

Other commenters claimed to have witnessed questionable union expenditures, which increased disclosure would have revealed. Another comment asserted, "Significant money is spent on items which many would consider a waste of funds if only the members knew." Others said that the greater detail in the proposed form "will make thefts harder to cover up." Another member supported the initiative to "help prevent fraud and corruption," as well as to permit "informed decisions about workplace issues." A public interest organization commented that "the information provided by the AFL-CIO in the Form LM-2 is not sufficient to give the average union member an accurate picture of how the AFL-CIO spends much of the dues collected." One commenter noted that requiring unions to estimate the amount of time spent by union officers and employees performing various duties will provide significant new information to union members. The commenter also stated that, together with reporting receipts and disbursements by functional categories, the proposed rule will provide information that will help ensure that union leadership is acting in the interests of its membership. Another public interest organization commented that more "detailed financial reporting is needed" to avoid "waste, fraud and corruption." A 25-year union member stated, "It will be a great victory for [the union's] membership when the reform is passed."

Many commenters opposed the proposed changes, expressing their beliefs that the proposed rule is: political payback designed to punish organized labor; designed to weaken the union movement; intended to hamper the ability of unions to service their members; designed to strain union budgets; intended to expand the requirements of *Communication Workers of America v. Beck*, 487 U.S. 735 (1988); and intended to secure additional information for employers and anti-union organizations rather than union members. Although a number of unions and their members submitted helpful comments on the substance of the rule, some of the general comments in opposition simply criticized the Administration and Department officials, and lacked specific recommendations on the substance of the proposal. They nevertheless expressed strongly held feelings in opposition to the proposed changes.

Acknowledging that there are strong views on both sides of the issue, the Department has carefully considered all of the comments and the arguments

made for and against the proposed revision of the forms used by labor organizations to report annual financial information as required by the LMRDA.

B. The Secretary's Statutory Authority

Some of the commenters questioned the Department's authority to make the proposed changes, arguing that the Department is upsetting the delicate balance between labor and management that was recognized by Congress in the National Labor Relations Act. Some unions complained that the proposal would require that labor organizations disclose confidential trade secrets, such as organizing strategy and negotiating plans, which some courts have ruled are not discoverable by union members and would give adversaries a greater knowledge of the inner workings of the labor organizations with which they may deal in connection with collective bargaining or organizing activities. These commenters argue that the Department's proposal is inconsistent with the principle that governmental intrusion into the affairs of labor organizations should be limited because the Constitution protects the right of association, there purportedly is no evidence that union members want this information, and, they alleged, other voluntary organizations are not subjected to this level of disclosure.

The Department takes seriously the concerns expressed that the proposed rule would intrude too deeply in the internal affairs of labor organizations and provide unfair advantages to the adversaries and competitors of such organizations. Accordingly, the Department has made numerous changes, described below, to avoid these unintended and unwanted results. In the Department's view, however, none of these changes is necessitated by any lack of authority on the part of the Department to revise the reporting forms or the manner in which reports must be filed. On the contrary, the LMRDA gives the Secretary of Labor authority to make such changes, for the reasons outlined in the Notice of Proposed Rulemaking (NPRM) and in this rule. Section 201(b) of the LMRDA, 29 U.S.C. 431(b), requires that:

Every labor organization shall file annually with the Secretary a financial report signed by its president and treasurer or corresponding principal officers containing the following information *in such detail as may be necessary accurately to disclose its financial condition and operations for its preceding fiscal year* * * *

(Emphasis added.) In addition, section 208 of the LMRDA, 29 U.S.C. 438, states in part:

The Secretary shall have 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 prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.

These provisions make it clear that the Secretary has discretion to determine the format in which the information required by the statute must be provided, as well as the detail in which the information must be reported.

The statutory language describing the information that labor organizations are required to report is broad. Each labor organization must include in its annual financial report:

- (1) Assets and liabilities at the beginning and end of the fiscal year;
- (2) receipts of any kind and the sources thereof;
- (3) salary, allowances and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who, during such fiscal year, received more than \$10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated, or which is affiliated with the same national or international labor organization;
- (4) direct and indirect loans made to any officer, employee, or member, which aggregated more than \$250 during the fiscal year, together with a statement of the purposes, security, if any, and arrangements for repayment;
- (5) direct and indirect loans to any business enterprise, together with a statement of the purpose, security, if any, and arrangements for repayment; and
- (6) other disbursements made by it including the purposes thereof; all in such categories as the Secretary may prescribe.

29 U.S.C. 431(b)(1)-(6). Comments that the Secretary lacks authority to require that receipts and disbursements be itemized or that disbursements be reported in categories are inconsistent with the plain language of the statute. In fact, the statute authorizes the Secretary to require labor organizations to report every receipt and disbursement, in any amount, and in any categories prescribed by the Secretary. The statute's requirement that labor organizations report "receipts" and "disbursements" does not, as some comments argue, call for only aggregated receipts and disbursements. Neither the fact that the Secretary has not heretofore exercised the full extent