AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

Tuesday,
February 2, 2010

Part V

Department of Labor

Office of Labor-Management Standards

29 CFR Part 403

Rescission of Form T–1, Trust Annual Report; Require Subsidiary Organization Reporting on the Form LM–2, Labor Organization Annual Report; LMRDA Coverage of Intermediate Labor Organizations; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 403

RIN 1215–AB75

Rescission of Form T–1, Trust Annual Report; Require Subsidiary Organization Reporting on the Form LM–2, Labor Organization Annual Report; LMRDA Coverage of Intermediate Labor Organizations

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Labor-Management Standards proposes to amend its regulations which require labor organizations to file the Form T–1, Trust Annual Report, about certain trusts in which they are interested pursuant to the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The Department of Labor (Department) proposes to amend these regulations because it believes that the trust reporting required under the rule is overly broad and is not necessary to prevent the circumvention and evasion of the Title II reporting requirements. Moreover, the Department views separate trust reporting requirements as unnecessary, in part because the Department also proposes to return "subsidiary organization" reporting to the Form LM–2 reporting requirements, which it believes is necessary to satisfy the purposes of the LMRDA. Finally, in interpreting the definition of "labor organization" under the LMRDA, the Department proposes to return to its long held view that the statute's coverage does not encompass intermediate bodies that are wholly composed of public sector organizations. In so doing, the Department has reconsidered a definitional interpretation that it adopted in 2003, which the Department now considers to have been insufficiently supported during the rulemaking process. The Department seeks comment on each of these proposals.

DATES: Comments must be received on or before April 5, 2010.

ADDRESSES: You may submit comments, identified by RIN 1215–AB75, only by the following methods:

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.

Delivery: Comments should be sent to: Denise M. Boucher, Director of the Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD). Only those comments submitted through *http://www.regulations.gov,* hand-delivered, or mailed will be accepted. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Denise M. Boucher, Director, Office of Policy, Reports and Disclosure, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, (202) 693–1185 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Authority

This proposed rescission of the 2008 Form T–1 rule, the proposed union reporting requirements concerning subsidiary organizations, and the proposed interpretation relating to the coverage of public sector intermediate body labor unions under LRMDA section 3(j), 29 U.S.C. 402, are made pursuant to section 208 of the LMRDA, 29 U.S.C. 438. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions, and also includes authority to issue rules "prescribing reports concerning trusts in which a labor organization is interested" as she may "find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements." 29 U.S.C. 438. Additionally, Secretary's Order No. 1–2008, issued May 30, 2008, and published in the **Federal Register** on June 6, 2008, 73 FR 32424 (Jun. 6, 2008), contains the delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Assistant Secretary for Employment Standards and permits re-delegation of such authority.

II. Background

In enacting the LMRDA in 1959, Congress sought to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers, employees, and representatives. 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. The LMRDA addressed various ills through a set of integrated provisions aimed at labor-management relations governance and management. These provisions include LMRDA Title II financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies. *See* 29 U.S.C. 431–36, 441.

The Department has developed several forms to implement the union annual reporting requirements of the LMRDA. 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. The labor organization annual financial 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), are to contain information about a labor organization's assets, liabilities, receipts, and disbursements "as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year." The Form LM–2 Annual Report, the most detailed of the annual labor organization reports and that required to be filed by labor organizations with $250,000 or more in annual receipts, must include reporting of 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, in addition to other information.

In addition to prescribing the form and publication of the LMRDA reports, the Secretary is authorized to issue regulations that prevent labor unions

and others from avoiding their reporting responsibilities. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions, including "prescribing reports concerning trusts in which a labor organization is interested" as she may "find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements." 29 U.S.C. 438.

Historically, the Department's LMRDA reporting program had not provided for separate trust reporting by unions. However, there was a long history of reporting on "subsidiary organization[s]." Part VIII of the 1962 Instructions for Form LM–2 provided for reporting concerning these entities, which were defined in the Form LM–2 instructions as "any separate organization in which the ownership is wholly vested in the labor organization or its officers or its membership, which is governed or controlled by the officers, employees or members of the labor organization, and which is wholly financed by the labor organization."

On July 21, 2009, the Department held a public meeting to solicit comments from representatives of the community that would be affected by the Department's proposed changes. The Department developed its proposal with these discussions in mind and it requests comments from this community and other members of the public on any and all aspects of the proposal.

III. Proposal To Rescind the October 2, 2008 Final Rule Establishing the Form T–1

A. History of the Form T–1

The Form T–1 report was first proposed on December 27, 2002, as one part of a proposal to extensively change the Form LM–2. 67 FR 79279 (Dec. 27, 2002). The rule was proposed under the authority of Section 208, which permits the Secretary to issue rules "prescribing reports concerning trusts in which a labor organization is interested" as she may "find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements." 29 U.S.C. 438. Following consideration of public comments, on October 9, 2003, the Department published a final rule enacting extensive changes to the Form LM–2 and establishing a Form T–1. 68 FR 58374 (Oct. 9, 2003) (2003 Form T–1 rule). The 2003 Form T–1 rule eliminated the requirement that unions report on subsidiary organizations on the Form LM–2, but it mandated that each labor organization filing a Form LM–2 report also file separate reports 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.

The 2003 Form T–1 rule defined the phrase "significant trust in which the labor organization is interested" by utilizing the § 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 definition of a "trust in which a labor organization is interested," is:

> 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 U.S. Court of Appeals for the District of Columbia 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 reporting requirements by, for example, permitting a union to maintain control of funds." *Id.* at 389. The court also vacated the Form T–1 portions of the 2003 rule because its 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 promulgated—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.

Following the 2003 vacatur of the provision of the final rule relating to the Form T–1, the Department issued a revised Form T–1 final rule on September 9, 2006. 71 FR 57716 (Sept. 9, 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. 76 (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 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 became effective on December 31, 2008. Under this rule, Form T–1 reports would be filed no earlier than March 31, 2010 for fiscal years that begin no earlier than January 1, 2009.

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 57411. 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.

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

B. Reasons for the Proposal To Rescind the October 2, 2008 Form T–1 Final Rule

The Department is proposing to rescind the 2008 Form T–1 rule because it believes that the trust reporting required under the rule is overly broad and that such trust reporting is not necessary to prevent the circumvention and evasion of the Title II reporting requirements. Moreover, the Department has reviewed the 2008 rulemaking record and no longer views the separate reporting requirements as set forth in the 2008 Form T–1 rule as justified in light of the burden they impose.

Under the Act, the Secretary has the authority to "issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements." 29 U.S.C. 438. The Secretary's regulatory authority thus includes the reporting mandated by the Act and discretionary authority to require reporting on trusts falling within the statutory definition of a trust "in which a labor organization is interested." 29 U.S.C. 402(l). The Secretary's discretion to require separate trust reporting applies to trusts if: (1) The union has an interest in a trust as defined by 29 U.S.C. 402(l) *and* (2) reporting is determined to be necessary to prevent the circumvention or evasion of Title II reporting requirements. 29 U.S.C. 438. As both the Department and the court recognized, this is a two part requirement. *See AFL–CIO* v. *Chao,* 409 F.3d 377, 386–87 (D.C. Cir. 2005) (discussion of two-part test).

A key feature of the Secretary's discretionary authority to require trust reporting is the requirement that the Secretary conclude that such reporting is "necessary" to prevent circumvention or evasion of a labor organization's requirement to report on its finances under the LMRDA. The Department now believes that the 2008 Form T–1 rule was overly broad, requiring financial reporting by many trusts, including trusts funded by employers pursuant to collective bargaining agreements, without an adequate showing that such a change is necessary to prevent circumvention or evasion of the reporting requirements.

The Department proposes to rescind the 2008 Form T–1 rule, because the Department now believes that the final rule is not necessary to prevent circumvention or evasion of existing reporting requirements and that an adequate assessment of the interaction between labor organizations and section 3(l) trusts would be needed to justify additional reporting. However, it is the Department's position, consistent with the D.C. Court of Appeals' opinion in *AFL–CIO* v. *Chao,* that the Department retains the authority to regulate trust reporting when the two-part test is satisfied. *AFL–CIO* v. *Chao,* 409 F.3d at 386–87 (D.C. Cir. 2005). In this proposal, the Department simply suggests that based on its review of the 2008 Form T–1 rule and its rulemaking record, the imposition of a separate reporting requirement for unions on their section 3(l) trusts is not necessary to prevent circumvention or evasion of the reporting requirements.

In particular, the rule provided that, for purposes of evaluating whether payments to a trust indicate that the union is financially dominant over the trust, payments made by employers to set up trusts under Section 302(c) of the LMRA, 29 U.S.C. 186(c) (Taft-Hartley funds), should be treated as funds of the union. Taft-Hartley funds are created and maintained through employer contributions paid to a trust fund, pursuant to a collective bargaining agreement, and must have equal numbers of union and management trustees, who owe a duty of loyalty to the trust. Taft-Hartley funds are established for the "sole and exclusive benefit of the employees" and are excepted from the statutory prohibition against an employer paying money to employees, representatives, or labor organizations. *See* 29 U.S.C. 186(a) and (c)(5).

The Department recognizes that its authority under section 3(l) to require reporting of trusts in which a union is interested is sufficiently broad to encompass Taft-Hartley plans funded by employer contributions. However, as explained above, this is only the first part of the section 208 analysis. The second part of the analysis requires that the Secretary determine that the reporting is necessary to prevent circumvention or evasion of the reporting of union money subject to Title II.

As explained in the 2008 Form T–1 rule, section 201 of the LMRDA requires that unions "file annual, public reports with the Department, detailing the labor organization's financial condition and operations during the reporting period, and, as implemented, identifying its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving $10,000 or more in aggregate from the labor organization, direct or indirect loans (in excess of $250 aggregate) to any officer, employee, or member, any loans (of any amount) to any business enterprise, and other disbursements." 73 FR at 57413 (citing 29 U.S.C. 431(b)). Further, section 201 requires that such information shall be filed "in such detail as may be necessary to disclose [a labor organization's] financial condition and operations." 73 FR at 57414 (citing *Id.*). Significantly, each listed reportable financial transactions to be reported is one that reflects upon the union's financial condition and operations, not solely the financial condition and operations of another entity.

Thus, under the Act, the Secretary may require trust reporting when she concludes it is necessary to prevent the circumvention or evasion of labor organization's Title II reporting requirements. *See* 29 U.S.C. 208. The Title II reporting requirements for a labor organization require it "to disclose *its* financial condition and operations." 29 U.S.C. 201(b) (emphasis added). Consequently, trust reporting is permissible to prevent a labor union from using a trust to circumvent reporting of the *labor union's* finances.

The 2008 Form T–1 rule did not adequately address the second part of the two-part test when it presumed that employer contributions establish labor union financial domination of a trust. Indeed, the money contributed by the employer to a Taft-Hartley fund is not generally the property of the union, and

thus its disclosure by a union would not "disclose *its* financial condition and operations." 29 U.S.C. 201(b) (emphasis added). Conversely, a union's nondisclosure of such funds would not be an evasion of the union's reporting requirement. Such ordinary employer funds, not within the control of the union, would in no instance be reported by a union under the LMRDA reporting requirements. Such payments are generally paid by the employer to the Taft-Hartley trust for the sole and exclusive benefit of the employees, and it appears that the payment and use of these moneys would not ordinarily relate to the condition and operations of the union. Consequently, the Department now believes that the 2008 Form T–1 rule was overly broad, requiring reporting in instances where a union is not in a position to use a trust to circumvent or evade its reporting requirement.

In an apparent acknowledgement that the 2008 Form T–1 rule was premised upon policies in addition to preventing circumvention of Title II reporting, the final rule stated that, "by requiring that labor organizations file the Form T–1 for specific section 3(l) trusts, labor organization members and the public will receive some of the same benefit of transparency regarding the trust that they now receive under the Form LM–2, thereby preventing a labor organization from using the trust to circumvent or evade its reporting requirements." 73 FR at 57413. This rationale indicates that the rule may have provided for more general reporting than would be "necessary to prevent" the circumvention of LMRDA reporting requirements.

The 2008 NPRM asserted that "money paid into the trusts reflects payments that otherwise could be made directly to employees as wages, benefits, or both, but for their assignment to the trusts." 73 FR 11761 (NPRM) 73 FR 57417 (final rule). Assuming this is so, these underlying wages and benefits would not have been reported on a Form LM–2. Therefore it is not apparent that payment of these wages and benefits to a trust involves the circumvention or evasion of Title II reporting, regardless of the purported control a union exercises with an employer concerning such a trust. Thus, with respect to these funds, it is not clear from the final rule how the Form T–1 "provides transparency of *labor organization finances* and effectuates the goals of the LMRDA." (emphasis added) 73 FR 57414.

In addition, the final rule states that the Form T–1 will prevent union officials or others with influence over the union from "avoid[ing], 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." 73 FR 57414. The Department acknowledges that such transfers of money to a Taft-Hartley trust may constitute circumvention or evasion of the union's reporting requirements, but the final rule did not distinguish between those Taft-Hartley trusts that are exclusively funded by employers from those in which the union does transfer money. Only in the latter instance would the Form T–1 capture a union's circumvention of its Title II reporting requirements. Instead, the final rule covers all Taft-Hartley plans through its "financial domination" test.

In *AFL–CIO* v. *Chao,* the Court of Appeals for the D.C. Circuit held that the first "Form T–1 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." *AFL–CIO* v. *Chao,* 409 F.3d at 389. The Department proposes that the 2008 Form T–1 rule may be overly broad in the same manner, requiring many labor organizations to file the Form T–1 for independent trusts, even where there is no apparent means by which the union could use the trust as a means of circumventing or evading its Title II reporting requirements.

In sum, the Department proposes to withdraw the rule implementing the Form T–1, because it believes that the trust reporting required under the rule is overly broad and is not necessary to prevent the circumvention and evasion of the Title II reporting requirements. The Department invites comments on its proposal to rescind the 2008 Form T–1 rule.

