure is an outgrowth of earlier rulemaking efforts and is shaped by the concerns there expressed and the Department's accommodation to those concerns. This amount is a higher amount than the itemization threshold provided for in the Form LM-2 (\$5,000). As the Department has stated in the past, "The Department will continue to monitor this threshold, as well as all other thresholds established by this rule, and may make future adjustments if economic conditions warrant such a change." 68 FR 58374, 58421.

As to aggregation, the Department recognizes that tracking multiple payments from a specific source throughout the fiscal year imposes some additional burden on a reporting labor organization and a section 3(l) trust. Developments in electronic recordkeeping, however, should minimize this burden.

Electronic recordkeeping is now relatively simple and used routinely even by very small organizations and by individuals. Moreover, given the nature of their day-to-day operations, section 3(l) trusts are likely to already possess the technology and expertise to provide relevant information without undue burden. The Form LM-2 filing experience demonstrates the ability of labor organizations, often without the same level of recordkeeping sophistication possessed by most trusts, to satisfy the requirements imposed by the Form LM-2, which are generally more demanding than those posed by the Form T-1.

#### 4. Protection of Sensitive Information

This proposal protects the disclosure of personal information about members of labor organizations and the disclosure of sensitive information about a labor organization's negotiating or bargaining strategies by subjecting the Form T-1 to the same confidentiality provisions contained in the Form LM-2 regulations, 29 CFR 403.8. The only difference between the provisions relating to the Form LM-2 and this proposal for the Form T-1 is that each addresses the distinct itemization thresholds for the two reports (\$5,000 for Form LM-2 and \$10,000 for Form T-1).

The Department also proposes to provide labor organizations the same reporting options available under the Form LM-2 for reporting certain major transactions in situations where a labor organization, acting in good faith and on reasonable grounds, believes that reporting the details of the transaction would divulge information relating to the labor organization's prospective organizing strategy, the identification of individuals working as "salts" (persons having sought and attained employment at a company in order to organize its workers), or its prospective negotiation strategy. Consistent with the instructions provided, this information may be reported without itemization.

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

#### 5. Exemptions and Alternative Means of Compliance

The Department proposes to exempt from the labor organization's Form T-1 reporting requirement a PAC or an organization exempt under Internal Revenue Code section 527 (section 527 political organization), if the entity, assuming it meets the definition of an LMRDA section 3(l) trust, files timely, complete and publicly-available reports with federal or state agencies, as required by federal or state law.

Additionally, the Department proposes to exempt a labor organization from filing a Form T-1 for a section 3(l) trust if the trust was part of an employee benefit plan that under ERISA files a Form 5500.

The purpose of limiting the filing requirements in this way is to minimize any overlapping reporting obligations that exist under certain other laws where such reports are publicly available and provide information roughly comparable to that required by the Form T-1. The Department asks for comment on whether to retain such Form T-1 exemptions tied to ERISA.

Each of these alternative methods for meeting the labor organization's Form T-1 obligations provides significant, timely financial information about the trust that is updated on a regular basis (for PAC and section 527 reports, typically more frequently than the Form T-1) and requires the itemization of receipts and expenditures.<sup>13</sup> These reports provide a level of transparency similar to the proposed Form T-1.

The proposed rule also leaves in place the Form LM-2 requirement that labor organizations report their subsidiaries on the union's Form LM-2 report. *See* Form LM-2 Instructions, Part X (defining a "subsidiary organization" as "any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization."). Such reporting framework reduces burden on labor organizations, while simultaneously providing greater disclosure for the public. There is greater disclosure in general because the Form LM-2 report requires greater detail than the proposed Form T-1 and greater disclosure concerning itemization in particular; the Form LM-2 has a lower threshold (\$5,000 as opposed to \$10,000) and subsidiaries will not be able to avoid aggregating expenditures they made separately with those of the labor organization because both are reported on the same form. Further, leaving subsidiary

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<sup>13</sup> Significantly, these forms set the itemization threshold below the \$10,000 amount proposed for the Form T-1. They require aggregation of receipts and disbursements; itemization is required for any receipts from or disbursements to an individual or entity that total \$200 or more during prescribed reporting cycles. *See* Federal Election Commission, Instructions for FEC Form 3X and Related Schedules, available at <https://www.fec.gov/resources/cms-content/documents/fecfrm3xi.pdf> (last visited Dec. 4, 2018); IRS, Instructions for Form 8872, available at <https://www.irs.gov/pub/irs-pdf/i8872.pdf> (last visited Dec. 4, 2018).

reporting with the Form LM-2 will alleviate confusion on the part of the public, as many would expect to see all funds of the union reported on its Form LM-2 report.

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

- The audit is performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with Generally Accepted Accounting Principles or Other Comprehensive Basis of Accounting.
- The audit includes notes to the financial statements that disclose, for the preceding twelve-month period:
  - Losses, shortages, or other discrepancies in the trust's finances;
  - The acquisition or disposition of assets, other than by purchase or sale;

- Liabilities and loans liquidated, reduced, or written off without the disbursement of cash;
  - Loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and
  - Loans made to officers and employees that were liquidated, reduced, or written off.
- The audit is accompanied by schedules that disclose, for the preceding twelve-month period:
- A statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; and
  - A statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in \$10,000 or more of commerce and the total of the transactions with each party.

The Department requests comment on whether it should exempt financial institutions affiliated with labor organizations, such as credit unions, from the final rule. Federally insured credit unions are already subject to extensive reporting requirements pursuant to the Federal Credit Union Act, 12 U.S.C. 1751, as well as other laws and regulations. The 2008 Final T-1 Rule exempted labor organizations from submitting a Form T-1 for a union-owned bank's financial operations.<sup>14</sup> In that Final Rule, the

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<sup>14</sup> Labor organizations are no longer permitted to own banks and only one union-owned bank exists by virtue of a grandfather provision in the Bank Holding Act of 1956. *See* 12 U.S.C. 1843.

Department wrote that the bank engaged in a much larger number of potentially reportable transactions and all but a few, if any, involved section 3(l) trusts. The Department also wrote that the bank was subject to strict state and federal regulations that temper the need for reporting obligations. However, the 2008 rule did not exempt credit unions from Form T-1 reporting. *See* 73 FR 57433.

#### 6. Reporting When Multiple Labor Organizations With Annual Receipts of at Least \$250,000 Participate in a Section 3(l) Trust

The Department proposes that only the parent union (*i.e.*, the national/international or intermediate union) would need to file the Form T-1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test. The affiliates would continue to identify the trust in their Form LM-2 report, and, under the proposal, would also state in their Form LM-2 report that the parent union will file a Form T-1 report for the trust.<sup>15</sup>

But where multiple labor organizations are interested in the same covered trust, the Department proposes that each and every Form LM-2 labor organization that meets the financial or managerial domination test files a Form T-1 report, provided that such labor organization is not affiliated with another parent labor organization that shares this reporting requirement. In this respect, the proposal does not differentiate among the reporting obligations of labor organizations contributing to the same trust. Any labor organization that satisfies the reporting threshold will have to submit the Form T-1, even though the labor organization's share may only represent a relatively small portion of the total contributions made to the trust by other labor organizations.

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<sup>15</sup> See the Information Collection Request (ICR) associated with this notice, which contains corresponding changes to the Form LM-2 Instructions, Part XI (Completing Form LM-2), Item 10 (Trusts or Funds). Specifically, the instructions state that the Form LM-2 filing labor organization must identify whether a Form T-1 will be filed for the labor organization's trust, providing the Form T-1 file number.