IV. Proposal To Reinstate Subsidiary Organization Reporting on the Form LM–2

As part of the requirement to report on independent trusts, the 2008 Form T–1 rule established Form T–1 reporting obligations for labor union subsidiary organizations, entities wholly owned, controlled, and financed by a single union. The Department believes that a substantial number of Form T–1 reports it would have received would have been for subsidiary organizations. During the 2004 reporting year, the last year in which unions filed annual reports on the old Form LM–2, approximately 1,087 filers indicated that they had at least one subsidiary organization. Additionally, in the Department's experience about half of the approximately 100 largest labor organizations have multiple subsidiaries, with these 50 unions having about two additional subsidiaries. Thus, the Department estimates approximately 1,187 subsidiaries for Form LM–2 filers (the 1,087 filers with subsidiaries plus an additional 100 for the 50 unions with two additional subsidiaries). Further, the Form T–1 final rule estimated an average of 3,131 Form T–1 reports per fiscal year. 73 FR at 57441. Therefore, the Department estimates that more than one-third of Form T–1 reports would have been for subsidiary organizations. *See* Paperwork Reduction Act Analysis.

Prior to the 2003 Form LM–2 changes, labor organizations were required to report under the Form LM–2 reporting requirements.[1] Subsidiary organizations were defined in the Form LM–2 instructions 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." *See* pre-2003 Form LM–2 Instructions, Section X.[2] This requirement was dropped in the October 2003 modifications to the Form LM–2. *See* 68 FR at 58414. While not made explicit in the final regulation, the Department's assumption at that time was that the prior subsidiary organization reporting would be captured by the new requirement for trust reporting on the Form T–1, which was also introduced in that final rule. This result is implied by the Department's comment in the 2008 Form T–1 rule that "the Form T–1 closes a reporting gap under the Department's former rule whereby labor organizations were only required to report on 'subsidiary organizations.'" 73 FR at 57412.

However, the Department believes that subsidiary reporting is more appropriate on the Form LM–2, rather than the Form T–1, because subsidiaries are properties of labor organizations similar to any other account, fund, or

[1] The 2003 changes retained the requirement for labor organizations to include the receipts of their subsidiaries when determining if they have met the $250,000 filing threshold. *See* Form LM–2 Instructions, Part II.

[2] The pre-2003 Form LM–2 Instructions can be viewed at *http://www.regulations.gov*.

asset.[3] As a result, for a union's Form LM–2 to be complete, the Department believes that form should contain information on subsidiaries, as this will result in a Form LM–2 reporting scheme that treats all assets of the union uniformly, i.e., with the same reporting threshold and level of itemization. By including subsidiaries on the Form LM–2 and treating all union assets uniformly, the Department believes that the Form LM–2 will produce a more comprehensive and accurate report of a union's financial condition. This proposal would also align the Form LM–2 with the Form LM–3, which was unaffected by the Form T–1 and has continued to include subsidiary reporting. Finally, the inclusion of subsidiaries on the Form LM–2 will alleviate potential misunderstandings relating to the reporting of a union's total annual receipts. Currently, for purposes of determining whether a particular union must file a Form LM–2 (receipts of $250,000 or more) or a Form LM–3 (receipts less than $250,000), receipts of subsidiaries are included, even though these receipts are reported on the Form T–1 and are not reported on the Form LM–2. Thus, some unions with subsidiaries are required to file an LM–2, even though they may report receipts of less than $250,000, once the subsidiary's receipts are subtracted. This may lead to confusion on the part of union members and the public. For these reasons, explained more fully below, the Department proposes that incorporating subsidiaries on the Form LM–2 provides more information about the subsidiaries and a more accurate report of the union as a whole, reducing the potential for misunderstandings by union members and the public.

The 2008 Form T–1 actually reduced the level of disclosure of core union financial activities through subsidiaries. First, the Form T–1 reduces transparency regarding the reporting of assets and liabilities of subsidiary organizations. The Form LM–2 includes Schedules 1 through 10, which require detailed itemization of the union's assets and liabilities. The Form T–1 requires that unions report their assets and liabilities only in the aggregate at Items 21 and 22. Thus, a report on a subsidiary's assets and liabilities will have more information when the filer uses a Form LM–2, rather than a Form T–1. Second, the Form T–1 reduces the level of transparency and disclosure of these entities, because it has a higher reporting threshold for receipts and disbursements. The Form LM–2 requires that all union assets, liabilities, receipts and disbursements exceeding $5,000 in value be itemized and reported. The Form T–1 has a reporting threshold of $10,000. A union, therefore, reporting on a subsidiary's financial transaction will disclose a greater number of transactions using the Form LM–2, as compared to the Form T–1.

The return of subsidiary organizations to the Form LM–2 reporting requirements will restore the prior status quo concerning the financial disclosure of such entities, which was that a union must disclose the financial information of its subsidiary to the same level of detail as other assets of the union, even if the union chose to file a separate Form LM–2 report for the subsidiary or to file an audit for the entity. *See* pre-2003 Form LM–2 Instructions, Section X.

A labor union using the pre-2003 Form LM–2 could report on its subsidiary organizations in one of three ways. The filer could (1) Consolidate the financial information for the subsidiary and the labor organization in a single Form LM–2; (2) file a separate Form-2 report for the subsidiary organization, along with a Form LM–2 for the union; or (3) file along with a Form LM–2 for the union a regular annual report of the financial condition and operations of the subsidiary organization. As explained in more detail below, the Department proposes to allow Form LM–2 filers two options regarding the reporting of their subsidiaries, rather than the three options formerly permitted in the pre-2003 Form LM–2 Instructions. The Department proposes that Form LM–2 filers can either consolidate their subsidiaries' financial information on their Form LM–2 report, or they can file, with their Form LM–2 report, a regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles.

The Department proposes to remove one previous option for filers—that of filing a separate Form LM–2 report with only the subsidiary's financial information. This reporting option, which results in a union filing more than one Form LM–2 report for a single fiscal year, may create confusion for union members and the public. First, because there is only one version of the Form LM–2, it would be difficult to tell whether a report is for a subsidiary, for a labor union, or both and as a result, an individual looking at a union's Form LM–2 may not be aware that the union has a subsidiary, and that a separate form exists for that entity. Second, having an entity that is not a labor organization reporting on a form for labor organizations also may create confusion for the Department. The Department relies upon the database of Form LM–2 filers for informational, policy, and enforcement purposes. To the extent that subsidiary organizations file separate Form LM–2 reports, the Department believes that the data will not accurately reflect the universe of labor organizations. Third, where a union changes its reporting practices, one year including the subsidiary and filing a separate form the next, conducting a year-to-year comparison becomes difficult, which also affects the Department's ability to rely upon the Form LM–2 filer database for policy and enforcement decisions. Finally, in some cases, transparency may be increased when the union and the subsidiary share certain expenses that standing alone fall below the itemization threshold, but when combined in a single report, will then be itemized. In sum, consolidation has the virtue of including all financial information (that of the union and the subsidiary) on one report, which eliminates potential confusion among union members, presents the Department with a more reliable database of Form LM–2 filers, and increases overall transparency. Thus, the Department proposes to permit a union to consolidate on its Form LM–2 the financial information of the union with the financial information of the subsidiary, as well as the option to file a separate financial statement certified by a public accountant. The Department seeks comment on these choices for filers.

At the same time, the Department proposes to revise the Form LM–3 subsidiary organization instructions to conform with the instructions proposed for the Form LM–2. Labor organizations filing Form LM–3 reports are required to report concerning their subsidiary organizations and now have the option of using one of three reporting methods. The Form LM–3 filers may (1)

[3] Indeed, in *U.S.* v. *Hartsel,* the Sixth Circuit held that a charitable organization with a separate not-for-profit tax status constituted a fund of a labor organization for purposes of section 501(c) of the Act, as the union in question created the fund, financed it by soliciting contributions from the members, and managed and controlled it by appointing its officers. *U.S.* v. *Hartsel,* 199 F.3d 812, 819–820 (6th Cir. 1999); *see also U.S.* v. *LaBarbara,* 129 F.3d 81 (2d Cir. 1987) (holding that assets of a not-for-profit building corporation controlled by a union comprise the assets of a labor organization under section 501).

consolidate the financial information for the subsidiary organization and the labor organization in a single Form LM–3; (2) file a separate Form-3 report for the subsidiary organization with the union's Form LM–3 report; or (3) file with the union's Form LM–3 report the regular annual report of the financial condition and operations of the subsidiary organization. For the reasons discussed above, the Department proposes to eliminate the second option and seeks comments on this proposal.

V. Specific Proposed Changes to the Form LM–2 and Instructions

The text of the Form LM–2, its Instructions pertaining to some sections, and certain Schedules will be changed to address the proposal to require reporting of subsidiary organizations. These include Sections II, VIII, X, and XI. The proposed modified instructions are included in an appendix to the NPRM, and the following is a section by section overview of the changes.

Section II. What Form to File: The Department proposes to revise the instructions to indicate that all special funds and funds of subsidiary organizations should be included in the "total annual receipts" of the labor organization. Cites to revised Section VIII (Funds to be Reported) and Section X (Labor Organizations with Subsidiary Organizations) are included in the proposed instructions. Additionally, the instructions specify that receipts of section 3(l) trusts are not to be included in "total annual receipts," unless such 3(l) trusts are subsidiary organizations of the union. Since the Department proposes to return to the prior Form LM–2 reporting regime for subsidiaries, the proposed instructions remove the current references to trusts that are "wholly owned, wholly controlled, and wholly financed by the labor organization," as such entities are now "subsidiary organizations."

Section VIII—Funds to be Reported: The Department proposes to revise this section to remove any reference to the Form T–1, and to clarify that "special purpose funds" include those of subsidiary organizations (with a cite to revised Section X: Labor Organizations with Subsidiary Organizations).

Section X—Labor Organizations with Subsidiary Organizations: The Department proposes to eliminate the current Section X, which provides information on section 3(l) trusts and the Form T–1, replacing this with information on subsidiary organizations, including its definition and the requirement to include its financial information on the Form LM–2, and ways in which a labor organization can properly report on their Form LM–2 the necessary information about such subsidiaries. The instructions are similar to the pre-2003 instructions for subsidiaries, with the primary difference being that, as explained above, the Department proposes that unions are provided two options instead of three for filing information on subsidiaries: Option one, consolidation, or option two, the attachment of an audit. Unions would not file a separate Form LM–2 report for the subsidiary. The proposed Section X also includes information on what each option requires.

Section XI—Completing Form LM–2: The Department proposes changes to the instructions to Items 10 and 11. The instructions for Item 10 would be changed to remove any reference to the Form T–1, although basic information about the trust would still be required, as would a cite to any report filed for the trust with another government agency, such as the Department's Employee Benefits Security Administration (EBSA).

The Department proposes to split Item 11 into two parts: Item 11(a), which is the current Item 11 referencing political action committees (PACs), and Item 11(b), which would ask unions to indicate if they had a subsidiary organization during the reporting period. The Department believes that since PACs may be subsidiary organizations, it is reasonable to include each of these in the same item on the form. The instructions for Item 11 will become the instructions for Item 11(a), while the proposed new instructions for Item 11(b) will simply state that unions must check this item if they have a subsidiary organization and must detail the name, address, and purpose of each of its subsidiary in Item 69 (Additional Information), including which filing method was chosen. The instructions would also reference proposed Section X of the instructions for more information on subsidiaries.

Schedules and Instructions for Schedules: The Department proposes revisions to certain Form LM–2 Schedules and Instructions to reflect the rescission of Form T–1 trust reporting and the reinstatement of subsidiary organization reporting on the Form LM–2, as proposed in the NPRM. Specifically, these Schedules and Instructions include:

- Schedule 5—Investments Other Than U.S. Treasury Securities, Item 6
- Instructions for Schedule 2—Loans Receivable,
- Instructions for Schedule 5—Investments Other Than U.S. Treasury Securities,
- Instructions for Schedule 7—Other Assets, and
- Instructions for Schedule 12—Disbursements to Employees.

The Department seeks comments on its proposed changes to the Form LM–2 and Instructions.

VI. Specific Proposed Changes to the Form LM–3 and Instructions

The text of the Form LM–3 and Instructions pertaining to some sections will be changed to address the reporting of subsidiary organizations. With respect to the Form, the Department proposes to remove Item 3(c), which currently requires a reporting labor organization to identify if the report is exclusively filed for a subsidiary organization, as the Department proposes to remove this option, as described above. The proposed revised Form LM–3 Instructions include changes to sections VIII and X.

Regarding Section VIII, the only proposed change would clarify that filers have only two options, rather than the current three: Either consolidation or attaching a separate report, that of an audit by a certified public accountant. Filers can no longer attach a separate Form LM–3 for the subsidiary. The proposed Section VIII also references Section X of the Form LM–3 instructions for more information on subsidiaries and subsidiary reporting.

The proposed changes to Section X, Labor Organizations with Subsidiaries, are virtually identical to the changes proposed to the corresponding Section X of the Form LM–2. Specifically, proposed section X would provide information on subsidiary organizations, including its definition and the requirement to include its financial information on the Form LM–3, and ways in which a labor organization can properly report on their Form LM–3 the necessary information about such subsidiaries. The instructions are similar to the current instructions for subsidiaries, with the primary difference being that, as explained above, the Department proposes that unions have only two options instead of three for filing information on subsidiaries: Option one, consolidation, or option two, the attachment of an audit. Unions no longer would have the option of filing a separate Form LM–3 report for the subsidiary. The proposed Section X also includes information on what each option requires.

The Department seeks comments on its proposed revisions to the Form LM–3 and instructions.

VII. Proposal To Revise the Interpretation Regarding Public Sector Intermediate Bodies

The Department proposes to revise its recently articulated policy regarding LMRDA coverage of certain public sector intermediate bodies, which was based on an interpretation of the definition of "labor organization" found in Section 3(i) and (j) of the LMRDA, 29 U.S.C. 402(i) and (j), by returning to the interpretation the Department held for nearly 40 years. The definitional criteria for "labor organization" in the statute are patently ambiguous, and therefore susceptible to two legally permissible interpretations. *See Alabama Education Ass'n* v. *Chao,* 455 F.3d 386 (D.C. Cir. 2006). The Department now considers, for the reasons set forth below, that its long-held interpretation, which excludes from coverage certain intermediate labor organizations that have as members only public sector local unions, better serves the purposes of the statute. The Department seeks comments from the public on this change.

Between 1963 and 2003, the Department's interpretation of the LMRDA excluded from coverage intermediate labor organizations composed solely of public sector labor unions.[4] In 2003, the Department revised its interpretation, thereby imposing on these never-before covered public-sector intermediate bodies financial reporting obligations under the statute.[5] The Department's revised statutory interpretation was offered as a construction of the "which includes" clause in Section 3(j)(5), 29 U.S.C. 402(j)(5).[6] In its 2003 interpretation the Department read the clause to modify the phrase "national or international labor organization," thus establishing coverage over an intermediate body that did not itself include a private sector local labor organization, so long as the national or international labor organization to which it was subordinate included a private sector labor organization.[7] Newly covered intermediate bodies challenged the 2003 interpretation in court, and years of litigation ensued.[8] The Department has recently undertaken a review of the revised interpretation of Section 3(i) and (j)(5) adopted in 2003 and the policy justifications for implementing it. The Department now considers that its prior long-standing policy is preferred. This policy is consistent with the conclusion that the 'which includes' condition modifies the statutory list of intermediate bodies, thereby establishing coverage over only those intermediate bodies that are subordinate to a national or international labor organization and that themselves include one or more private sector labor organizations. The Department seeks input from the public on this issue.

The grounds for the Department's 2003 interpretative change have been the subject of significant criticism during the rulemaking and litigation processes. During the comment period for the NPRM, several labor organizations, including the AFL–CIO, the American Federation of Teachers (AFT), the National Education Association (NEA) and the International Association of Firefighters, challenged the change in interpretation. The primary contention of these comments was that the Department's interpretation improperly expanded the statute's well-established coverage limitations over private-sector labor organizations to include those labor organizations that had no private sector members at all. For instance, the NEA noted that although its local affiliates primarily represent public school teachers, certain local affiliates also represent a small number of private-sector employees, and this fact justified the national organization's coverage under the LMRDA. However, with regard to its state-level affiliates, the NEA indicated that the new interpretation would impose significant recordkeeping and reporting burdens on state labor organization affiliates that are composed only of public sector members. The AFT's comment similarly criticized the Department for over-reaching with regard to state-level affiliates composed solely of public-sector members. Labor organization commenters also criticized the legal reasoning behind the Department's new interpretation.

The textual basis for the Department's revised interpretation was upheld by the Court of Appeals for the DC Circuit, but not without skepticism. *See Alabama Education,* 455 F.3d at 396 (plaintiff labor organizations "may have the better reading of the statute * * *").[9] Ultimately, the appellate court determined that the Department's new statutory interpretation was not supported by a justification adequate to sustain the policy change, and thus the court remanded the case to the Department for further explanation of the policy rationale supporting the changed interpretation. *Id.* at *396–397.* In reviewing the Department's newly developed policy rationale on remand, the district court stated that it would withhold comment on whether "the Secretary is hitting a gnat with a hammer[,]" suggesting that the labor

[4] Section 3(i) of the LMRDA, 29 U.S.C. 402(i), defines a "labor organization" as (1) any organization "engaged in an industry affecting commerce * * * in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment," or (2) "any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization other than a State or local central body." The first clause of Section 3(i) applies to entities that exist, at least in part, to deal with employers concerning terms and conditions of employment. Although "employer" is defined broadly in the Act, the United States, States and local governments are expressly excluded from this definition. 29 U.S.C. 402(e). Thus, an organization is not covered under the first clause of Section 3(i), which requires that the organization deal with a statutory "employer," if it deals only with federal, state or local governments. The second clause of the definition applies to conferences, general committees, joint or system boards or joint councils—entities that are known as "intermediate" labor organizations. See 29 CFR 451.4(f).

[5] Although the revision of the Department's interpretation was initiated in 2002, it was completed in 2003 with the publication of the final rule, 68 FR 58,374 (Oct. 9, 2003). See footnote 7, *infra.*

[6] Section 3(j) of the LMRDA, 29 U.S.C. 402(j), sets forth the circumstances under which labor organizations will be "deemed to be engaged in an industry affecting commerce" under the Act. In particular, Section 3(j)(5) of the Act provides that an intermediate labor organization is deemed "engaged in an industry affecting commerce" if it is "a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, *which includes* a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body." 29 U.S.C. 402(j)(5) (emphasis added).

[7] See Labor Organization Annual Financial Reports, 67 FR 79,280 (Dec. 21, 2002) (NPRM); Labor Organization Annual Financial Reports, 68 FR 58,374 (Oct. 9, 2003) (Final Rule); Labor Organization Annual Financial Reports Policy Statement; Interpretation, 72 FR 3735 (Jan. 26, 2007) (court-ordered analysis supporting Department's interpretative change).

[8] *See Alabama Education Ass'n* v. *Chao,* 2005 WL 736535 (D.D.C. Mar 31, 2005) (holding new interpretation invalid); 455 F.3d 386 (2006) (reversing lower court and remanding to Department for further explanation of policy justifications for new interpretation); 539 F.Supp 2d 378 (D.D.C. 2008) (upholding Department's policy justification for interpretive change), 595 F.Supp. 2d 93 (D.D.C. 2009) (denial of reconsideration). The plaintiff state affiliates have appealed the most recent decision of the district court in this litigation, but on May 5, 2009, the DC Circuit granted the Department's motion to stay the appeals pending resolution of this regulatory proceeding.

[9] The court reviewed the Department's interpretation under the "two-step analysis" of *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837 (1984). Addressing Chevron's step one, the Court concluded that the text of Section 3(j)(5) and the application of the "which includes" clause was ambiguous, and that the LMRDA's legislative history "merely confirm[ed] the inherent ambiguity of the statute." 455 F.3d at 394 and n.*. Accordingly, the Court concluded that nothing in LMRDA Section 3 "forecloses the possibility that a body without private sector members may be subject to the LMRDA if it is subordinate to or part of a larger organization that does have private sector members." *Id.* at 394–395.

organization transparency problems identified by the Department were insignificant in comparison to the demands of coverage imposed on the newly covered intermediate labor unions. *Alabama Education,* 539 F.Supp.2d at 385. The district court also noted that the State affiliates' challenges to the Department's policy justifications raise "serious issues" that "might convince the court, were it the [policy] decisionmaker" and not limited by a narrow standard of review, to reject the Department's rationales for the new interpretation. *Id.* at 379. The limited nature of the court's review also caused the district court to overlook the "multitude of practical objections" to the new policy. *Id.* at 380 n. 2.

Unlike the reviewing courts, the Department's role as administrator of the statute is not so circumscribed that it can or should continue to ignore the "serious issues" or "multitude of practical objections" associated with the policy shift. Indeed, the Department's administrative and enforcement functions demand a reevaluation of the policy underlying its 2003 interpretation in light of the criticisms from both the regulated community and the reviewing courts. Therefore, the Department now considers other factors that militate against the imposition of the LMRDA, including its reporting obligations, on intermediate labor organizations without private sector members.

It is well-settled that the LMRDA was enacted to promote democracy and transparency in labor organizations that act on behalf of employees employed in the private sector. 29 U.S.C. 401(b), (c). It is equally settled that Congress intended to exclude from coverage local, national, and international labor organizations representing only employees in the public sector, and the overall thrust of the statute comports with that private-sector-only coverage. *See Alabama Education,* 455 F.2d at 394–95; *see also Thompson* v. *McCombe,* 99 F.3d 352, 353 (9th Cir. 1996) ("A labor organization composed entirely of public sector employees is not a labor organization for purposes of the LMRDA.").

Nevertheless, the Department justified its 2003 policy shift in part by suggesting that reading the statute's coverage provisions as broadly as possible offered increased transparency and accountability. 72 FR at 3738. Transparency and accountability of labor organizations are indeed valued goals, but they are not the sole, overriding purpose of the statute, and LMRDA coverage for the purpose of reporting and disclosure also exposes covered labor organizations to the full scope of federal regulation under the Act. Taken as a whole, the Department's 2003 policy shift lacks consistency and coherence. For example, the Department's 2003 policy shift resulted in the coverage of wholly public sector intermediate bodies, although not wholly public sector international or local unions. Upon reconsideration, the proper balance between the goals of robust union transparency and limited regulation of public sector unions should not result in an illogical dichotomy between types of public sector labor unions or reporting burdens that hinge solely on the particular tier a public sector union is placed. The Department now concludes that when enlarged coverage for more expansive transparency is balanced with the emphasis on minimizing regulatory burdens on unions representing exclusively public sector employees, it is not the better policy alternative.

The Department noted as an additional justification for its 2003 policy shift that labor organizations' structural and financial complexity has increased in recent decades, and this complexity supported the expansion of coverage. 72 FR at 3738. The district court reviewing the Department's policy rationales described this explanation as "entirely a make-weight." 539 F.Supp. 2d at 384. Indeed, upon reexamination, the Department's theory that local union members not only need to, but want to, "ascertain[] the endpoint of his or her dues cast into the stream of affiliate expenditures" in order to assure financial regularity, *id.,* overstates the ends to which one must go to sustain labor organization transparency and accountability. There has been no clear indication that such meticulous tracing of individual membership dues "in the stream of expenditures" is required to understand a labor organization's financial state.

In support of the 2003 policy shift, and in part to address the congressional concern that wholly public sector unions be excluded from the Act, the Department provided data that traced "to the endpoint" dues of local union members employed in the private sector to their locals' national affiliate and back to the newly covered public sector intermediate affiliates. These data purportedly strengthened the tenuous link between undisputedly covered labor organizations representing employees in the private sector and their public sector intermediate affiliates. Thus, the Department's expansion of coverage was justified to require "the disclosure of assets and expenditures of intermediate labor bodies whose funds are derived, at least in part, from private sector employees." 72 FR at 3739. Furthermore, the Department intended that this tracing of money would illustrate that "the so-called 'wholly public sector' intermediate body loses that attribute to a great extent (despite its composition) when it is subordinate to, and accepting contributions from, covered national and international labor organizations whose funds are derived, in part, from employees in the private sector." 72 FR at 3737.

In justifying the 2003 policy choice, the Department examined the incoming local membership contributions and outgoing disbursements of only two national labor organizations to conclude, as a broad proposition, that all public sector intermediate affiliates subordinate to a covered national or international labor organization should be covered. In one of the two cases, the money distributed by the national labor organization to the state affiliate was minute—just $15,000—as compared to both the disbursing national's and the receiving state affiliate's multimillion dollar budgets. The second national labor organization examined collected dues from local affiliates representing employees in the private sector and then routinely made disbursements to many of its state affiliates. However, that union subsequently implemented measures to keep private sector dues money in a separate segregated fund that is not disbursed to wholly public sector intermediate bodies. Any meaningful link between the union's private sector funds and the financial operations of its public sector intermediate bodies, at first somewhat tenuous and theoretical, is now remote. The Department would not, of course, base this proposed rule on the current (and perhaps temporary) practices of a single union. The original rule, however, was based on only two examples concerning the flow of money in two unions.

Where a rulemaking is to be supported by data, and those data are offered as proof of a problem, weakness and deficiencies in the data cast doubt on the necessity of the asserted policy. As a result, a second look at the data relied upon by the Department to bolster its 2003 interpretative change appears not to support the conclusion that "following dues to their endpoint" justifies "the so-called 'wholly public sector' intermediate body" losing that attribute, thus warranting the expansion of LMRDA coverage undertaken by the Department in 2003. Rather, the Department concludes that the stated concern should be sustained only if an

analysis of a broader array of national and international labor organizations, which have both local members employed in the private sector and state affiliates composed of members in the public sector, reflects more than a *de minimis* financial association between the two. We now believe that the data upon which the Department relied in its 2007 Policy Statement do not adequately demonstrate such an association.

A second look at the "dues endpoint" theory and data also indicates that the 2003 coverage expansion is overly broad. Despite the stated rationale that the coverage expansion was justified by following membership dues from local union members in the private sector to state affiliates, the change in interpretation would result in significant and costly reporting obligations on some public sector intermediate bodies that may not receive any private-sector membership dues from their national affiliate. This overbreadth problem is clear as it pertains to the national labor organizations examined by the Department in its policy statement, which have state affiliates that receive no disbursements from the national organization but which would nevertheless be required to submit annual financial reports. In addition, the overly broad result may well pertain to other intermediate labor organizations that were not the subject of the Department's purported empirical analysis and that do not receive disbursements from their national affiliate or, if they do, such disbursements may not be derived from dues of local members employed in the private sector.

As noted above, given the nature of the data presented, the scope of the private-sector-dues-to-public-affiliate scenario may be *de minimis,* and the fix undertaken to address it appears burdensome and overbroad *Alabama Education,* 539 F.Supp.2d at 385. In this new light, the Department proposes a return to its prior interpretation regarding the statutory criteria governing the coverage of intermediate bodies. The Department invites comments on this proposal.

VIII. Regulatory Procedures

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. In the Paperwork Reduction Act (PRA) analysis below, the Department estimates that the proposed rule will result in a total burden on labor unions of less than $3 million. In addition, we believe that the elimination of the Form T–1 reporting requirements will significantly reduce compliance costs for labor organizations. In our 2008 final rule, for example, we estimated that the projected total cost on filers in the first year would be over $15 million in the first year and at least $8 million in subsequent years. This rule is a significant regulatory action and was reviewed by the Office of Management and Budget.

Unfunded Mandates Reform

This proposed rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

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.

Executive Order 13132 (Federalism)

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

Analysis of Costs for Paperwork Reduction Act and Regulatory Flexibility Act

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

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

Paperwork Reduction Act

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

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

A. Summary of the Rule: Need and Economic Impact

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

The proposed rule would rescind the Form T–1 Trust Annual Report established by final rule on October 2, 2008, and would amend the Form LM–2 Labor Organization Annual Report to require unions to include on that report information concerning its wholly owned, controlled, and financed subsidiary organizations. (Under the Form T–1 reporting regime, these subsidiaries would have been included on a Form T–1 report, rather than on the union's annual report.). The proposed rule also would amend the Form LM–3 Labor Organization Annual Report to conform its subsidiary organization reporting to those proposed for the Form LM–2. Finally, the proposed rule also would return the Department to a prior interpretation of the Labor-Management Reporting and Disclosure Act (LMRDA), which excludes wholly public sector intermediate bodies from coverage under the Act. *See* section 3(j)(5), 29 U.S.C. 402(j)(5).

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Provisions of the LMRDA include financial reporting and disclosure requirements for labor organizations and others as set forth in Title II of the Act. See 29 U.S.C. 431–36, 441. Under Section 201(b) of the Act, 29 U.S.C. 431(b), labor organizations are required to file for public disclosure annual financial reports, which are to contain information about a labor organization's assets, liabilities, receipts, and disbursements.