This proposal reflects information received in part during earlier rulemakings. In response to the Department's 2006 proposal, for example, an international labor organization explained that it was not uncommon for several locals to participate in an apprenticeship and training fund that would be funded by payments from employers pursuant to negotiated agreements providing for a "cents per hour" contribution for hours worked by each of their employees. 71 FR 57716, 57724. As an example, the labor organization discussed a fund with annual contributions over \$300,000 in which seven locals participated. *Id.* The contributions from each local ranged from about \$10,000 to about \$100,000. *Id.* The fund had four management and four labor trustees; three from different locals contributing to the trust and a fourth from the labor organizations' parent organization. *Id.* The labor organization also explained that it is common for local labor organizations in different crafts (affiliated with different parent bodies) to participate in a fund. *Id.* It explained that in these instances, it would be unusual for a single craft or local to represent a majority of the labor organization trustees. It stated that in such circumstances it is unrealistic to suggest that any single labor organization or craft controls the trust. *Id.*

As suggested by the Department's proposal and the apprenticeship and training fund just discussed, it is not uncommon for multiple labor organizations to participate in a section 3(I) trust without any single labor organization contributing a majority of the trust's receipts. In some trusts, such as strike funds, labor organizations may be the sole contributors to the fund; in others, such as Taft-Hartley trusts, the trust will be funded by employers, but such funds are established through collective bargaining agreements and the employer contributions are made for the benefit of the members of the participating labor organizations or their beneficiaries.

Thus, in order to prevent evasion of a labor organization's reporting requirements, this proposal may

require multiple labor organizations to report on a single trust. As discussed above, a single labor organization may circumvent its Form LM-2 reporting obligations when it retains a controlling management role or financially dominates a trust; there is no basis to conclude that a group of labor organizations is not equally capable of doing so. Disbursements from a trust of pooled labor organization money reflect the contributing labor organizations' financial conditions and operations as clearly as the disbursements from a trust funded by a single labor organization. A rule directed to preventing a single labor organization from circumventing or evading the law should not permit the same conduct when it is undertaken by more than one labor organization.

The Department is interested in streamlining this proposal's filing requirements in order to eliminate duplication and requests comments on how best to accomplish this. The Department requests comments on alternatives such as fixing the obligation on the labor organization with the greatest stake in the trust or allowing either one of the participating labor organizations or a parent union of one or more of the participating labor organizations to voluntarily take on this responsibility.

A consideration that led the Department to this proposal where multiple labor organizations may be required to report on a single trust is the recognition that the section 3(l) trust, not the reporting labor organizations, will compile most of the necessary information. This information, in large part, will be identical for each participating labor organization. This will also operate to allocate the reporting costs among the labor organizations, as determined by the trust, and will keep their total costs only marginally higher than if a Form T-1 was required to be filed by only one of the participating labor organizations. In requiring that multiple labor organizations file when they share a section 3(l) trust, the Department seeks to avoid penalizing the labor organization which contributes the most to the trust. The Department requests comments on these aspects of its proposal.

In response to the 2006 Proposed T-1 Rule, several commenters expressed concern that a section 3(l) trust could refuse to provide the information needed to complete the Form T-1. 71 FR 57716, 57726. Several commenters expressed concern about a labor organization's liability for failure to file a timely report, given that the trust might refuse to provide the information and the labor organization may be unable to compel production. The Department acknowledges that this may remain a possibility under this proposal. However, given that the reporting obligation under the proposal only arises where a labor organization, alone or in combination with other labor organizations, maintains management control or financial domination over a trust, the possibility of such intransigence appears remote.

The Department seeks comment on this aspect of the proposal.

## 7. Effective Date

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

Form T-1 must be filed within 90 days of the end of the labor organization's fiscal year. The Form T-1 shall cover the trust's most recent fiscal year, *i.e.*, the fiscal year ending on or before the closing date of the labor organization's own fiscal year.

Under the proposal, labor organizations will file a Form T-1 and Form LM-2 together. The filing will be due 90 days after the labor organization's fiscal year ends. The Form T-1 will be based on the latest available information for the trust's most recent fiscal year reported to the labor organization by the trust or from a qualifying audit. The Department's intention in permitting a labor organization to file Form T-1 within 90 days after the labor organization's fiscal year ending date, rather than requiring it to be filed within 90 days after the trust's fiscal year ending date, is to ease the burden for both the trust and the labor organization. The Department anticipates that a trust will be able to more readily provide necessary information to the reporting labor organization at the conclusion of the trust's fiscal year and that a labor organization will have correspondingly less difficulty in obtaining information at that time. The Department intends to include in the instructions that are published as part of the final rule examples of the rule's application to trusts and labor organizations that have the same or different fiscal years.

## **Paperwork Reduction Act**

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 ("PRA").<sup>16</sup>

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<sup>16</sup> See 5 CFR 1320.9. The rule implements an information collection that meets the requirements of the PRA in that: (1) the information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information; (3) the provisions reduce to the extent practicable and appropriate the burden on labor organizations that must provide the information, including small labor organizations; (4) the form, instructions, and explanatory information are written in plain language that will be understandable by reporting labor organizations; (5) the disclosure requirements are implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of labor organizations that must comply with them; (6) this preamble informs labor organizations of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, which is mandatory, the fact that all information collected will be made public, and the fact that they need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is "appropriate to the purpose for

## A. Summary

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

Union members thus will be able to obtain a more accurate and complete picture of their union's financial condition and operations without imposing an unwarranted burden on respondents. Supporting documentation need not be submitted with the forms, but labor organizations are required, pursuant to the LMRDA, to maintain, assemble, and produce such documentation in the event of an inquiry from a union member or a compliance audit by an OLMS investigator.

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which the information is to be collected"; and (9) the changes implemented by this rule make extensive, appropriate use of information technology "to reduce burden and improve data quality, agency efficiency and responsiveness to the public." *See* 5 CFR 1320.9; 44 U.S.C. 3506(c).

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

The Department estimates that a maximum of 2070 Form T-1 reports will be submitted annually by 810 labor organizations as a result of the proposed rule. The Department derives this estimate from a review of 2018 LM-2 reports from labor organizations that identified having a trust. The Department recognizes that this number of Form T-1 filers is an over estimation due to the Department's current proposal that only the parent union (*i.e.*, the national/international or intermediate union) should file the Form T-1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test.

Each of these 810 labor organizations will file at least one Form T-1 annually. Given that the Department estimates a maximum of 2070 Form T-1 reports will be submitted annually, the 810 labor organizations will file ~2.56 reports on average.

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

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

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

### **B. Hours to Complete and File Form T-1**

The Department modeled its current analysis on the analysis in the 2008 Form T-1 final rule. The Department estimates burden hours for the nonrecurring (first year) recordkeeping and reporting requirements, the recurring recordkeeping and reporting burden hours, and a three-year annual average for the additional nonrecurring and recurring burden hours associated with the final rule. *See* 73 FR 57436-57445.

The Department estimates that, on average, labor organizations will expend 1.83 reporting hours each year completing page one of the Form T-1. To complete the first page of the Form T-1, the labor organization will have to train new staff on the reporting software; enter trust information; answer questions 9, 14, and 15; provide additional information (if necessary); and sign the report. The labor organization's information should be automatically filled by the reporting software when the Form T-1 is downloaded. The remaining information provided on the first page of the Form T-1 is very similar to the information provided on the first page of the Form LM-3 (10 items that identify the labor

organization and one yes/no question addressing whether or not the organization's records are kept at its mailing address). Experience with the Form LM-3 has indicated that LM-3 filers expend approximately 15 minutes each year training new staff on how to fill out the first page of the Form LM-3. Additionally, LM-3 filers spend approximately 5 minutes on each item and question on the Form LM-3. Therefore, the Department has determined that Form T-1 filers will spend 50 minutes filling out the trust information and answering the 3 yes/no questions. If additional information is required, the Department has determined that the labor organization should be able to fill out the mailing address for the records of the trust and labor organization in 10 minutes. Finally, the labor organization president and treasurer will be able to sign the Form T-1 in 20 minutes once they have reviewed the report. The president and treasurer will already have the signature software setup for the LM-2. In most cases, it will be a matter of pressing a button to apply the signature.