The Department has developed several forms to implement the union annual reporting requirements of the LMRDA. 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. The Form LM–2 Annual Report, the most detailed of the annual labor organization reports, and that required to be filed by labor organizations with $250,000 or more in annual receipts, must include reporting of 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, in addition to other information. The Secretary also has prescribed simplified annual reports for smaller labor organizations. Form LM–3 may be filed by unions with $10,000 or more, but less than $250,000 in annual receipts, and Form LM–4 may be filed by unions with less than $10,000 in annual receipts.

On October 2, 2008, the Department issued a final rule establishing the Form T–1 Trust Annual Report, which prescribes the form and content of annual reporting by unions concerning entities defined in Section 3(l) of the LMRDA as "trusts in which a labor organization is interested." 73 FR 57412. Prior to the implementation of the Form T–1 rule, the Department's LMRDA reporting program had not provided for separate trust reporting by unions. The objective of this proposed rule is to rescind the Form T–1 Trust Annual Report, as the Department has determined that it is overbroad, and not necessary to prevent the circumvention and evasion of the Title II requirements. The proposed rule also would reinstate a requirement for subsidiary organization reporting on Form LM–2.

The Form T–1 includes the requirement to report subsidiaries of labor organizations, which the Department defines 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." *See* Form LM–3 Instructions, Part X, Labor Organizations With Subsidiary Organizations). The Department continues to hold the view that reporting all subsidiaries is necessary for members and the public to have an accurate understanding of a particular labor organization's financial condition. The Department believes that without the inclusion of the financial information for all subsidiaries, the financial disclosures on the Form LM–2 will be incomplete. The subsidiary is an asset of the labor organization, and a viewer of the report would not get an accurate understanding of the union's finances without the inclusion of the subsidiary. Therefore, with the proposed rescission of the Form T–1, the Department also proposes to require that labor organizations include with or within their Form LM–2 reports information concerning their subsidiary organizations.

Prior to the Department's development of the concept of the trust annual report, the Department's regulations required unions to report information on subsidiaries on their Form LM–2 reports. This requirement was revoked by revisions to the Form LM–2 in 2003. Labor Organization Annual Financial Reports, 68 FR 58374 (Oct. 9, 2003). The return of subsidiary organizations to the Form LM–2 reporting requirements would improve the amount of financial disclosure of such entities, as compared to the disclosure provided on the Form T–1, as the Form T–1 has no equivalent to the Form LM–2 assets and liabilities Schedules 1–10, and the itemization threshold for receipts and disbursements on the Form LM–2 is $5,000 while that on the Form T–1 is $10,000. Under the proposal, and as the pre-2003 Form LM–2 had long required, a union must disclose the financial information of its subsidiary to the same level of detail as other funds of the union, including details regarding assets and liabilities not required to be reported on the Form T–1.

The Department proposes to make available to Form LM–2 filers two options regarding the reporting of their subsidiaries, rather than the three options formerly permitted in the pre-2003 Form LM–2 Instructions. First, the

Department proposes that a labor union may consolidate its subsidiaries' financial information with the union's financial information on its Form LM–2 report. Alternatively, the Department proposes that a labor union can file, with its Form LM–2 report, a regular annual report of the financial condition and operations of each subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles. When choosing to file a separate accountant's report, the union would be required also to include information regarding loans payable and payments to union officers and employees in the same detail required by the Form LM–2 instructions on the related schedules (Schedules 1, 11, and 12).

The Department proposes not to reinstate a third option previously available on Form LM–2: that of filing a separate Form LM–2 report on each subsidiary organization. In the Department's experience, the filing of a separate Form LM–2 in addition to the union's primary report creates confusion for union members and others viewing the reports in that the form is designed for unions, not segregated funds and assets. Moreover, a union must file one Form LM–2 report per fiscal year, and the filing of multiple forms by a union for its subsidiaries creates confusion as to which one is the primary form. While consolidation contains some risk of confusion, the Department's experience is that combined reports are easier to follow than separate reports. This is a particularly appropriate and desirable option for some unions with subsidiaries that perform traditional union operations, such as strike funds and other special union funds. Thus, the Department proposes to preserve this option for Form LM–2 filers.

To remain consistent with the proposed reporting options available for Form LM–2 filers, the Department also proposes to revise the Form LM–3 instructions regarding the reporting of subsidiary organizations. Form LM–3 filers will have the same two options to report required information about subsidiaries as the Form LM–2 filers, and the reporting unions' option to file a separate Form LM–3 report on a subsidiary organization will likewise be eliminated. Again, this would avoid potential confusion for the public and would align the Form LM–3 subsidiary reporting regime with that proposed for Form LM–2 filers.

The obligation to report on the Form T–1 constituted an increase in reporting burdens for those labor organizations with reportable trusts. Given that increase, and as stated more fully below, this proposed rule represents a net reduction in the total filing burden for Form LM–2 filers, as the rescission of the Form T–1 removes the information collection burden associated with that form and replaces it with the reinstatement of subsidiary organization reporting, which presents only a small increase in the total Form LM–2 reporting burden. As demonstrated in the 2008 Form T–1 rule, the Form T–1 represented a total burden, for the estimated 2,292 Form LM–2 filers affected by the rule, of approximately 423,900 hours in the first year and 306,700 in the subsequent years. Additionally, the projected total cost on filers in the first year was approximately $15.2 million in the first year and approximately $8.2 million in subsequent years. 73 FR at 57441 and 57445. The proposed rule eliminates these burdens and costs from OMB 1215–0188, although, as discussed below, the reinstatement of subsidiary reporting transfers a small portion of this burden to the Form LM–2.

The proposed rule does not add any burden associated with the electronic submission of reports. The Department has in place an electronic reporting system for use by labor organizations, e.LORS. The objectives of the e.LORS system include the electronic filing of current Forms LM–2, LM–3, and LM–4, as well as other LMRDA disclosure documents; disclosure of reports via a searchable Internet database; improving the accuracy, completeness and timeliness of reports; and creating efficiency gains in the reporting system. Effective use of the system reduces the burden on reporting organizations, provides increased information to members of labor organizations, and enhances LMRDA enforcement by OLMS. The OLMS Online Public Disclosure site is available for public use at *www.unionreports.gov*. The site contains a copy of each labor organization's annual financial report for reporting year 2000 and thereafter as well as an indexed computer database of the information in each report.

Filing labor organizations have several advantages with the current electronic filing system. With e.LORS, data from the reporting unions' electronic records can be directly imported into Form LM–2. Not only is entry of the information eased, the software makes mathematical calculations and checks for errors or discrepancies. Additionally, any attachments to Form LM–2, such as would be required for unions choosing to submit a separate independent audit report for their subsidiary organizations, could be submitted electronically with the Form LM–2 reports.

As discussed in more detail below, there is negligible, if any, new information collection burden associated with the minor change proposed for the Form LM–3 reporting requirements regarding subsidiary organizations, nor is there any information collection associated with the proposal to change the Department's interpretation regarding wholly public sector intermediate bodies.

B. Overview of Subsidiary Reporting on Form LM–2 and Trust Reporting on Form T–1

Every labor organization whose total annual receipts are $250,000 or more and those organizations that are in trusteeship must currently file an annual financial report using the current Form LM–2, Labor Organization Annual Report, within 90 days after the end of the labor organization's fiscal year, to disclose their financial condition and operations for the preceding fiscal year. The current instructions state that the calculation of "total annual receipts" does not include "trusts" (of which the union may be required to file the Form T–1, Trust Annual Report), unless the trusts are "wholly owned, wholly controlled, and wholly financed by the labor organizations." *See* Form LM–2 Instructions, Part II: What Form to File. Although the current Form Instructions do not use the term, the above description refers to subsidiary organizations. Presently, Form LM–3 filers must also include the assets, liabilities, receipts, and disbursements within the Form LM–3 report, and prior to changes made in 2003, the Department required Form LM–2 filers to do the same. The current Form LM–2 is also used by covered labor organizations with total annual receipts of $250,000 or more to file a terminal report upon losing their identity by merger, consolidation, or other reason.

Therefore, unions must currently identify subsidiaries on the Form LM–2 in Item 10, Trusts or Funds, and they must calculate the total receipts of the subsidiary for purposes of the Form LM–2 filing threshold of $250,000. However, there are currently no further Form LM–2 reporting obligations concerning such subsidiaries. Rather, filers must report information on such subsidiaries on the Form T–1. *See* Form LM–2 Instructions Part X, Trusts in

Which a Labor Organization is Interested.

The current Form LM–2 consists of 21 questions that identify the labor organization and provide basic information (in primarily a yes/no format); a statement of 11 financial items on different assets and liabilities (Statement A); a statement of receipts and disbursements (Statement B); and 20 supporting schedules (Schedules 1–10, Assets and Liabilities related schedules; Schedules 11–12 and 14–20, receipts and disbursements related schedules; and Schedule 13, which details general membership information).

The Form LM–2 requires such information as: whether the labor organization has any trusts (Item 10, including, on the current form and instructions, subsidiary organizations); whether the labor organization has a political action committee (Item 11); whether the labor organization discovered any loss or shortage of funds (Item 13); the number of members (Item 20); rates of dues and fees (Item 21); the dollar amount for seven asset categories, such as accounts receivable, cash, and investments (Items 22–28); the dollar amount for four liability categories, such as accounts payable and mortgages payable (Items 30–33); the dollar amount for 13 categories of receipts such as dues and interest (Items 36–48); and the dollar amount for 16 categories of disbursements such as payments to officers and repayment of loans obtained (Items 50–65).

Schedules 1–10 requires detailed information and itemization on assets and liabilities, such as loans receivable and payable and the sale and purchase of investments and fixed assets. There are also nine supporting schedules (Schedules 11–12, 14–20) for receipts and disbursements that provide members of labor organizations with more detailed information by general groupings or bookkeeping categories to identify their purpose. Labor organizations are required to track their receipts and disbursements in order to correctly group them into the categories on the current form.

The Form T–1 provides similar but not identical reporting and disclosure for section 3(l) trusts, currently including subsidiaries, of Form LM–2 filing labor organizations. The Form T–1 requires information such as: losses or shortages of funds or other property (Item 16); acquisition or disposal of any goods or property in any manner other than by purchase or sale (Item 17); whether or not the trusts liquidated, reduced, or wrote-off any liabilities without full payment of principal and interest (Item 18); whether 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 (Item 19); whether the trust liquidated, reduced, or wrote-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest (Item 20); and the aggregate totals of assets, liabilities, receipts, and disbursements (Items 21–24). Additionally, the union must report detailed itemization and other information regarding receipts in Schedule 1, disbursements in Schedule 2, and disbursements to officers and employees of the trust in Schedule 3.

Although the Form T–1 has a higher reporting threshold for receipts and disbursements than does the Form LM–2, it provides nearly identical information regarding receipts and disbursements as does the Form LM–2. For example, unions must itemize receipts of trusts with virtually identical detail on Form T–1, Schedule 1, as does the Form LM–2 on its Schedule 14. Further, the information required on Form T–1 Schedules 2 and 3 correspond almost directly to the information required on Form LM–2 Schedules 15–20 and 11–12, respectively, although the format does not directly correlate. However, as discussed earlier, Form T–1 does not provide as much detail regarding assets and liabilities of trusts as the Form LM–2 requires. For example, although Form T–1 Items 16 and 17 correspond directly to Form LM–2 Items 13 and 15, and the information required in Form T–1 Items 18–20 is required in a different format in Form LM–2, Schedules 2 and 8–10, there is also significant information required on the Form LM–2 and not on the Form T–1. Chief of the material excluded on the Form T–1 is the detailed information regarding assets and liabilities required by Form LM–2, Schedules 1–10. In sum, under the proposed rule unions would need to report such information on the Form LM–2, while they would not need to do so under the existing Form T–1. Thus, consolidation of subsidiaries on the Form LM–2 provides greater transparency for such entities than does the Form T–1.

Additionally, the Department provided the public with separate burden analyses for the Form LM–2 and the Form T–1, in addition to the other forms required to be filed with the Department under the LMRDA. These analyses include the time for reviewing the respective set of instructions, searching existing data sources, gathering and maintaining data needed, creating needed accounting procedures, purchasing software, and completing and reviewing the collection of information. This proposed rule eliminates the need for a Form T–1 burden analysis, as it proposes to eliminate that form and its separate reporting regime. The proposed rule also amends the reporting requirements for the Form LM–2 to bring subsidiary reporting back into its reporting regime, but it does not establish a new reporting regime. Thus, many of the areas analyzed in other LMRDA reporting and disclosure burden analyses are not relevant to this discussion, as the existence and basic structure and procedures of the present Form LM–2 reporting regime is not amended by this proposed rule.

Finally, for the purposes of the analysis below, the following is a brief discussion of the similarities and differences between subsidiary organizations and other entities included within the Form T–1 reporting regime, which demonstrates that data used for evaluating the burden of the Form T–1 may also be used in evaluating the burden of reporting on subsidiary organizations on the Form LM–2. As stated in the preamble, subsidiary organizations are entities wholly owned, controlled, and financed by a union, and the Department estimates that they constitute at least one third of "trusts" included within the Form T–1 reporting regime. These subsidiaries include entities such as strike funds and building corporations, and they also include other entities unrelated to typical union functions. Other entities included within the Form T–1 include Taft-Hartley funds, which are funded by an employer pursuant to a collective bargaining agreement and established and managed jointly between union(s) and employer(s). The latter includes apprenticeship and training funds. Although the entities within the reporting regime of the Form T–1 often differ widely in terms of their structure (including within the subsidiary category itself), subsidiaries and Taft-Hartley funds share many characteristics in this area, such as size, number of officers and employees, assets, liabilities, receipts, and disbursements. As such, although subsidiaries often differ from Taft-Hartley funds in terms of function and certainly in management, they also often have commonalities in areas such as structure and typical reporting and disclosure categories.

C. Methodology for the Burden Estimates [10]

Initially, as stated above, this notice proposes an overall reduction of burden hours for Form LM–2 filers. The Department proposes to rescind the Form T–1, which would result in a reduction of 423,913.74 burden hours in the first year and 306,736.92 in the subsequent years that an estimated 2,292 Form LM–2 filers would incur. Additionally, the total cost to filers was projected to be $15,186,874.46 in the first year and $8,168,474.74 in subsequent years. 73 FR at 57441 and 57445. However, the reinstatement of the subsidiary organization reporting requirement on the Form LM–2 does transfer a portion of the Form T–1 reporting burden to the Form LM–2, as discussed more fully below. The Department has employed much of the burden analysis used in the Form T–1 cost estimates as a basis for its determination of the additional subsidiary organization burden here, although, as noted above, not all aspects of such analysis are relevant to the consolidation of subsidiaries on the Form LM–2, nor do the Form T–1 and Form LM–2 reporting regimes correspond directly to one another. Those places in which the analysis from the 2008 Form T–1 rule is modified or not used are noted.

Further, the changes proposed to the Form LM–3 reporting requirements, which currently require subsidiary reporting, do not result in any significant increase or decrease to the burden for those filers. As stated above, Form LM–3 filers currently have three options in which to report on their subsidiaries: (1) Consolidate all financial transactions on one Form LM–3; (2) file a separate Form LM–3 for each subsidiary organization; or (3) attach an audit to the Form LM–3, prepared in accordance with the Form LM–3 Instructions for each subsidiary. In the Department's experience, a substantial majority of Form LM–3 filers with subsidiary organizations elect to file a consolidated Form LM–3, with few choosing either of the other options. Additionally, the burden for filing a separate LM–3 is virtually identical to consolidating the information on one report. The Department, therefore, does not believe the removal of the option to file separate LM–3s for each subsidiary organization results in a change to the filing burden for Form LM–3 filers.

In reaching its estimates regarding the burden on Form LM–2 filers to consolidate information regarding their subsidiary organizations, the Department considered the recurring costs associated with the proposed rule. Additionally, the Department used the Form T–1 cost and burden estimates as the basis for the estimates for consolidating subsidiary organization information on the Form LM–2 (73 FR 57436–57445). As stated above, although subsidiary organizations represent only a portion of the Form T–1 universe, and they differ from Taft-Hartley funds and other trusts in their function and management, the Department believes that the similarity in the make-up of the organizations and the similar level of reporting of receipts and disbursements required by the Form T–1 and Form LM–2, justify the use of Form T–1 estimates. However, there are differences between Form T–1 reporting and consolidating subsidiary organization financial information on the Form LM–2, and the analysis below will address these.

Additionally, the Department's labor cost estimates reflect the Department's assumption that the labor organizations will rely upon the services of some or all of the following positions (either internal or external staff): The labor organization's president, secretary-treasurer, accountant, and bookkeeper. In the 2008 Form T–1 rule, the salaries for these positions are measured by wage rates published by the Bureau of Labor Statistics or derived from data reported in e.LORS.

1. Number of Subsidiary Organizations

The Department estimates that Form LM–2 filers have approximately 1,187 subsidiary organizations. This number derives from a review of Form LM–2 reports filed in 2004, the final year in which filers were required to identify on Item 10 whether they had a subsidiary organization. A review of these reports indicated that 1,087 Form LM–2 filers indicated that they had at least one subsidiary organization. In the Department's experience, generally about half of the 100 largest labor organizations have multiple subsidiary organizations, with the remainder of all filers with such organizations having only one of them. In the Department's experience, these 50 of the largest labor organizations that have multiple subsidiary organizations have on average approximately two additional subsidiary organizations, for a total of three subsidiaries. Therefore, the Department added 100 (2 subsidiaries × 50 labor organizations) to the 1,087 filers indicating that they had at least one subsidiary organization, for a total estimate of 1,187 subsidiaries.[11]

2. Hours To Complete and File a Consolidated Form LM–2: Reporting and Recordkeeping

Initially, the Department considered the issue of non-recurring burden hours associated with Form LM–2 subsidiary reporting, but it believes that burdens such as those associated with reviewing the Form LM–2 instructions, training staff, acquiring the necessary software to complete and submit the form, and similar up-front burdens, do not exist separately with subsidiary organization reporting. Therefore, unlike with the Form T–1, there are no non-recurring burdens associated with subsidiary organization reporting; only recurring ones. These burdens are already included in the Form LM–2 burden estimate, and the similar burdens related to the Form T–1 would be rescinded by this proposed rule (*See* Form T–1 final rule, Table 5, 73 FR 57444). Further, many recurring burdens and tasks, such as those analyzed in the Form T–1 analysis, are also not included in this analysis, because they did not relate to the Form LM–2 requirements or are already accounted for in the Form LM–2 burden analysis. For example, the basic labor organization identifying information, Items 1–68, and the summary statements are accounted for in the existing Form LM–2 burden analysis. Therefore, this analysis focuses on additional costs necessary to consolidate subsidiary organization information on the filer's existing Form LM–2.

Additionally, the estimated reporting and recordkeeping burden hours for those filers who choose to undertake an audit are substantially the same as those who consolidate the data on their Form LM–2, as the detail required for the audit is congruent with the Form LM–2 requirements. Accordingly, the Department has analyzed below the costs associated with consolidated reporting, and assumes as part of its conclusion that the costs of the audit

[10] Some of the burden numbers included in both this PRA analysis and regulatory flexibility analysis will not add perfectly due to rounding.

[11] These figures differ from the Department's estimates in the Form T–1 analysis. See 73 FR 57441. In the Form T–1 analysis, the Department estimated 2,292 Form LM–2 filers would submit a Form T–1 based upon an analysis of those filers who indicated on their 2006 report that they had at least one LMRDA section 3(l) trust. In this NPRM, the Department derives its estimate of the number of Form LM–2 filers with subsidiaries directly from the number of Form LM–2 filers who indicated on their 2004 Form LM–2 reports that they had a subsidiary organization. The number of Form LM–2 filers with subsidiaries is smaller than the number of LM–2 filers with section 3(l) trusts because the definition of section 3(l) trusts includes more entities than the definition of subsidiaries.

option are no greater than those costs associated with consolidated reporting.

a. Recordkeeping Burden Hours To Complete Schedules for Assets, Liabilities, Receipts, Disbursements, and Officers and Employees Schedules

The Department has recently estimated the recordkeeping burden associated with the number of disbursements, receipts, officers, and employees of trusts in the 2008 Form T–1 rule. (73 FR 57440–57445). The Department assumes that the recordkeeping tasks associated with gathering information required for the Form T–1 are essentially the same as those tasks associated with gathering the necessary information for subsidiary reporting proposed here. For instance, as explained above, although the Form T–1 uses a different format and requires reporting at a higher threshold than the Form LM–2, the Form T–1 receipts schedule, Schedule 1, corresponds to Form LM–2 Schedule 14; the Form T–1 general disbursements Schedule 2 corresponds to Form LM–2 Schedules 15–20; and the Form T–1 officer and employee disbursements Schedule 3 corresponds to Form LM–2 Schedules 11–12. As a result, the Department has employed here the burden hours it concluded were associated with Form T–1 recordkeeping for these categories. For the categories of assets and liabilities, the Form T–1 has no schedules, while the Form LM–2 does provide for reporting these categories in its Schedules 1–10. However, the Department does not believe there is any new recordkeeping burden for these schedules, because unions would already maintain this subsidiary information in the accounting systems used to electronically complete the existing schedules for assets and liabilities not associated with the subsidiary. *See* 68 FR at 58439 (no recurring burden for assets and liabilities in revised Form LM–2 where schedule and software unchanged). Accordingly, the Department concludes that a Form LM–2 filer keeping records necessary to report a subsidiary organization will spend 5.49 additional hours compiling information regarding receipts, 54.15 hours compiling information on general disbursements, and 10.07 hours compiling information to report on disbursements to officers and employees. *See* 73 FR at 57442 (specifically analyzing those recordkeeping tasks for the Form T–1). The total number of hours for recordkeeping tasks is reflected below in Table 1; *see also* 73 FR 57443.

The Form T–1 analysis was based in part on a randomly selected subset of the 2,292 Form LM–2 filers in 2006 that indicated an interest in at least one trust. That analysis has been adapted here for use in analyzing reporting on subsidiaries as opposed to trusts, and includes calculations estimating the recordkeeping burden for receipts (corresponding to Form T–1 Schedule 1; Form LM–2 Schedule 14), general disbursements (corresponding to Form T–1 Schedule 2; Form LM–2 Schedules 15–20), and disbursements to officers and employees (corresponding to Form T–1 Schedule 3; Form LM–2 Schedules 11–12). Based on that analysis, the Department has derived the information-compilation hours noted above (5.49 hours for receipts, 54.15 hours for general disbursements, and 10.07 hours for officer and employee disbursements) in a similar manner, as follows:

The Department estimates that, on average, consolidated Form LM–2 filers will expend 5.49 hours a year on recordkeeping to document the information necessary to complete the Form LM–2 receipts schedule 14. Based on the random sample of labor organizations with an interest in at least one trust outlined above, Form LM–2 filers on average itemize 11 receipts on Schedule 14 (other receipts). The remaining receipts are reported as aggregates in 12 separate categories on Statement B (cash receipts): dues, per capita tax, fees, sales of supplies, interest, dividends, rents, sales of investment and fixed assets, loans, repayment of loans, receipts held on behalf of affiliates for transmission to them, and receipts from members for disbursement on their behalf. The Department does not believe subsidiaries will have receipts from per capita taxes or that they will they hold money for members and affiliates. For the Form T–1, the Department stated that, on average, trusts will itemize 109.86 receipts each year as estimated for the Form T–1. Experience with the Form LM–2 indicates that a labor organization can input all the necessary information on an itemized receipt in 3 minutes. The total number of itemized receipts, 109.86, was multiplied by 3 minutes to reach the yearly recordkeeping burden, 5.49 hours.[12]

For the Form LM–2 disbursement schedules (Schedules 15–20), the Department estimates that, on average, consolidated filers will expend 54.15 hours a year on recordkeeping. The average Form LM–2 has 1,083 itemized disbursements. Like receipts, the Department estimates it will take 3 minutes to input all the necessary information on an itemized disbursement. The total number of itemized disbursements, 1,083, was multiplied by 3 minutes to reach the yearly recordkeeping burden, 54.15 hours.[13]

Regarding the officer and employee schedules (Schedules 11–12), the Department estimates consolidated Form LM–2 filers will expend 10.07 hours on recordkeeping to compile the information necessary to complete these schedules, as Form T–1 Schedule 3 is virtually identical to Form LM–2 Schedules 11–12. The Department based its estimate on the analysis used in the 2008 Form T–1 PRA analysis, as the rule required unions to file Form T–1 reports for subsidiaries, and the Department believes, as explained previously, that the filing burden for subsidiaries greatly resembles that of the burden for filing a Form T–1 for trusts. Specifically, similar to the Form T–1 analysis, a union will not have to increase recordkeeping for officers of subsidiaries, as they are already required to keep records on its officers and key employees (including those of the subsidiary) for the IRS Form 990, including name, address, current position, salary, fees, bonuses, severance payments, deferred compensation, allowances, and taxable and nontaxable fringe benefits. (See 73 FR 57440–42).

Additionally, the Department determined, consistent with the 2008 Form T–1 burden analysis and its Form LM–2 sample, that Form LM–2 filers have, on average, 21.57 employees. The Department assumes that subsidiaries will have a comparable number of employees, although in practice subsidiaries, such as strike funds and building corporations may have considerably fewer. Nevertheless, subsidiaries, as part of unions and thus functioning in certain purposes as employers, keep wage records for each of their employees. The filers will also have to begin keeping records on non-key employees. *Id.*

Finally, for the assets and liabilities schedules (Form LM–2 Schedules 1–10), reporting in these categories was not required for the Form T–1. As explained above, the Department does not believe there is any new recordkeeping burden for these schedules, as subsidiaries already maintain this information as accounts receivable, accounts payable, and investments.

b. Reporting Burden Hours for Data Input

As with the recordkeeping burden above, the Department concludes that the number of hours required for data input for subsidiary reporting on the Form LM–2 is substantially the same as the number of hours required for data input for the Form T–1, which was assessed in the 2008 Form T–1 rule. 73 FR at 57442. In its 2008 Form T–1 rule, the Department estimated that Form T–1 filers will spend 3.75 reporting hours on each schedule inputting the data. As stated in that analysis, experience with the Form LM–2 in previous rulemakings indicates that labor organizations will spend, for each type of reporting (i.e. receipts; general disbursements; officer and employee

[12] This number differs slightly from the 5.43 hours used in the Form T–1 analysis (73 FR 57442) due to a rounding error in that analysis.

[13] This number differs slightly from the 54.13 hours used in the Form T–1 analysis (73 FR 57442) due to a rounding error in that analysis.

disbursements), 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.

In this analysis, the Department has removed the 15 minutes of additional training each year from its estimate, because this extra training is already accounted for in the existing Form LM–2 burden and information relating to the subsidiary is entered on the Form in the same manner as any other asset. However, as in the Form T–1 analysis, the Department estimates that Form LM–2 filers will spend 3.5 hours inputting data for receipts (on Form LM–2, Schedule 14, which corresponds to Form T–1, Schedule 1); officer and employee disbursements (on Form LM–2, Schedules 11–12, which correspond to Form T–1, Schedule 3); the remaining disbursements (on Form LM–2, Schedules 15–20, which correspond to Form T–1, Schedule 2); as well as for the assets and liabilities schedules (on Form LM–2, Schedules 1–10, although the Form T–1 has no counterpart). Additionally, as in the Form T–1 analysis, the Department also estimates that the president and treasurer of the Form LM–2 filing union will each spend two extra hours reviewing the form to ensure the accuracy of the consolidated subsidiary information before signing. *See* 73 FR 57444. These figures are shown below in Table 2.

The Department also removed other reporting categories used in Table 3 of the Form T–1 burden analysis (73 FR 57443), because they did not relate the Form LM–2 requirements or are already included in the Form LM–2 reporting regime and accounted for separately. These categories include: Fill out trust/labor organization information; answer questions; fill in assets, liabilities, disbursements and receipts; additional information; and signature.

c. Total Hours Spent on Recordkeeping and Reporting

As discussed above, and as reflected in the following tables, the Department estimates that, in addition to the existing burden to complete the Form LM–2 as calculated in the 2003 Form LM–2 Final Rule, 68 FR at 58436–40, Form LM–2 filers will expend, on average, 69.71 hours per year on recordkeeping per subsidiary organization and 18.00 hours on reporting.