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

The Department estimates that, on average, labor organizations will expend 1.33 reporting hours each year completing page two of the Form T-1. The labor organization will have to train new staff, answer five questions, enter the total assets and liabilities, and enter additional information as necessary. Like the first page of the Form T-1, the second page of the Form T-1 is relatively straight forward. The Department has determined that labor organizations can train staff to complete the second page of the

Form T-1 in 15 minutes. The majority of the reporting burden is attributable to questions 16 through 20. Although rare, the types of losses and transactions captured by questions 16 through 20 are of significant importance to both labor organizations and trusts. Each of these losses or transactions is tracked closely by the trust to ensure that the trust is properly managed and free from preferential insider transactions. Therefore, the trust should be able easily to identify and provide details on any loss or transaction that falls within questions 16 through 20. The Department estimates that the trust should be able to provide the labor organization with answers to questions 16 through 20 in 25 minutes, 5 minutes per question. Further, the Department estimates that the labor organization will spend approximately 30 minutes entering the details of the transaction or loss in item 25. Finally, the Department estimates that it will take 10 minutes to find and enter the total assets and liabilities in items 21 and 22.

There is no recordkeeping burden associated with the second page of the Form T-1. The answers to questions 16 through 20 are tracked by the trust along with receipts and disbursements. Therefore, the recordkeeping burden associated with questions 16 through 20 has been included in the recordkeeping burden for the receipts and disbursements schedules. There is no recordkeeping burden associated with items 21 through 24. Information provided in items 21, total assets, and 22, total liabilities, are kept in the normal course of the trust's recordkeeping. Items 23, total receipts, and 24, total disbursements, will be automatically calculated and entered by the reporting software.

Trusts are already tracking most receipts, disbursements, and payments to officers and employees in the regular course of business, but it is unlikely they are tracking the information in the detail or structure required by Form T-1 reporting. Therefore, covered 3(l) trusts will have to change their accounting systems to track the necessary information in a format that can be provided to the interested labor organization to complete the Form T-1. In 2003, Form LM-2 filers had to change their accounting

systems to capture information very similar to the information reported on the Form T-1. Experience with the Form LM-2 indicates that, on average, T-1 respondents will expend 9.75 (of nonrecurring burden) hours developing, testing, and reviewing revisions to the account software; preparing the download methodology; and training personnel on each of the schedules.

The Form 5500 exemption significantly reduces the variability of 3(l) trusts covered by the Form T-1. A careful analysis of the remaining trusts, used in the analysis above, indicates that most of the Form T-1s will be filed for building trusts, strike funds, labor-management cooperation committees, and apprenticeship and training funds. Unlike pension and health plans, these trusts, on average, will have few disbursements, receipts, officers, and employees. For example, strike funds are likely to have no disbursements unless the labor organization is striking. Further, many of these trusts, including building trusts, are closely associated with the labor organization and function in a similar fashion. Therefore, similar to the 2008 rule, the Department uses the Form LM-2 experience to estimate the number of disbursements, receipts, officers, and employees listed on the Form T-1.

In terms of recordkeeping, the Department estimates that, on average, Form T-1 filers will expend 5.43 hours a year on recordkeeping to document the information necessary to complete the Form T-1 receipts schedule. Additionally, for the Form T-1 disbursement schedule, the Department estimates that, on average, filers will expend 54.13 hours a year on recordkeeping. Further, the Department estimates Form T-1 filers will expend 10.07 hours on recordkeeping to compile the information necessary to complete the officers and employees schedule.

Finally, the Department estimated that Form T-1 filers will spend 3.75 hours on each schedule inputting the data. Inputting the information into the Form T-1 is very similar to inputting data into the Form LM-

2. Experience with the Form LM-2 in previous rulemakings indicates that a labor organization will spend 15 minutes a year training new staff; 60 minutes preparing the download; 90 minutes preparing and testing the data file; and 60 minutes editing, validating and importing the data.

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

### **C. Estimated Number of Form T-1 Reports**

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

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

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

The final chart (Table 3) generated the average number of Form T-1s that would be filed per Form T-1

filer in each decile and overall.

**Table 1 - Total Number of Form T-1s by Decile**

Decile of LM-2s with at Least 1 3(l) Trust	Formula*	Variable	Number of T-1s
10 (Top 10%)	Y	Y	330
9	$(W+Y)/2$		299.25
8	$(Z+Y)/2$	W	268.5
7	$(W+Z)/2$		237.75
6	$(X+Y)/2$	Z	207
5	$(X+Y)/2$	Z	207

4	$(T+Z)/2$		176.25
3	$(Z+X)/2$	T	145.5
2	$(T+X)/2$		114.75
1 (Bottom 10%)	X	X	84
Total:			2070

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

Given the divide in the number of T-1 reports between the top decile consisting of the largest LM-2 filers and the bottom consisting of the smallest, namely that the top decile has over twice as many T-1 reports likely to be filed as the bottom decile, the Department assumes that using the simple arithmetic

mean Z to represent the number of T-1 reports by decile would misrepresent the number of reports in those deciles. Z would be an overestimation of reports in the lower deciles and an underestimation in the top deciles. Instead, in order to represent the gradual decline in T-1 reports that is expected in each decile, and thus represent the number of T-1 reports generated in each decile more accurately, the Department calculated the average of Z & Y and then the average of Z & X in order to calculate W and T, respectively, where W is the number of T-1 reports expected for the middle decile in the top deciles (Decile 8) and T is the middle decile in the bottom deciles (Decile 3).

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

**Table 2 - Number of Unions Filing at Least 1 Form T-1**

Decile of LM-2s with at Least 1 3(l) Trust	Formula*	Variable	Number of Unions Filing at Least 1 T-1
10 (Top 10%)	Y	Y	100
9	$(W+Y)/2$		95.25

8	$(Z+Y)/2$	W	90.5
7	$(W+Z)/2$		85.75
6	$(X+Y)/2$	Z	81
5	$(X+Y)/2$	Z	81
4	$(T+Z)/2$		76.25
3	$(Z+X)/2$	T	71.5
2	$(T+X)/2$		66.75
1 (Bottom 10%)	X	X	62

Total:			810
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\* These formulae represent the process by which the Department calculated the average number of labor organizations filing at least 1 (one) T-1 report in each decile. X and Y were not calculations; these variables were figures determined from extensive, time-consuming reviews of all LM-2 filers with trusts in the bottom and top deciles by annual revenue size, respectively. Decile 5 and 6, being the middle deciles, were represented by a simple arithmetic mean, averaging X and Y together to find Z, the average number of unions filing at least 1 (one) T-1 report in those deciles.

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

With W and T, the remaining deciles were determined. The number of labor organizations filing at least

1 (one) T-1 report for Decile 9 was calculated by averaging Y (the number of such labor organizations in Decile 10) and W (the number of such labor organizations in Decile 8). Decile 7 by averaging W (the number of such labor organizations in Decile 8) and Z (the number of such labor organizations in Decile 6). Decile 4 by averaging Z (the number of such labor organizations in Decile 5) and T (the number of such labor organizations in Decile 3). Decile 2 by averaging T (the number of such labor organizations in Decile 3) and X (the number of such labor organizations in Decile 1).