TABLE 1—RECORDKEEPING BURDEN IN HOURS PER SUBSIDIARY ORGANIZATION

Schedule	Schedule or item description	Total recordkeeping burden (in hours)
Schedules 1–10	Assets and Liabilities Schedules	0.00
Schedule 14	Individually itemized receipts	5.49
Schedules 15–20	Individually itemized disbursements	54.15
Schedule 11 and 12	Disbursements to Officers and Employees of subsidiary	10.07
Total Recordkeeping Burden Hours per Subsidiary Organization		69.71

TABLE 2—REPORTING BURDEN IN MINUTES PER SUBSIDIARY ORGANIZATION

Schedule	Schedule or item description	Prepare download	Preparation of test/data file	Edit/validate/import data file	Total reporting burden
Schedules 1–10	Assets and Liabilities Schedules	60	90	60	210
Schedule 14	Individually itemized receipts	60	90	60	210
Schedules 15–20	Individually itemized disbursements	60	90	60	210
Schedule 11 and 12	Disbursements to Officers and Employees of subsidiary.	60	90	60	210
	Management Review				240
Total Burden per Subsidiary Organization		240	360	240	1080
Total Burden Hours per Subsidiary Organization		4.00	6.00	4.00	18.00

3. Cost of Personnel To Report Subsidiary Organization Financial Information on the Form LM–2

As in the Form T–1 analysis (73 FR 57443–45), the Department assumes that, on average, the completion by a labor organization of a consolidated Form LM–2 will involve an accountant/auditor, bookkeeper/clerk, labor organization president and labor organization treasurer. Based on the 2008 Bureau of Labor Statistics (BLS) wage data from its Occupational Employment Statistics Survey, accountants earn $34.74 per hour and bookkeepers/clerks earn $15.88 per hour.[14] The Department also increased each of these figures by 43.0% to account for total compensation.[15] *See* Table 3 below.

As in the Form T–1 analysis, the Department estimates the average annual salaries of labor organization officers needed to complete tasks for compliance with this rule—the president and treasurer—from responses to salary inquiries based on a sample of 205 labor organizations that filed a Form LM–2 in 2006 and indicated an interest in at least one section 3(l) trust. Because the Department assumes significant commonality between those labor organizations that would have reported on trust interests under the Form T–1

[14] See Occupational Employment and Wages Survey. 2008, survey, Table 6, from the Bureau of Labor Statistics (BLS), Occupational Employment Statistics (OES) Program; *http://www.bls.gov/news.release/pdf/ocwage.pdf*. The Form T–1 analysis utilized data from the 2007 survey, while this proposed rule has updated the data with the use of the 2008 survey.

[15] See Employer Costs for Employee Compensation Summary, from the BLS, at *http://www.bls.gov/news.release/ecec.nr0.htm*. The Department updated the total hourly compensation figures from the Form T–1 analysis (30.2% to 43.0%), in that it uses 2008 rather than 2007 numbers, and it increased the hourly wage rate by the percentage total of the average hourly compensation figure ($8.90 in 2008) over the average hourly wage ($20.49 in 2008).

rule and those labor organizations that will report on subsidiaries under Form LM–2, the Department has employed here the salary data for labor organization President and Treasurer utilized in the Form T–1. The Form T–1 study determined that in 2006 Form LM–2 labor organization presidents with section 3(l) trusts make, on average, $24.89 an hour and treasurers $31.58. The average annual salaries were determined by multiplying the average hourly wage by the number of hours in a year, based on a standard 40-hour work week (40 × 52 = 2,080 hours). The average hourly wage was then multiplied by the same 43.0% to reach $35.59 per hour and $45.16 per hour, for presidents and treasurers, respectively. *See* Table 3 below.

TABLE 3—COMPENSATION COST TABLE

Title	Total hourly wage	Total hourly compensation
Accountants/Auditors	$34.74	$49.68
Bookkeepers/Clerks	15.88	22.71
President	24.89	35.59
Treasurer	31.58	45.16

Once the labor costs were calculated, the Department applied those costs to each of the Form LM–2 tasks computed in the previous section. Each task was evaluated separately to determine which individual from a particular job category would be needed to complete the task. All tasks identified by the Department above as necessary for compliance with the requirements of this rule were analyzed to determine which personnel would conduct those tasks. As stated previously, the Department removed tasks associated with the Form T–1 burden analysis that do not correlate to a task needed to consolidate subsidiary information on the Form LM–2, or are otherwise accounted for in the pre-existing Form LM–2 reporting regime and its burden (*See* Form T–1 final rule, Table 5, 73 FR 57444). The following table presents this analysis.

TABLE 4—COST BY TASK FOR SUBSIDIARY ORGANIZATION CONSOLIDATION ON THE FORM LM–2

Burden type	Task	Individuals participating	Hourly cost	Hours to complete	Cost
Recordkeeping	Input Records	Bookkeeper	$22.71	69.71	$1,583.11
Reporting	Prepare Download	Bookkeeper	$22.71	4.00	90.84
Reporting	Preparation of Test/ Data File.	Accountant	$49.68	6.00	298.08
Reporting	Edit/Validate/Import Data File.	Accountant	$49.68	4.00	298.08
Reporting	Management Review	President and Treasurer.	$35.59 and $45.16	4.00 (2 hours each)	161.50
Total Recordkeeping and Reporting Burdens Hours and Costs				87.71	2,431.61

4. Calculation of Total Costs To Form LM–2 Labor Organizations With a Subsidiary Organization

Based on the analysis reflected in the table above, the average cost per labor organization to consolidate its subsidiary's financial information on its Form LM–2 is $2,431.61. As noted earlier, the Department has employed here many of the assumptions about recordkeeping and reporting burdens from the cost analysis in the Form T–1 Final Rule, because the two reporting regimes have many similarities. However, subsidiaries of smaller unions will not have as many officers, employees, receipts, or disbursements as the subsidiaries of larger unions. As a result, the Department views the burden estimate developed here as somewhat more generous than it will likely be in actuality.

Additionally, based upon experience, the Department estimates that 10% of filers will submit an audit rather than consolidate on its Form LM–2. For these filers, the Department estimates that the reporting and recordkeeping burden, as well as the total cost, will be virtually identical to filers who choose to consolidate, as the same information and level of detail is required for both options. However, the Department understands that the accountant who prepares a separate audit will not engage in the three separate reporting activities (prepare download, prepare data file, and edit import file). Rather, he or she will conduct an analysis of the records and create an audit report. Nevertheless, the Department believes that the reporting burden associated with preparing an audit report will be virtually identical to that of the reporting burden associated with consolidating such information on the Form LM–2. As a result, the Department estimates that the audit option will also cost Form LM–2 filers $2,431.61.

Based upon an estimate of 1,187 total subsidiaries for Form LM–2 filers, the Department estimates that the total cost for Form LM–2 subsidiary reporting is $2,886,321.07. These results are reflected in the table below.

TABLE 5—REPORTING AND RECORDKEEPING BURDEN HOURS AND COSTS FOR FORM LM–2 SUBSIDIARY ORGANIZATION REPORTING

Number of subsidiaries	Reporting hours per subsidiary	Total reporting hours	Recordkeeping hours per subsidiary	Total recordkeeping hours	Total burden hours per subsidiary	Total burden hours	Average cost per subsidiary	Total cost
1,187	18.00	21,366	69.71	82,745.77	87.71	104,111.77	$2,431.61	$2,886,321.07

5. Request for Public Comment

Currently, the Department is soliciting comments concerning the information collection request ("ICR") for the information collection requirements included in this proposed regulation at section 403.2, Annual financial report, of title 29, Code of Federal Regulations, which, when implemented will revise the existing OMB control number 1215–0188. A copy of this ICR, with applicable supporting documentation, including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*. Please note that comments submitted in response to this notice will be made a matter of public record.

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

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

Type of Review: Revision of a currently approved collection.

Agency: Office of Labor-Management Standards.

Title: Labor Organization and Auxiliary Reports.

OMB Number: 1215–0188.

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

Number of Annual Responses: 33,684.

Frequency of Response: Annual for most forms.

Estimated Total Annual Burden Hours: 4,411,641.

Estimated Total Annual Burden Cost: $185,035,644.

Potential respondents are hereby duly notified that such persons are not required to respond to a collection of information or revision thereof unless approved by OMB under the PRA and it displays a currently valid OMB control number. *See* 35 U.S.C. 3506(c)(1)(B)(iii)(V). In accordance with 5 CFR 1320.11(k), the Department will publish a notice in the Federal Register informing the public of OMB's decision with respect to the ICR submitted thereto under the PRA.

Regulatory Flexibility Analysis

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

As in prior rulemakings, the Department's regulatory flexibility analysis utilizes the Small Business Administration's ("SBA") "small business" standard for "Labor Unions and Similar Labor Organizations." Specifically, the Department used the $5 million standard established in 2000, which was updated to $6.5 million in 2005 and in 2008 to $7 million, for purposes of its regulatory flexibility analyses. *See* 65 FR 30836 (May 15, 2000); 70 FR 72577 (Dec. 6, 2005). This same standard ($7 million) has been used in developing the regulatory flexibility analysis for this rule.

All numbers used in this analysis are based on 2006 data taken from the Office of Labor-Management Standards e.LORS database, which contains data from annual financial reports filed by labor organizations with the Department pursuant to the LMRDA, and BLS data.[16] Accordingly, the following analysis assesses the impact of these regulations on small entities as defined by the applicable SBA size standards.

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

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

The objective of this proposed rule is to reinstate subsidiary organization reporting on Form LM–2. Subsidiary reporting on the Form LM–2 was eliminated with revisions to the form in 2003 in anticipation of the implementation of the Form T–1. Until 2003, a union's annual Form LM–2 report would not be complete without inclusion of subsidiaries' financial information. This requirement was superseded by the introduction of the Form T–1. With the rescission of the Form T–1, reporting on subsidiary organizations is proposed to be reinstated within the Form LM–2 reporting requirements. Thus, the proposed rule requires that labor organizations include within their Form LM–2 filing financial information concerning their subsidiary organizations, defined 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." *See* proposed Form LM–2 Instructions, Section X.

As noted earlier in the preamble, the return of subsidiary organizations to the

[16] In order to estimate the number of labor organizations that will report subsidiaries, the Department also analyzed Form LM–2 reports from 2004, which was the final year in which filers were required to identify whether they had a subsidiary organization.

Form LM–2 reporting requirements will improve the amount of financial disclosure of such entities, as compared to disclosure under the Form T–1. Under the proposal, and as the Form LM–2 long required, a union must disclose the financial information of its subsidiary to the same level of detail as other assets of the union, even if the union chose to file a separate Form LM–2 report for the subsidiary or to file an audit for the entity. See pre-2003 Form LM–2 Instructions, Section X. In contrast, the Form T–1, while requiring similar detail in reporting of receipts and disbursements, requires less detailed reporting of assets and liabilities. See Form T–1, Items 16–24, and Form LM–2, Schedules 1–10.

The Department proposes to provide to Form LM–2 filers two options regarding the reporting of their subsidiaries, rather than the three options provided in the pre-2003 Form LM–2 Instructions. The Department proposes that Form LM–2 filers can either consolidate their subsidiaries' financial information on their Form LM–2 report, or they can file, with their Form LM–2 report, a regular annual report of the financial condition and operations of each subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles. Specific information concerning loans payable and payments to officers and employees, in the same detail required under the related schedules on Form LM–2, also would have to be reported.

The Department proposes to not reinstate a previous third option for filers: that of filing a separate Form LM–2 report that includes only the subsidiary's financial information. In the Department's experience, the filing of a separate Form LM–2 in addition to the union's primary report creates confusion for union members and others viewing the reports in that the form is designed for unions, not segregated funds and assets. Moreover, a union must file one Form LM–2 report per fiscal year, and the filing of multiple forms by a union for its subsidiaries creates confusion as to which one is the primary form. While consolidation contains some risk of confusion, the Department's experience is that combined reports are easier to follow than separate reports. Moreover, consolidation is entirely appropriate for subsidiaries that are wholly owned, wholly financed, and wholly controlled by the reporting labor union. This reporting method is a particularly appropriate and desirable option for some unions with subsidiaries that perform traditional union operations, such as strike funds and other special union funds. Thus, the Department proposes to preserve this option for Form LM–2 filers.

Additionally, to preserve consistency, the Department proposes to alter the Form LM–3 instructions regarding the reporting of subsidiary organizations by aligning them with the revised Form LM–2 instructions pertaining to the two options for reporting on subsidiaries. This proposal would establish uniformity with the subsidiary reporting requirements of the two forms.

2. Legal Basis for Rule

The legal authority for this final 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 she may find necessary to prevent the circumvention or evasion of the reporting requirements. 29 U.S.C. 438.

3. Number of Small Entities Covered Under the Proposal

As stated in the preamble and in the PRA analysis, 1,087 filers indicated that they had at least one subsidiary organization on their 2004 Form LM–2 reports, the final year in which filers were required to identify on Item 10 whether they had a subsidiary organization. The Department assumes that of those 1087 filers, 100 labor organizations have receipts valued above SBA's $7 million threshold used to differentiate between small and large entities. Therefore, the Department concludes that there are 987 small labor organizations with receipts below the $7 million threshold that may be affected by this rule. Further, in its experience, those smaller unions with under $7 million in annual receipts will each only have one subsidiary. *See* PRA analysis, *supra.*

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

To the extent that there are federal rules that duplicate, overlap, or conflict with this rule, this is the result of the requirements of the LMRDA and other Federal statutes, such as the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code. Section 201(b) of the LMRDA requires reporting of all assets, liabilities, receipts, and disbursements of labor organizations, and this includes subsidiary organizations. 29 U.S.C. § 431(b). However, to limit burden and any potential duplication, the Department allows filers to attach an audit rather than consolidate information on their subsidiaries.

5. Differing Compliance or Reporting Requirements for Small Entities

Labor organizations that have total annual receipts of $250,000 or more must file the revised Form LM–2. Under the proposed rule, the reporting, recordkeeping, and other compliance requirements apply equally to all labor organizations that are required to file a Form LM–2 under the LMRDA.

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

Form LM–2 filers are directed to use an electronic reporting format. OLMS will provide compliance assistance for any questions or difficulties that may arise from using the Form LM–2 reporting software. A toll-free help desk is staffed during normal business hours and can be reached by telephone at 1–866–401–1109.

Additionally, the use of electronic forms makes it possible to download information from previously filed reports directly into the form; enables most schedule 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 assists reporting compliance and reduces the likelihood that a union will have to file an amended report. The error summaries provided by the software, combined with the speed and ease of electronic filing, also make it easier for both the reporting labor organization and OLMS to identify errors in both current and previously filed reports and to file amended reports to correct them.