**Table 3 - Number of Form T-1 Reports Per Union Filing At Least 1 Form T-1**

Decile of LM-2s with at Least 1 3(l) Trust	Formula*	Number of T-1s	Number of Unions Filing at Least 1 T-1	Average Number of T-1s per Union**
10 (Top 10%)	$X/Y = Z$	330	100	3.3
9	$X/Y=Z$	299.25	95.25	3.14
8	$X/Y=Z$	268.5	90.5	2.97

7	X/Y=Z	237.75	85.75	2.77
6	X/Y=Z	207	81	2.56
5	X/Y=Z	207	81	2.56
4	X/Y=Z	176.25	76.25	2.31
3	X/Y=Z	145.5	71.5	2.03
2	X/Y=Z	114.75	66.75	1.72
1 (Bottom 10%)	X/Y=Z	84	62	1.35
Total:		2070	810	2.56***

\*= Where “X” represents the Number of Form T-1s, “Y” represents the Number of Unions Filing at Least 1 Form T-1, and Z represents the Average number of Form T-1s per Union.

\*\*= Rounded to the Nearest 100th

\*\*\*= This represents the overall average number of reports Form T-1 filers must file.

As the proposed rule requires an information collection, the Department is submitting, contemporaneous with the publication of this notice, an information collection request (ICR) to revise the Paperwork Reduction Act (PRA) clearance to address the clearance term. The ICR includes a new form, the Form T-1, which the Department has drafted that LM-2 filing labor organizations must complete and submit, consistent with this proposed rule. The ICR also contains corresponding changes to the Form LM-2 Instructions, Part XI (Completing Form LM-2), Item 10 (Trusts or Funds). A copy of this ICR, with applicable supporting documentation, including among other items a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at

[http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201903-1245-001](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201903-1245-001) (this link will only become active on the day following publication of this notice) or from the Department by contacting Andrew Davis on 202-693-0123 (this is not a toll-free number)/ email: [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov).

As mentioned in DATES and ADDRESSES sections of this preamble, the Department invites interested parties to comment on any aspect of this revised information collection, In addition, interested parties may also submit comments on the ICR directly with OMB for a period of 30 days after publication of this proposed rule. PRA comments should reference OMB control number 1245-0003. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Type of Review:* Revision of an existing collection.

*Agency:* OLMS.

*Title:* Labor Organization and Auxiliary Reports.

*OMB Number:* 1245-0003.

*Affected Public:* Private Sector—not-for-profit institutions.

*Total Estimated Number of Annual Respondents:* 2,070.

*Total Estimated Number of Responses:* 33,571.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden Hours: 4,754,243.*

*Estimated Total Annual Other Burden Cost: \$0.*

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

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. 58 FR 51735. Section 3(f) of E.O. 12866 defines a "significant regulatory action" as an action that is likely to result in a rule that (1) has an annual effect on the economy of \$100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. *Id.* OMB has determined that this proposed rule is not an economically significant regulatory action under section 3(f) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the

agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

E.O. 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This proposed rule is expected to be an EO 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

#### **A. Costs of the Form T-1 for Labor Organizations**

The Form T-1 will be filed by Form LM-2 filing labor organizations with trusts that meet the dominance test if those labor organizations are not otherwise exempted from filing. Using data from LM-2 filings, the Department estimates that there are at least 810 total affected labor organizations (*i.e.*, LM-2 filers with trusts for which they must submit at least 1 Form T-1). The average form LM-2 filer will spend approximately 121.38 hours on average in the first year, and 84.12 hours each subsequent year to fill out the report. Based on current filings, the average hourly wage at LM-2 filers for an accountant is \$35.42, \$17.37 for a bookkeeper or clerk, \$21.54 for a secretary or treasurer, and \$26.10 for the president, respectively. The weighted average hourly wage for LM-2 filers is \$33.87. To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been doubled, so the fully loaded hourly wage is \$67.74 ( $\$33.87 \times 2 = \$67.74$ ).

Therefore, the cost for each T-1 filer to complete a T-1 is estimated to be \$8,222.28 ( $\$67.74 \times 121.38$  hours = \$8,222.28). This number, however, should be multiplied by the average number of reports that

each T-1 filer will be responsible for (2.56), for a total of \$21,049. This number should have a one-time regulation familiarization cost of \$13.05 per filer ( $0.25 \text{ hours} \times \$52.20 = \$13.05$ ) included as well.

Doing so brings the first year costs per filer to \$21,063 ( $[2.56 \times 121.38 \times \$67.74] + \$13.05 = \$21,063$ ).

In subsequent years, the cost for each T-1 filer would be \$14,588 ( $2.56 \times 84.12 \times \$67.74 = \$14,588$ ).

Thus, the total annual cost in the first year for all 810 T-1 filers is estimated to be \$17,061,030 ( $810 \times \$21,063 = \$17,061,030$ ), and the total annual cost in subsequent years is estimated to be \$11,816,280 ( $810 \times \$14,588 = \$11,816,280$ ).

Regulatory familiarization costs represent direct costs to LM-2 labor organizations associated with reviewing the new regulation to see if it applies to them. The Department calculated this cost by multiplying the estimated time to review the rule by the hourly compensation of the president of the LM-2 filing labor organization. Using the same fringe benefit and overhead costs rationale as above, the fully loaded hourly wage for the president is \$52.20 ( $\$26.10 \times 2 = \$52.20$ ). The Department estimates that the president of each labor organization will spend 15 minutes to review the rule.

Therefore, the one-time familiarization cost for all remaining 1,200 LM-2 filing labor organizations with trusts (2010 LM-2 filers with trusts minus the 810 T-1 filers that are already accounted for = 1,200) is estimated to be \$38,237 ( $\$52.20 \times 1,200 \text{ LM-2 filers with trusts} \times .25 \text{ hours} = \$15,660$ ) in the first year.

## **B. Summary of Costs**

The total expected first-year costs would be \$17,076,690 ( $\$17,061,030 + 15,660 = \$17,076,690$ ) In subsequent years, the total cost would be \$11,816,280. The 10-year annualized cost is expected to be

\$12,414,999 at a 3 percent discount rate and \$12,516,246 at a 7 percent discount rate. The annualized perpetual cost at a 7 percent discount rate is expected to be \$9,110,275.

### **C. Benefits**

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

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

## **Regulatory Flexibility Analysis**

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

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the determination is that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. *Id.*

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

According to the Small Business Administration (SBA), organizations under NAICS 813930 are considered small entities if they have average annual receipts of less than \$7.5 million.<sup>17</sup> For this analysis, based on previous standards utilized in other regulatory analyses, the threshold for significance is 3% of annual receipts, while a substantial number of small entities would be 20%.

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

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

#### **A. Why the Department is Considering Action**

As explained more fully in the preamble to today's proposed rule, the Department is considering today's

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<sup>17</sup> *See* <https://www.sba.gov/document/support--table-size-standards>.

proposed rule to avoid circumvention and evasion of the reporting requirements established by Congress in the LMRDA to “eliminate or prevent improper practices” in labor organizations, protect the rights and interests of workers, and prevent labor organization corruption. 29 U.S.C. 401(b), (c), 431(b). These reporting provisions of the LMRDA were intended to safeguard democratic procedures within labor organizations and protect the basic democratic rights of union members. But recent cases of corruption have highlighted the potential for circumvention and evasion of these requirements through the use of section 3(l) trusts. The Form T-1 will prevent such evasion and thereby enable labor organization members to be responsible, informed, and effective participants in the governance of their labor organizations; discourage embezzlement and financial mismanagement; and strengthen the effective and efficient enforcement of the Act by the Department.

The Form T-1 is specifically designed to close a reporting gap where labor organization finances related to LMRDA section 3(l) trusts were not disclosed to members, the public, or the Department. The Form T-1 would follow labor organization funds that remain in closely connected trusts, but which would otherwise go unreported. As a result of non-disclosure of these funds, members have long been denied important information about labor organization funds that were being directed to other entities, ostensibly for the members’ benefit, such as joint funds administered by a labor organization and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions, and redevelopment or investment groups. *See* 67 FR 79285. The Form T-1 is necessary to close this gap and prevent certain trusts from being used to evade the Title II reporting requirements. It will provide labor organization members with information about financial transactions involving a significant amount of money relative to the labor organization’s overall financial operations and other reportable transactions. 68 FR 58415. For example, the Form T-1 will also identify the trust’s significant vendors and service providers. A labor organization member who is aware that a labor

organization official has a financial relationship with one or more of these businesses will then be able to determine whether the business and the labor organization official have made required reports concerning that relationship. This proposal thus serves the fundamental purpose of the LMRDA disclosure requirements to prevent financial malfeasance on the part of those handling labor organization money. 67 FR 79282-83.

## **B. Objectives of and Legal Basis for the Proposed Rule**

Congress enacted the LMRDA after an extensive investigation of “the labor and management fields ... [found] that there ha[d] been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct...” 29 U.S.C. 401(b). Congress intended the Act to “eliminate or prevent improper practices” in labor organizations, to protect the rights and interests of employees, and to prevent union corruption. 29 U.S.C. 401(b), (c).

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

The legal authority for this rule is section 208 of the LMRDA, 29 U.S.C. 438. Section 208 provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing

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

### **C. Compliance Requirements of the Proposed Rule, Including Reporting and Recordkeeping**

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

The labor organization alone, or in combination with other labor organizations, either:

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

### **D. Estimating the Number of Small Businesses Affected by the Rulemaking**

As stated in the Paperwork Reduction Act analysis (PRA), this rule will apply to the 2,009 labor

organizations with at least one trust<sup>18</sup> and that are at least \$250,000 in size by annual receipts. This will result in the submission of approximately 2070 Form T-1 reports.

#### **E. Cost to Complete and File Form T-1**

Based on current filings, the average hourly wage at LM-2 filers for an accountant is \$35.42, \$17.37 for a bookkeeper or clerk, \$21.54 for a secretary or treasurer, and \$26.10 for the president, respectively. The weighted average hourly wage for LM-2 filers is \$33.87. To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been doubled, so the fully loaded hourly wage is \$67.74 ( $\$33.87 \times 2 = \$67.74$ ).

As discussed in the regulatory impact analysis above, the average cost per respondent to complete the Form T-1 is \$21,063 in the first year, and is \$14,588 in each subsequent year.

#### **F. Calculating Impact of Proposed Rule on Small Business Firms**

For this analysis, a small union is defined as one in which annual receipts are less than \$7.5 million dollars. This rule impacts 2009 labor organizations at least \$250,000 in size by annual receipts, with at least one trust. Of these organizations, only 1648 have annual receipts less than \$7.5 million. The data cited for the following calculations came from a query of the Department's database containing all submitted 2018 Form LM-2 union financial disclosure reports. The query asked for all Form LM-2 filers

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<sup>18</sup> While 2,036 Form LM-2 filing unions reported having trusts, 27 of these LM-2 filers had receipts under \$250,000 and were removed in calculating the deciles, bringing the number to 2009. These 27 presumably consist of unions under trusteeship for which a parent organization files an LM-2 (organizations that are likely not small entities), unions mistakenly filing an LM-2, and possibly unions filing terminal reports. They were removed because it is likely that they would not file a T-1; any that might be covered consist of a markedly small portion that is already covered by the extra T-1s captured in the Department's overestimation of 2,070 reports.

with at least one trust. It returned a list of each such filer along with various discrete informational fields, including each Form LM-2 filer's annual receipts information, which was used to identify all of the Form LM-2 filers with less than \$7.5 million in annual receipts that inform this RFA analysis.

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

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

There are only 376 LM-2 filers with at least one trust whose annual receipts were small enough that the Form T-1 costs would amount to more than a 3% impact. The largest of the 376 had annual receipts of \$700,249 for a 3.01% impact. The smallest of the filers had \$253,475 in annual receipts for an 8.31% impact.

Under this rule 376 unions would have costs representing more than 3% of their annual receipts (at most 8.31%). The proposed rule thus impacts 22.82% of small business entities, which exceeds the 20%

standard set for this NPRM.

**Significant Impact on Small Unions - \$7.5 Million Size Standard**

Size (by Receipts)	# of Small Unions Affected	Avg. Annual Receipts	Avg. T-1 Rule Burden per Union	Burden as % of Annual Receipts	% of Small Unions Affected	# of Small Unions Subject to Significant Impact*	% of Small Unions Subject to Significant Impact**
\$5M - \$7.5M	145	\$6,072,570	\$21,063	0.34%	8.80%	0	
\$2.5M - \$4.99M	377	\$3,542,277	\$21,063	0.59%	22.88%	0	
\$1M - \$2.49M	543	\$1,642,770	\$21,063	1.28%	32.95%	0	
\$500K - \$999,999	368	\$740,460	\$21,063	2.84%	22.33%	161	
\$250K - \$499,999	215	\$380,192	\$21,063	5.54%	13.05%	215	
<b>Total</b>	<b>1,648</b>				<b>100%</b>	<b>376</b>	<b>22.82%</b>
	*The Revenue test for significant impact on small unions is set at 3% for this NPRM.						
	**The standard for substantial number is set at 20% of small unions overall for this NPRM.						

The Department welcomes comments on the data, factors, and assumptions used in this analysis.

**G. Relevant Federal Rules Duplicating, Overlapping, or Conflicting with the Rule**

To the extent that there are federal rules that duplicate, overlap, or conflict with this rule, a specific exemption from the requirements of this rule has been provided. Specifically, no union with a 3(l) trust would need to file a Form T-1 if the trust has filed a complete and timely Form 5500 with EBSA.

The Department is not aware of any other relevant federal rules that conflict with this NPRM.

**H. Alternative to the Proposed Rule.**

The Department has considered and here presents three regulatory alternatives: (1) no regulatory action, (2) a similar proposal, but with a modified test for when a Form T-1 is required for a given 3(l) trusts, and (3) a similar proposal, but modifying the Form T-1 in order to reduce its scope.

If the Department were not to take this regulatory action, it would avoid any new burden on labor organizations and thus ensure no new significant economic impact on small entities, but it would at the same time prevent realization of the many benefits of the Form T-1 detailed in this proposed rule.

Regulatory inaction would leave open the current avenue for circumvention or evasion of reporting requirements through moving funds into union-controlled trusts and would eliminate the associated benefits to union financial transparency. The Department invites comments on this alternative, but has not pursued it because the prevention of circumvention or evasion of union financial reporting is a responsibility of the Department pursuant to the LMRDA.

Modifying the proposed financial or managerial domination test would serve to reduce the burden on small labor organizations because fewer trusts would be covered under that alternative to the proposed rule. However, it would be critical to somehow ensure that the trusts that are no longer covered do not serve as possible tools for circumventing or evading financial reporting. The test already limits coverage based on one or more labor organizations having control over the trust in question, so viable exemptions are those that retain coverage for trusts over which unions hold sufficient control or that carve out exemptions for certain trusts. As to exemptions, the Department has already incorporated some exemptions into the proposed rule as it currently stands where trusts already report sufficient financial information to another agency, e.g., exempting trusts that file the Form 5500 with the Department. Further, the Department has proposed to exempt subordinate labor organizations from having to file a Form T-1 when the parent labor organization files one covering the subordinate's trust. The Department

invites comments on such alternatives, but has not pursued these alternatives because the control test has already been narrowed and tailored throughout the history of the Form T-1 to ensure it does not extend the Form T-1 reporting requirement to any more trusts than necessary while still fully serving the purpose of preventing circumvention or evasion of reporting obligations.