7. Steps Taken To Reduce Burden

The proposed rule substantially reduces the burden on labor organizations that file the Form LM–2, including many small labor organizations. By proposing to rescind the Form T–1, which was estimated to affect 2,292 Form LM–2 filers, the proposed rule will eliminate a projected average cost per filer of $4,851.20 in the first year and $2,609.29 in subsequent

year. Subsidiary organization reporting, in contrast, impacts fewer unions (only 1,087 unions are estimated to have such entities), and the cost to consolidate their financial information is only $2,431.61. The Department has further reduced the burden by permitting those unions who already have audit reports for such subsidiaries to attach them to their Form LM–2. *See* PRA analysis, *supra.*

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

This analysis only considers labor organizations with annual receipts between $250,000 and $7 million. Labor organizations with less than $250,000 in annual receipts are not required to file the Form LM–2 and those with annual receipts greater than $7 million are outside of the coverage of the Regulatory Flexibility Act. The proposed rule is not expected to have a significant economic impact on a substantial number of small entities. The LMRDA is primarily a reporting and disclosure statute. Accordingly, the primary economic impact will be the cost of obtaining and reporting required information.

As stated above, the Department estimates that there are 987 labor unions with under $7 million in total annual receipts, which are affected by this rule. Additionally, these unions will have a burden of only $2,431.61, which comes out to merely 0.97% of the total annual receipts of the smallest Form LM–2 filers ($250,000 in total annual receipts) and about 0.07% of the median of unions between $250,000 and $7 million in total annual receipts (i.e. $3,375,000 in total annual receipts). The Department has further reduced the burden by permitting those unions who already have audit reports for such subsidiaries to attach them to their Form LM–2. *See* PRA analysis, *supra.* Moreover, the Department does not believe that the burden will be as great on smaller unions as those with greater than $7 million in total annual receipts, as the smaller unions' subsidiaries will not be as complicated and as large, in areas such as total officers, employees, receipts and disbursements.

9. Conclusion

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

As noted above, the Department estimates that there are 987 labor unions with under $7 million in total annual receipts that will be affected by this rule, and each of these has an estimated one subsidiary about which it will be required to report. As noted in the PRA analysis, *supra,* the Department estimated above that a labor organization's cost for filing a report for one subsidiary is $2,431.61. This cost represents less that one percent (0.97%) of the total annual receipts of the smallest Form LM–2 filers ($250,000 in total annual receipts). Further, this cost represents less than one-tenth of one percent (0.07%) of the median of unions between $250,000 and $7 million in total annual receipts (i.e. $3,375,000 in total annual receipts).

The Department concludes that this economic impact is not significant, as that term is employed for the purpose of this analysis. As to the number of labor organizations affected by this rule, the Department has determined, by examining e.LORS data, that there are 987 smaller unions (each with one subsidiary) affected by this rule. This total represents only 23.34% of the recent total of 4,228 Form LM–2s from labor organizations with receipts between $250,000 and $7,000,000 (which constitute just 17.6% of the 24,065 labor organizations that must file any of the annual financial reports required under the LMRDA (Forms LM–2, LM–3, or LM–4)). The Department concludes that the rule does not impact a substantial number of small entities. Therefore, under 5 U.S.C. 605, the Department concludes that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Electronic Filing of Forms and Availability of Collected Data

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

The OLMS Internet Disclosure site at *http://www.unionreports.gov* is available for public use. The site contains a copy of each labor organization's annual financial report for reporting years 2000 and thereafter, as well as an indexed computer database of the information in each report that is searchable through the Internet.

Information about this system can be obtained on the OLMS Web site at *http://www.olms.dol.gov.*

Appendix A: Specific Changes to the Form LM–2 Instructions

A. General Instructions

Section II. What Form To File

Current instructions read:

Every labor organization subject to the LMRDA, CSRA, or FSA with total annual receipts of $250,000 or more must file Form LM–2. The term "total annual receipts" means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds as described in Section VIII (Funds To Be Reported) of these instructions. Receipts of a trust in which the labor organization is interested should not be included in the total annual receipts of the labor organization when determining which form to file unless the trust is wholly owned, wholly controlled, and wholly financed by the labor organization.

Labor organizations with total annual reports of less than $250,000 may file the simplified annual report Form LM–3, if not in trusteeship as defined in Section IX (Labor Organizations In Trusteeship) of these instructions. Labor organizations with total annual receipts of less than $10,000 may file the abbreviated annual report Form LM–4, if not in trusteeship.

The Department proposes that the above language be revised to read:

Every labor organization subject to the LMRDA, CSRA, or FSA with total annual receipts of $250,000 or more must file Form LM–2. The term "total annual receipts" means all financial receipts of the labor organization during its fiscal year, regardless of the source, including receipts of any special funds as described in Section VIII (Funds To Be Reported) or as described in Section X (Labor Organizations With Subsidiary Organizations). Receipts of a trust in which the labor organization is interested should not be included in the total annual receipts of the labor organization when determining which form to file, unless the 3(l) trusts is a subsidiary organization of the union.

Labor organizations with total annual receipts of less than $250,000 may file the simplified Form LM–3, if not in trusteeship as defined in Section IX (Labor Organization In Trusteeship) of these instructions. Labor organizations with total annual receipts of less than $10,000 may file the abbreviated annual report Form LM–4, if not in trusteeship.

Section VIII. Funds To Be Reported

Current instructions read:

The labor organization must report financial information on Form LM–2 for all

funds of the labor organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even if they are not part of the labor organization's general treasury. The labor organization is required to report information about any trust in which it is interested on the Form T–1. *See* Section X (Trusts In Which A Labor Organization Is Interested).

The Department proposes that the above language be revised to read:

The labor organization must report financial information on Form LM–2 for all funds of the labor organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even if they are not part of the labor organization's general treasury. These special purpose funds include those of subsidiary organizations. *See* Section X (Labor Organizations With Subsidiary Organizations).

Special Instructions for Certain Organizations

Section X. Labor Organizations With Subsidiary Organizations

Current instructions read:

A trust in which a labor organization is interested is defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) 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.

The definition of a trust in which a labor organization is interested may include, but is not limited to, joint funds administered by a union and an employer pursuant to a collective bargaining agreement, educational or training institutions, credit unions created for the benefit of union members, and redevelopment or investment groups established by the unions for the benefit of its members. The determination whether a particular entity is a trust in which a labor organization is interested must be based on the facts in each case.

A labor organization is required to report in Form LM–2 information concerning each LMRDA Section 3(l) trust in accordance with the instructions in Item 10 of Form LM–2.

A labor organization must, in addition, file a separate Form T–1 report disclosing assets, liabilities, receipts, and disbursements of a trust in which the labor organization is interested if the labor organization, alone or in combination with other labor organizations, either (1) appoints or selects a majority of the members of the trust's governing board or (2) contributes to the trust 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 contribution.

No Form T–1 should be filed for any labor organization that 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 Act, such as organizations composed entirely of state or local government employees or state or local central bodies.

No Form T–1 need be filed for:

- A Political Action Committee (PAC) if timely, complete, and publicly available reports on the PAC funds are filed with a Federal or state agency
- A political organization under 26 U.S.C. 527, if timely, complete, and publicly available reports are filed with the Internal Revenue Service
- A federal employee health benefit plan subject to the provisions of the Federal Employees Health Benefits Act (FEHBA)
- A for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843
- An employee benefit plan required to file a Form 5500 for a plan year ending during the reporting period of the union.

For purposes of these instructions, only, a trust is "required to file a Form 5500" if a plan administrator is required to file an annual report on behalf of the trust under 29 U.S.C. sections 1021 and/or 1024.[17] However, if the plan administrator of the trust is eligible for an exemption from filing a Form 5500 or Form 5500–SF, then a Form T–1 must be filed for that section 3(l) trust regardless of whether a Form 5500 or Form 5500–SF is filed on its behalf. For a definition of plans "required to file a Form 5500" for purposes of filing the Form T–1, *see* 29 CFR 403.2(d)(3)(vi).

An abbreviated Form T–1 report may be filed where a qualifying independent audit also is submitted, in accordance with requirements specified in the Form T–1 instructions.

A Form T–1 report must be filed within 90 days after the end of the union's fiscal year. The Form T–1 covers the most recently concluded fiscal year of the trust.

See Instructions for Form T–1, Trust Annual Report.

Questions regarding these reporting requirements should be directed to the OLMS Division of Interpretations and Standards, which can be reached by e-mail at *OLMS–Public@dol.gov,* by phone at 202–693–0123, by fax at 202–693–1340, or at the following address: U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210.

Examples of a trust in which a labor organization is interested may include, but are not limited to, the following entities:

Example A: The Building Corporation—A labor organization creates a corporation which owns the building where the union has its offices. The building corporation must be reported as a trust in which the labor organization is interested.

Example B: The Redevelopment Corporation—A labor organization creates an entity named the Redevelopment Corporation, or appoints one or more of the members of the governing board of the Corporation, which is established primarily to enable members of the labor organization to obtain low cost housing constructed with Federal Housing and Urban Development (HUD) grants. The Redevelopment Corporation must be reported as a trust in which it is interested. A labor organization that neither participated in the creation of the Corporation, nor appointed members of its governing board, but loaned money to the Corporation to use as matching money for HUD grants need not report the Corporation as a trust in which it is interested.

Example C: The Educational Institute—Five reporting labor organizations form the Educational Institute to provide educational services primarily for the benefit of their members. Similar services are also provided to the general public. Each labor organization contributes funds to start the Educational Institute, which will then offer various educational programs that will generate revenue. Each labor organization that participated in forming the Institute, or that appoints a member to its governing body, must report the Educational Institute as a trust in which it is interested.

Example D: Joint Funds—A reporting labor organization that forms a "joint fund" with a large national manufacturer to offer a variety of training and jobs skills programs for members of the labor organization, or appoints a member to the governing body of such a fund, must report the joint fund as a trust in which the labor organization has an interest.

Example E: Job Targeting Fund—A reporting labor organization creates an entity for the purpose of making targeted disbursements to increase employment opportunities for its members. The fund must be reported as a trust in which the labor organization is interested.

The Department proposes that the above language be revised to read:

The labor organization must disclose assets, liabilities, receipts, and disbursements of a subsidiary organization.

Within the meaning of these instructions, a subsidiary organization is defined 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. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the

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

reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. An example of a subsidiary organization is a building corporation which holds title to a building; the labor organization owns the building corporation, selects the officers, and finances the operation of the building corporation.

A labor organization is required to report financial information for each of its subsidiary organizations using one of the following methods:

Method (1)—Consolidate the financial information for the subsidiary organization(s) and the labor organization on a single Form LM–2.

Method (2)—File, with the labor organization's Form LM–2, the regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles.

Financial information reported separately for subsidiary organizations under method (2) must include the name of the subsidiary organization and the name and file number of the labor organization as shown on its Form LM–2. The financial report of the subsidiary organization must cover the same reporting period as that used by the reporting labor organization.

When method (2) is used and the subsidiary organization is an investment, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 26 (Investments) and in Schedule 5 (Investments) of the labor organization's Form LM–2. When method (2) is used and the subsidiary organization is of a non-investment nature, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 28 (Other Assets) of the labor organization's Form LM–2.

The same type of information required on Form LM–2 regarding disbursements to officers and employees and loans made by labor organizations must also be reported with respect to the subsidiary organization. In method (1) the information relating to the subsidiary organization must be combined with that of the labor organization and reported on the labor organization's Form LM–2 on Schedule 11 and Schedule 12 in the detail required by the instructions. If method (2) is used, an attachment must be submitted containing the information required by the instructions for Schedules 2, 11, and 12.

The information regarding loans made by the subsidiary organization must include a listing of the names of each officer, employee, or member of the labor organization and each officer or employee of the subsidiary organization whose total loan indebtedness to the subsidiary organization, to the labor organization, or to both at any time during the reporting period exceeded $250. However, if method (2) is used, the amount reported by the subsidiary organization should be only the amount owed to the subsidiary organization.

The annual financial report must also include all disbursements made by the subsidiary organization to or on behalf of its officers and officers of the labor organization. The report must also list the name and position of the subsidiary organization's employees whose total gross salaries, allowances, and other disbursements from the subsidiary organization, the reporting labor organization, and any affiliates were more than $10,000. However, if method (2) is used, only the disbursements of the subsidiary organization for its employees should be reported.

XI. Completing Form LM–2

Item 10 currently reads:

10. TRUSTS OR FUNDS—Answer "Yes" to Item 10, if the labor organization has an interest in a trust as defined in 29 U.S.C. 402(l) (*see* Section X of these Instructions). Provide in Item 69 (Additional Information) the full name, address, and purpose of each trust. Also include in Item 69 the fiscal year ending date for any trust for which a Form T–1 is filed if the trust's fiscal year is different from that of the labor organization. If no Form T–1 is required to be filed on the trust because (1) the trust had annual receipts of less than $250,000 during the trust's most recent fiscal year or (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 less than $10,000, the labor organization should also report the amount of the contribution in Item 69 and, if the contribution was made by the labor organization itself, in the appropriate disbursement item in Statement B. Additionally, if no Form T–1 is filed because financial information is already available as a result of the disclosure requirements of another Federal statute, list the name of any government agency, such as the Employee Benefits Security Administration (EBSA) of the Department of Labor, with which the trust files a publicly available report, and the relevant file number of the trust, or otherwise indicate where the relevant report may be viewed. *See* Instructions for Form T–1, Trust Annual Report, for guidance on reporting the assets, liabilities, receipts, disbursements, and other information about these entities.

The Department proposes that the above language be revised to read:

10. TRUSTS—Answer "Yes" to Item 10, if the labor organization has an interest in a trust as defined in 29 U.S.C. 402(l). Provide in Item 69 (Additional Information) the full name, address, and purpose of each trust. If a report has been filed for the trust or other fund under the Employee Retirement Income Security Act of 1974 (ERISA), report in Item 69 (Additional Information) the ERISA file number (Employer Identification Number—EIN) and plan number, if any.

The Department proposes that the Form LM–2 be revised to break current Item 11 on the form into two questions to be read as follows:

Item 11(a). During the reporting period did the labor organization have a political action committee fund (PAC)?

Item 11(b). During the reporting period did the labor organization have a subsidiary organization as defined in Section X of these Instructions?