Simplifying and reducing the scope of the Form T-1 could alleviate the burden on small entities by reducing the burden hours of completing each Form T-1, but the Department would be doing so at the cost of losing important information on every single Form T-1 filed. Potential alternatives to the current Form T-1 with reduced scope could include fewer schedules or further limit the category of disbursements that must be itemized. The Department invites comments on such alternatives, but has not pursued them in this proposal because the schedules and itemization requirements are already greatly reduced compared to the Form LM-2 that the covered labor organizations complete and because further modification could impede the prevention of circumvention or evasion of LMRDA reporting requirements.<sup>19</sup>

### **I. Differing Compliance and Reporting Requirements for Small Entities**

This NPRM provides for no differing compliance requirements or reporting requirements for small entities. Under the rule, the reporting, recordkeeping, and other compliance requirements apply equally to all labor organizations that are required to file a Form T-1 under the LMRDA.

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<sup>19</sup> Form T-1 includes only three (3) schedules compared to the twenty (20) schedules of the Form LM-2 and has a higher threshold of \$10,000 for itemization compared to \$5,000 for the Form LM-2.

## **J. Clarification, Consolidation, and Simplification of Compliance and Reporting**

### **Requirements for Small Entities**

This NPRM was drafted to clearly state the compliance and reporting requirements for all small entities subject to this proposed rule.

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

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

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

## **Small Business Regulatory Enforcement Fairness Act of 1996**

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

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

- Labor Organization, Trusts, Reporting and Recordkeeping Requirements

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

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

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

AUTHORITY: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461);

Secretary's Order No. 03-2012, 77 FR 69376, November 16, 2012.

2. Amend § 403.2, by adding paragraph (d) to read as follows:

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

\* \* \* \* \*

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

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

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

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

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

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

(2) A separate report shall be filed on Form T-1 for each such trust within 90 days after the end of the labor organization's fiscal year in the detail required by the instructions accompanying the form and constituting a part thereof, and shall be signed by the president and treasurer, or corresponding principal officers, of the labor organization. Only the parent labor organization (*i.e.*, the national/international or intermediate labor organization) must file the Form T-1 report for covered trusts in which both the parent labor organization and its affiliates satisfy the financial or managerial domination test set forth in paragraph (d)(1)(i) of this section. The affiliates must continue to identify the trust in their Form LM-2 Labor Organization Annual Report, and include a statement that the parent labor organization will file a Form T-1 report for the trust.

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

(i) That meets the statutory definition of a labor organization and already files a Form LM-2, Form LM-3, Form LM-4, or simplified LM report,

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

(iii) That meets the definition of a subsidiary organization pursuant to Part X of the instructions for the Form LM-2 Labor Organization Annual Report,

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

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

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

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

(viii) That files a Form 5500 under 29 U.S.C. section 1021 and/or 1024. Filing the Form 5500-SF is not included within this exemption, unless the plan is required to file an annual form with the Employee Benefits Security Administration (EBSA)

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

(5) If such labor organization is in trusteeship on the date for filing the annual financial report, the labor

organization that has assumed trusteeship over such subordinate labor organization shall file such report as provided in § 408.5 of this chapter.

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

**§ 403.5. Terminal financial report.**

\* \* \* \* \*

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

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

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

\* \* \* \* \*

(b) \* \* \*

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

Signed in Washington, DC.

Arthur F. Rosenfeld

Director, Office of Labor-Management Standards

### **Appendix**

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

# FORM T-1 TRUST ANNUAL REPORT

<p>This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440. READ THE INSTRUCTIONS CAREFULLY BEFORE PREPARING THIS REPORT.</p>			
For Official Use Only	1. FILE NUMBERS UNION a) TRUST b)	2. PERIOD COVERED MO DAY YEAR  From  Through	3. (a) AMENDED - If this is an amended report, check here: (b) HARDSHIP - If filing under the hardship procedures, check here: (c) TERMINAL - If this is a terminal report, check here:
4. NAME OF UNION		10. NAME OF TRUST	
5. DESIGNATION (Local, Lodge, etc.)	6. DESIGNATION NUMBER	11. TAX STATUS OF TRUST	
7. UNIT NAME OF UNION (if any)		12. PURPOSE OF TRUST	
8. MAILING ADDRESS OF UNION (use capital letters)		13. MAILING ADDRESS OF TRUST (use capital letters)	
First Name	Last Name	First Name	Last Name
P.O. Box - Building and Room Number (if any)		P.O. Box - Building and Room Number (if any)	
Number and Street		Number and Street	
City		City	
State	Zip Code + 4	State	Zip Code + 4
9. Are the union's records kept at its mailing address? (If "No," provide address in Item 25.)  <div style="text-align: right;">                     Yes      No  <input type="checkbox"/>      <input type="checkbox"/> </div>		14. Are the trust's records kept at its mailing address? (If "No," provide address in Item 25.)  <div style="text-align: right;">                     Yes      No  <input type="checkbox"/>      <input type="checkbox"/> </div>	
		15. Will the labor organization be submitting an independent, certified audit in place of the remainder of Form T-1?  <div style="text-align: right;">                     Yes      No  <input type="checkbox"/>      <input type="checkbox"/> </div>	

Each of the undersigned, duly authorized officers of the above labor organization, declares, under penalty of perjury and other applicable penalties of law, that all of the information submitted in this report (including the information contained in any accompanying documents) has been examined by the signatory and is, to the best of the undersigned's knowledge and belief, true, correct, and complete. (See Section V on penalties in the instructions.)			
26. SIGNED: _____  _____ Date	PRESIDENT	27. SIGNED: _____  _____ Date	TREASURER
_____ Telephone Number		_____ Telephone Number	



**Complete Items 16 Through 25**

16. During the reporting period did the trust discover any loss or shortage of funds or other property? (Answer "Yes" even if there has been repayment or recovery.)

- YES
- NO

17. During the reporting period did the trust acquire or dispose of any goods or property in any manner other than by purchase or sale?

- YES
- NO

18. During the reporting period did the trust liquidate, reduce or write-off any liabilities without full payment of principal and interest?

- YES
- NO

19. Has the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates?

- YES
- NO

20. During the reporting period did the trust liquidate, reduce or write-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest?

- YES
- NO

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

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

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

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

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

**Please be sure to:**

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

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

**SCHEDULE 1 - INDIVIDUALLY IDENTIFIED RECEIPTS**

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

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

**Initial Itemization Page**

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

**SCHEDULE 2 - INDIVIDUALLY IDENTIFIED DISBURSEMENTS**

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

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

**Initial Itemization Page**

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

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

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

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

**25. ADDITIONAL INFORMATION**

UNION FILE NUMBER (a):

TRUST FILE NUMBER (b):

**Paperwork Reduction Act Notice:** Public reporting burden for this collection of information is estimated to average [X] hours per response in 20XX, [X] hours per response in 20XX, and [X] hours per response in 20XX and subsequent years. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. See 29 C.F.R. Part 403. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

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# INSTRUCTIONS FOR FORM T-1 TRUST ANNUAL REPORT

## GENERAL INSTRUCTIONS

### I. WHO MUST FILE

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

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

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

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

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

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

No Form T-1 should be filed for any trust that meets the statutory definition of a labor organization and already files a Form LM-2, LM-3, or LM-4, nor should a report be filed for any entity that is

expressly exempted from reporting in the LMRDA. No report need be filed for a subsidiary organization, as defined in Part X of the instructions for the Form LM-2 Labor Organization Annual Report. No report need be filed for a trust established as a Political Action Committee (PAC) if timely, complete, and publicly available reports on the PAC are filed with a Federal or state agency, or for a trust established as a political organization under 26 U.S.C. 527 if timely, complete, and publicly available reports are filed with the Internal Revenue Service. No Form T-1 need be filed for any trust that is an employee benefit plan that files a Form 5500, under the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. 1021 and/or 1024, for a plan year ending during the reporting period of the labor organization. Filing the Form 5500–SF is not included within this exemption, unless the plan is required to file an annual form with the Employee Benefits Security Administration (EBSA). No report need be filed for federal employee health benefit plans subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), nor for any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843.

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

A labor organization may complete only Items 1 through 15 and Items 26-27 (Signatures) of Form T-1 if an annual audit is prepared according to the following standards and a copy of the audit is filed with the Form T-1. The audit must be performed by an independent qualified public accountant, who after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust’s financial statements are presented fairly in conformity with Generally Accepted Accounting Principles (GAAP) or Other Comprehensive Basis of Accounting (OCBOA). The audit must include notes to the financial statements that disclose: losses,

shortages, or other discrepancies in the trust’s finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; loans made to labor organization officers or employees that were granted at more favorable terms than were available to others; and loans made to officers and employees that were liquidated, reduced, or written off. The audit must be accompanied by schedules that disclose: a statement of the assets and liabilities of the trust, aggregated by categories and valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements aggregated by general sources and applications, which must include the names of the parties with which the trust engaged in \$10,000 or more of commerce and the total of the transactions with each party.

Form T-1 must be filed with the Office of Labor-Management Standards (OLMS) of the U.S. Department of Labor (Department). The labor organization must file a separate Form T-1 for each trust that meets the above requirements.

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

## II. WHEN TO FILE

The Form T-1 requirements take effect on [YEAR]; they apply to a labor organization whose fiscal year *and* the fiscal year of its section 3(l) trust begin on or after January 1, [YEAR]. Form T-1 must be filed within 90 days of the end of the labor organization’s fiscal year. The Form T-1 shall cover the trust’s most recently completed fiscal year, *i.e.*, the fiscal year ending on or before the

closing date of the labor organization's own fiscal year. The penalties for delinquency are described in Section V (Officer Responsibilities and Penalties) of these instructions. Examples of filing dates for the Form T-1 follow:

Where the trust and labor organization have the same fiscal years

- The trust and labor organization have fiscal years ending on December 31. The Form T-1 for the fiscal year ending December 31, [YEAR] must be filed not later than March 31, [YEAR].
- The trust and the labor organization each has a fiscal year that ends on September 30. The labor organization's first Form T-1 will be for the trust's fiscal year ending September 30, [YEAR] and must be filed not later than December 29, [YEAR].

Where the trust and labor organization have different fiscal years

- The trust's fiscal year ends on June 30. The labor organization's fiscal year ends on September 30. Its first Form T-1 for this trust will be for the trust's fiscal year ending June 30, [YEAR ] and must be filed not later than December 29, [YEAR].
- The trust's fiscal year ends on September 30. The labor organization's fiscal year ends on December 31. Its first Form T-1 for this trust will be for the trust's fiscal year ending September 30, 2010 and must be filed not later than March 31, [YEAR].

If a trust for which a labor organization was required to file a Form T-1 goes out of existence, a terminal financial report must be filed within 30 days after the date it ceased to exist. Similarly, if a trust for which a labor organization was required to file a Form T-1 continues to exist, but the labor organization's interest in that trust ceases, a terminal financial report must be filed within 30 days

after the date that the labor organization's interest in the trust ceased. See Section IX (Trusts That Have Ceased to Exist) of these instructions for information on filing a terminal financial report.

### III. HOW TO FILE

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

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

#### HARDSHIP EXEMPTIONS

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

#### TEMPORARY HARDSHIP EXEMPTION:

If a labor organization experiences unanticipated technical difficulties that prevent the timely preparation and submission of an electronic filing of Form T-1, it may be filed in paper format by the required due date. An electronic format copy of the filed paper format document shall be submitted to the Department within ten business days after the required due date. Indicate in

Item 3 (Amended, Hardship Exempted, or Terminal Report) that the labor organization is filing this form under the hardship exemption procedures. Unanticipated technical difficulties that may result in additional delays should be brought to the attention of OLMS by email at [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov) or by phone at 202-693-0123.

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

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

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

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

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

The president and treasurer or the corresponding principal officers of the labor organization required to sign Form T-1 are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information

required to be contained in the report or in any information required to be submitted with it. Under the CSRA and FSA and implementing regulations, false reporting and failure to report may result in administrative enforcement action and litigation. The officers responsible for signing Form T-1 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18 and 1746 of Title 28 of the United States Code.

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

#### **VI. RECORDKEEPING**

The officers required to file Form T-1 are responsible for maintaining records that will provide in sufficient detail the information and data necessary to verify the accuracy and completeness of the report. The records must be kept for at least five years after the date the report is filed. Any record necessary to verify, explain, or clarify the report must be retained, including, but not limited to, vouchers, worksheets, receipts, applicable resolutions, and any electronic documents used to complete and file the report.

#### **SPECIAL INSTRUCTIONS FOR CERTAIN ORGANIZATIONS**

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

Any labor organization that has placed a subordinate labor organization in trusteeship is responsible for filing the

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

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

## VIII. COMPLETING FORM T-1

### INTRODUCTION

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

You may click on the "Validate Form" button at any time to check for errors. This action will generate an "Errors Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.

Items 1, 2, and 4 - 7 are "pre-filled" items. These fields were filled in by EFS based on information you entered when you initially accessed the system. You cannot edit these fields.

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

corrected before you sign the form.

### ITEMS 1 THROUGH 20

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

**1. FILE NUMBER** — EFS will enter the labor organization's 6-digit file number here and at the top of each page of Form LM-2. This is the number you entered when you downloaded Form LM-2. If the number is incorrect, you must download another copy of the form using the correct number. If the labor organization does not have the number on file and cannot obtain the number from prior reports filed with the Department, the number can be obtained from the OLMS Web site at [www.unionreports.gov](http://www.unionreports.gov), or by contacting the nearest OLMS field office.

The software will enter the trust's 7-digit (T### ###) file number in Item 1(b) and at the top of each page of Form T-1. This is the number you entered when you downloaded Form T-1. If the number is incorrect, you must download another copy of the form using the correct number.

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

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

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

correct dates.

If the labor organization changed its fiscal year, the ending date in Item 2 should be the labor organization's new fiscal year ending date and the labor organization should indicate in Item 69 (Additional Information) that the report is for a period of less than 12 months because its fiscal year has changed. For example, if the labor organization's fiscal year ending date changes from June 30 to December 31, a report must be filed for the partial year from July 1 to December 31. Thereafter, the labor organization's annual report should cover a full 12-month period from January 1 to December 31.

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

**4. NAME OF UNION** — EFS accesses this information from the OLMS database and will enter the name of the national or international labor organization that granted the labor organization a charter. "Affiliates," within the meaning of these instructions, are labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relationship of parent and subordinate. For example, a parent body is an affiliate of all of its subordinate bodies, and all subordinate bodies of the same

parent body are affiliates of each other.

If the labor organization has not reported such an affiliation, EFS will enter the name of the labor organization as currently identified in the labor organization's constitution and bylaws or other organizational documents.

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

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

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

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

**8. MAILING ADDRESS OF UNION** — EFS accesses the union's mailing address on record in the OLMS database and enters it in Item 8. The first and last name of the person, if any, to whom such mail should be sent and any building and room number should be included. These fields can be edited.

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

**10. NAME OF TRUST** — The software will enter the name of the

trust. This is the trust name you entered when you downloaded Form T-1. If the name is incorrect, you must download another form using the correct name.

This item cannot be edited. If the labor organization needs to change this information, contact the OLMS Division of Reports, Disclosure, and Audits by telephone at 202-693-0123 or by e-mail at [OLMS-Public@dol.gov](mailto:OLMS-Public@dol.gov). Indicate that the subject of the inquiry is the Form T-1 pre-filled identifying information.

**11. TRUST EMPLOYER IDENTIFICATION NUMBER (EIN) —**

Enter the Employer Identification Number assigned to the trust by the Internal Revenue Service.

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

**13. MAILING ADDRESS OF TRUST —**

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

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

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

*report.*

**15. AUDIT EXEMPTION —**

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

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

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

A filer may group similar acquired or disposed assets together, in

a larger category, as well as grouping multiple assets acquired from or disposed of to the same source. For example, if a trust acquired various types of office equipment as a donation, these assets may be grouped together for purposes of the description in Item 25.