Current instructions read:

If the labor organization answered "Yes" to Item 11, provide in Item 69 (Additional Information) the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds kept separate from the labor organization's treasury need not be included in the labor organization's Form LM–2 if publicly available reports on the PAC funds are filed with a Federal or state agency.)

The Department proposes that the Instructions for Item 11 be revised to read:

If the labor organization answered "Yes" to Item 11(a), in reference to a political action committee, provide in Item 69 (Additional Information) the full name of each separate political action committee (PAC) and list the name of any government agency, such as the Federal Election Commission or a state agency, with which the PAC has filed a publicly available report, and the relevant file number of the PAC. (PAC funds kept separate from the labor organization's treasury need not be included in the labor organization's Form LM–2 if publicly available reports on the PAC funds are filed with a Federal or state agency.)

If the labor organization answered "Yes" to Item 11(b), in reference to a subsidiary organization, provide in Item 69 (Additional Information) the name, address, and purpose of each subsidiary organization. Indicate whether the information concerning its financial condition and operations is included in this Form LM–2 or in a separate report. *See* Section X of these instructions for information on reporting subsidiary organizations.

Schedule 2—Loans Receivable

The instructions regarding Column (A) currently read:

Column (A): Enter the following information on Lines 1 through 3 (and on continuation pages if necessary):

- The name of each officer, employee, or member whose total loan indebtedness to the labor organization at any time during the reporting period exceeded $250, and the name of each business enterprise which had any loan indebtedness, regardless of amount, at any time during the reporting period;

The Department proposes that the Instructions for Schedule 2, Column (A) be revised to read:

Column (A): Enter the following information on Lines 1 through 3 (and on continuation pages if necessary):

- The name of each officer, employee, or member whose total loan indebtedness to the labor organization, including any subsidiary organization, at any time during the reporting period exceeded $250, and the name of each business enterprise which had any loan indebtedness, regardless of amount, at any time during the reporting period;

Schedule 5—Investments Other Than U.S. Treasury Securities

Schedule 5, Item 6 currently reads:

List each other investment which has a book value over $5,000 and exceeds 5% of Line 5. Also, list each Trust which is an investment.

The Department proposes that Schedule 5, Item 6 be revised to read:

List each other investment which has a book value over $5,000 and exceeds 5% of Line 5. Also, list each subsidiary for which separate reports are attached.

The Instructions for Schedule 5 currently read:

Report details of all the labor organization's investments at the end of the reporting period, other than U.S. Treasury securities. Include mortgages purchased on a block basis and any investments in a trust as defined in Section X (Trusts in Which a Labor Organization is Interested) of these instructions. Do not include savings accounts, certificates of deposit, or money market accounts, which must be reported in Item 22 (Cash) of Statement A.

The Department proposes that the Instructions for Schedule 5 be revised to read:

Report details of all the labor organization's investments at the end of the reporting period, other than U.S. Treasury securities. Include mortgages purchased on a block basis and investments in any subsidiary organization not reported on a consolidated basis in accordance with method (1) explained in Section X of these instructions. Do not include savings accounts, certificates of deposit, or money market accounts, which must be reported in Item 22 (Cash) of Statement A.

The Instructions for the Schedule 5, Note currently read:

Note: All trusts in which the labor organization is interested which are investments of the labor organization (such as real estate trusts, building corporations, etc.) must be reported in Schedule 5. On Lines 6(a) through (d) enter the name of each trust in Column (A) and the labor organization's share of its book value in Column (B).

The Department proposes that the Instructions for Schedule 5, Note be revised to read:

Note: If your organization has a subsidiary organization for which a separate report is being submitted in accordance with Section X of these instructions, the subsidiary organization must be reported in Schedule 5 if it is an investment. Enter on Lines 6(a) through (d) the name of each subsidiary organization in Column (A) and its book value in Column (B).

The Instructions for Schedule 7—Other Assets, Note currently read:

Note: If the labor organization has an ownership interest of a non-investment nature in a trust in which it is interested (such as a training fund) the value of the labor organization's ownership interest in the entity as shown on the labor organization's books must be reported in Schedule 7 (Other Assets). Enter in Column (A) the name of any such entity. Enter in Column (B) the value as shown on the labor organization's books of its share of the net assets of any such entity.

The Department proposes that the Instructions for Schedule 7, Note be revised to read:

Note: If your organization has a subsidiary organization for which a separate report is being submitted in accordance with Section X of these instructions, the value of the subsidiary organization as shown on your organization's books must be reported in Schedule 7 if it is of a non-investment nature. Enter in Column (A) the name of any such subsidiary organization. Enter in Column (B) the value as shown on your organization's books of the net assets of any such subsidiary organization.

The Instructions for Schedule 12—Disbursements to Employees, Columns (A), (B), and (C) currently read:

Column (A): Enter the last name, first name, and middle initial of each employee who during the reporting period received $10,000 or more in gross salaries, allowances, and other direct and indirect disbursements from the labor organization or from the labor organization and any affiliates and/or trusts of the labor organization. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relation of parent and subordinate.) The labor organization's report, however, should not include disbursements made by affiliates or trusts but should include only the disbursements made by the labor organization.

Column (B): Enter the position each listed employee held in the labor organization.

Column (C): Enter the name of any affiliate or trust that paid any salaries, allowances, or expenses on behalf of a listed employee.

The Department proposes that the Instructions for Schedule 12, Columns (A), (B), and (C) be revised to read:

Column (A): Enter the last name, first name, and middle initial of each employee who during the reporting period received $10,000 or more in gross salaries, allowances, and other direct and indirect disbursements from the labor organization (including any subsidiary organizations) or form the labor organization and any affiliates. ("Affiliates" means labor organizations chartered by the same parent body, governed by the same constitution and bylaws, or having the relation of parent and subordinate.) The labor organization's report, however, should not include disbursements made by affiliates but should include only the disbursements made by the labor organization.

Column (B): Enter the position each listed employee held in the labor organization (including any subsidiary organizations).

Column (C): Enter the name of any affiliate that paid any salaries, allowances, or expenses on behalf of a listed employee. If a subsidiary of the labor organization paid any salaries, allowances, or expenses on behalf of a listed employee, see Section X of these Instructions for information about reporting these disbursements.

The Department seeks comments on its proposed changes to the Form LM–2 and instructions.

Appendix B: Specific Proposed Changes to the Form LM–3 and Instructions

The text of the Form LM–3 and Instructions pertaining to some sections will be changed to address the reporting of subsidiary organizations. With respect to the Form, the Department proposes to remove Item 3(c), which currently requires to identify if the report is exclusively filed for a subsidiary organization, as the Department proposes to remove this option, as described above. The proposed revised Form LM–3 Instructions include changes to sections VIII and X.

Section VIII currently reads:

VIII. Funds To Be Reported

Your labor organization's Form LM–3 must report financial information for all funds of your organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even it they are not part of your organization's general treasury. All labor organization political action committee (PAC) funds are considered to be labor organization funds. However, to avoid duplicate reporting, PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM–3 if publicly available reports on the PAC funds are filed with a Federal or state agency.

Your organization is required to report financial information about any "subsidiary organization(s)." Financial information about your organization and its subsidiary organizations may be combined on a single Form LM–3 or a separate report may be filed for any subsidiary organization. *See* Section X of these instructions for information on reporting financial information for subsidiary organizations.

In combining the information concerning special funds and/or any subsidiary organizations, be sure to include the requested information and amounts for the "special funds" and subsidiary organizations as well as for your organization in all items.

The Department proposes that Section VIII read:

VIII. Funds To Be Reported

Your labor organization's Form LM–3 must report financial information for all funds of your organization. Include any special purpose funds or accounts, such as strike funds, vacation funds, and scholarship funds even it they are not part of your organization's general treasury. All labor organization political action committee (PAC) funds are considered to be labor organization funds. However, to avoid duplicate reporting, PAC funds which are kept separate from your labor organization's treasury are not required to be included in your organization's Form LM–3 if publicly available reports on the PAC funds are filed with a Federal or state agency.

Your organization is required to report financial information about any "subsidiary organization(s)." Financial information about your organization and its subsidiary organizations may be combined on a single Form LM–3 or you may attach an audit to your Form LM–3 report as described in

Section X of these instructions for information on reporting financial information for subsidiary organizations.

In combining the information concerning special funds and/or any subsidiary organizations, be sure to include the requested information and amounts for the "special funds" and subsidiary organizations as well as for your organization in all items.

Current Section X reads:

X. Labor Organizations With Subsidiary Organizations

A subsidiary organization, within the meaning of these instructions, is 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. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. An example of a subsidiary organization is a building corporation which holds title to a building; the labor organization owns the building corporation, selects the officers, and finances the operation of the building corporation.

If your organization has no subsidiary organization as defined above, skip to Section Xl of these instructions.

A labor organization is required to report financial information for each of its subsidiary organizations using one of the following methods:

Method (1)—Consolidate the financial information for the subsidiary organization(s) and the labor organization on a single Form LM–3.

Method (2)—Complete a separate Form LM–3 for the subsidiary organization and file it with the labor organization's Form LM–3. The LM–3 report for the subsidiary organization must be identified by selecting Item 3(c).

Method (3)—File, with the labor organization's Form LM–3, the regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles. Financial information reported separately for subsidiary organizations under methods (2) and (3) above must include the name of the subsidiary organization and the name and file number of the labor organization as shown on its Form LM–3. The financial report of the subsidiary organization must cover the same reporting period as that used by the reporting labor organization.

When method (2) or (3) is used and the subsidiary organization is an investment, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 28 (Investments) of the labor organization's Form LM–3.

When method (2) or (3) is used and the subsidiary organization is of a non-investment nature, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 30 (Other Assets) of the labor organization's Form LM–3.

The same type of information required on Form LM–3 regarding disbursements to officers and employees and loans made by labor organizations must also be reported with respect to the subsidiary organization. In method (1) the information relating to the subsidiary organization must be combined with that of the labor organization and reported on the labor organization's Form LM–3 in Item 24 and in Item 56 in the detail required by the instructions for Items 17 and 18. In method (2) this information must be reported on the separate Form LM–3 of the subsidiary organization in Item 24 and in Item 56 in the detail required by the instructions for Items 17 and 18. If method (3) is used, an attachment must be submitted containing the information required by the instructions for Items 17, 18, and 24.

The information regarding loans made by the subsidiary organization must include a listing of the names of each officer, employee, or member of the labor organization and each officer or employee of the subsidiary organization whose total loan indebtedness to the subsidiary organization, to the labor organization, or to both at any time during the reporting period exceeded $250. However, if method (2) or (3) is used, the amount reported by the subsidiary organization should be only the amount owed to the subsidiary organization.

The annual financial report must also include all disbursements made by the subsidiary organization to or on behalf of its officers and officers of the labor organization. The report must also list the name and position of the subsidiary organization's employees whose total gross salaries, allowances, and other disbursements from the subsidiary organization, the reporting labor organization, and any affiliates were more than $10,000. However, if method (2) or (3) is used, only the disbursements of the subsidiary organization for its employees should be reported.

The Department proposes that Section X be revised to read:

X. Labor Organizations With Subsidiary Organizations

A subsidiary organization, within the meaning of these instructions, is 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. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. An example of a subsidiary organization is a building corporation which holds title to a building; the labor organization owns the building corporation, selects the officers, and finances the operation of the building corporation.

If your organization has no subsidiary organization as defined above, skip to Section Xl of these instructions.

A labor organization is required to report financial information for each of its subsidiary organizations using one of the following methods:

Method (1)—Consolidate the financial information for the subsidiary organization(s) and the labor organization on a single Form LM–3.

Method (2)—File, with the labor organization's Form LM–3, the regular annual report of the financial condition and operations of the subsidiary organization, accompanied by a statement signed by an independent public accountant certifying that the financial report presents fairly the financial condition and operations of the subsidiary organization and was prepared in accordance with generally accepted accounting principles. Financial information reported separately for subsidiary organizations under this method must include the name of the subsidiary organization and the name and file number of the labor organization as shown on its Form LM–3. The financial report of the subsidiary organization must cover the same reporting period as that used by the reporting labor organization.

When method (2) is used and the subsidiary organization is an investment, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 28 (Investments) of the labor organization's Form LM–3.

When method (2) is used and the subsidiary organization is of a non-investment nature, the financial interest of the reporting labor organization in the subsidiary organization must be reported in Item 30 (Other Assets) of the labor organization's Form LM–3.

The same type of information required on Form LM–3 regarding disbursements to officers and employees and loans made by labor organizations must also be reported with respect to the subsidiary organization. In method (1) the information relating to the subsidiary organization must be combined with that of the labor organization and reported on the labor organization's Form LM–3 in Item 24 and in Item 56 in the detail required by the instructions for Items 17 and 18. If method (2) is used, an attachment must be submitted containing the information required by the instructions for Items 17, 18, and 24.

The information regarding loans made by the subsidiary organization must include a listing of the names of each officer, employee, or member of the labor organization and each officer or employee of the subsidiary organization whose total loan indebtedness to the subsidiary organization, to the labor organization, or to both at any time during the reporting period exceeded $250. However, if method (2) is used, the amount reported by the subsidiary organization should be only the amount owed to the subsidiary organization.

The annual financial report must also include all disbursements made by the

subsidiary organization to or on behalf of its officers and officers of the labor organization. The report must also list the name and position of the subsidiary organization's employees whose total gross salaries, allowances, and other disbursements from the subsidiary organization, the reporting labor organization, and any affiliates were more than $10,000. However, if method (2) is used, only the disbursements of the subsidiary organization for its employees should be reported.

List of Subjects in 29 CFR Part 403

Labor unions, Trusts, Reporting and recordkeeping requirements.

Text of Proposed Rule

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

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

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

Authority: Labor-Management Reporting and Disclosure Act Secs. 201, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 431, 437, 438); Secretary's Order No. 4–2007, May 2, 2007, 72 FR 26159.

§ 403.2 [Amended]

2. In § 403.2, remove paragraph (d).

§ 403.5 [Amended]

3. In § 403.5, remove paragraph (d).

§ 403.8 [Amended]

4. In § 403.8, remove paragraph (c) and redesignate paragraph (d) as paragraph (c).

Signed in Washington, DC, this 25th day of January 2010.

Andrew Auerbach,

Deputy Director, Office of Labor-Management Standards.

[FR Doc. 2010–1912 Filed 2–1–10; 8:45 am]

BILLING CODE 4510–CP–P