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

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

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

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

## FINANCIAL DETAILS

### REPORT ONLY DOLLAR AMOUNTS

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

Enter a single “0” if there is nothing to report.

## REPORTING CLASSIFICATIONS

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

## ASSETS AND LIABILITIES

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

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

## RECEIPTS AND DISBURSEMENTS

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

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

Do not include in Item 23 or 24 the total amount from the sale or redemption of U.S. Treasury securities, marketable securities, or other investments that was promptly reinvested (i.e., “rolled over”) in U.S. Treasury securities, marketable securities, or other investments during the reporting period. “Promptly reinvested” means reinvesting (or “rolling over”) the funds in a week or less without using the funds for any other purpose during the period between the sale of the investment and the reinvestment.

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

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

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

## **SCHEDULES 1 THROUGH 3**

### **SCHEDULES 1 AND 2 — RECEIPTS AND DISBURSEMENTS**

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

All “major” receipts during the reporting period must be separately identified in Schedule 1. A “major” receipt includes: 1) any individual receipt of \$10,000 or more; or 2) total receipts from any

single entity or individual that aggregate to \$10,000 or more during the reporting period. This process is discussed further below.

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

### **Exemptions**

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

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

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

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

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

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

#### Procedures for Completing Schedules 1 and 2

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

An Initial Itemization Page must be completed for each payer/payee described above. Additional Itemization Page(s) for additional payers/payees can be generated and added to the end of Form T-1 by pressing the “Add More Receipts” or “Add More Disbursements” button located at the top of the first Initial Itemization Page. If the number of receipts/disbursements exceeds the number of space provided on the Initial Itemization Page a Continuation Itemization Page(s) can be generated and added to the end of the Form T-1 by pressing the “More Receipts

for this Payee” or “More Disbursements for this Payer” button located below Column (A). The software will automatically enter the name, address, and type or classification of the payee/payer on the Continuation Itemization Page(s).

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

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

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

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

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

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

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

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

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

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

#### Special Instructions for Reporting Credit Card Disbursements

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

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

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

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

In instances when a credit card transaction is canceled and the charge is refunded in whole or part by entry of a credit on the

credit card statement, the charge should be treated as a disbursement, and the credit should be treated as a receipt. In reporting the credit as a receipt, Column (C) of Schedule 1 must indicate that the receipt was in refund of a disbursement, and must identify the disbursement by date and amount.

#### Special Procedures for Reporting Confidential Information

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

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

trust is otherwise prohibited by law from disclosing; and,

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

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

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

Information that is withheld from full disclosure is not subject to the *per se* disclosure rule if its disclosure would consist of individually identifiable health information the trust is required to protect under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Regulation, violate state or federal law, violate a non-disclosure provision of a settlement agreement, or endanger the health or safety of an individual.

**NOTE:** *Under no circumstances should a filer disclose the identity of the recipient of HIPAA-related payments. Likewise, a*

*filer should not disclose the identity of the recipient of any payment where doing so would violate federal or state law, would violate a non-disclosure provision of a settlement agreement, or would endanger the health or safety of an individual. Filers should not include social security or bank account numbers in completing the form.*

### **SCHEDULE 3 — DISBURSEMENTS TO OFFICERS AND EMPLOYEES OF THE TRUST**

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

For purposes of completing the Form T-1,

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

These definitions will require a fact-specific inquiry by filers to determine whether trustees, the trust administrator, and other

individuals performing service to the trust under its control or the trust administrator's control are officers or employees of the trust.

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

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

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

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

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

**Column (C):** Enter the total allowances made by direct and indirect disbursements to the officer or employee on a daily,

weekly, monthly, or other periodic basis. Do not include allowances paid on the basis of mileage or meals which must be reported in Column (D) or (E), as applicable.

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

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

- The amount of an advance for a specific trip does not exceed the amount of expenses reasonably expected to be incurred for official travel in the near future, and the amount of the advance is fully repaid or fully accounted for by vouchers or paid receipts within 30 days after the completion or cancellation of the travel.
- The amount of a standing advance to an officer or employee who must frequently travel on official business does not unreasonably exceed the average monthly travel expenses for which the individual is separately reimbursed after submission of vouchers or paid receipts, and the individual does not exceed 60 days without engaging in official travel.

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

- Payments to individuals, other than officers and employees of

the trust, who perform work or service for the trust;

- Reimbursements to an officer or employee for the purchase of investments or fixed assets, such as reimbursing an officer or employee for a file cabinet purchased for office use;
- Indirect disbursements for temporary lodging (room rent charges only) or transportation by public carrier necessary for conducting official business while the officer or employee is in travel status away from his or her home and principal place of employment with the trust if payment is made by the trust directly to the provider or through a credit arrangement;
- Disbursements made by the trust to someone other than an officer or employee as a result of transactions arranged by an officer or employee in which property, goods, services, or other things of value were received by or on behalf of the trust rather than the officer or employee, such as rental of offices and meeting rooms, purchase of office supplies, refreshments and other expenses of meetings, and food and refreshments for the entertainment of groups other than the officers or employees on official business;
- Office supplies, equipment, and facilities furnished to officers or employees by the trust for use in conducting official business; and
- Maintenance and operating costs of the trust's assets, including buildings, office furniture, and office equipment; however, see "Special Rules for Automobiles" below.

**Column (E):** Enter all other direct and indirect disbursements to the officer or employee. Include all disbursements for which cash, property, goods, services, or other things of value were received by or on behalf of each officer or employee and were essentially for the personal benefit of the officer or employee and not necessary for conducting official business of the trust. Benefits payments to the trust officers and employees are not of

the type required to be reported in Schedule 3 if the detailed basis on which such payments are to be made is specified in a written specific trust agreement.

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

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

The software will enter on Line 10 the totals from any continuation pages for Schedule 3.

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

## **SPECIAL RULES FOR AUTOMOBILES**

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

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

Information) indicating that the vehicle was also used part of the time for personal business. Likewise, if less than 50% of the officer or employee's use of the vehicle was for official business, the trust may report all disbursements relative to the vehicle in Column (E) with an explanation in Item 25 indicating that the vehicle was also used part of the time on official business.

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

## **ADDITIONAL INFORMATION AND SIGNATURES**

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

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

The completed Form T-1 that is filed with OLMS must be signed by both the president and treasurer, or corresponding principal officers, of the labor organization. If an officer other than the president or treasurer performs the duties of the principal executive or principal financial officer, the other officer may sign the report. If an officer other than the president or treasurer signs the report, enter the correct title in the title field next to the signature and explain in Item 25 (Additional Information) why the president or treasurer did not sign the report.

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

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

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

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

The terminal financial report must be filed electronically with OLMS, via EFS, within 30 days after the date of termination.

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

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

that will retain the records of the terminated organization. If the trust merged with another trust, report that organization's name and address.

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

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

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

Atlanta, GA  
Birmingham, AL  
Boston, MA  
Buffalo, NY  
Chicago, IL  
Cincinnati, OH  
Cleveland, OH  
Dallas, TX  
Denver, CO  
Detroit, MI  
Grand Rapids, MI  
Guaynabo, PR  
Honolulu, HI  
Houston, TX  
Kansas City, MO  
Los Angeles, CA  
Miami (Ft. Lauderdale), FL  
Milwaukee, WI  
Minneapolis, MN  
Nashville, TN

New Haven, CT  
New Orleans, LA  
New York, NY  
Newark (Iselin), NJ  
Philadelphia, PA  
Pittsburgh, PA  
St. Louis, MO  
San Francisco, CA  
Seattle, WA  
Tampa, FL  
Washington, DC

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

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

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

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

[Month, 20XX]

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