

continue with this approach. This avoids forcing labor organizations to incur the expenses and burdens associated with making determinations about whether given items are "material." Even those commenters that suggested that the Department should consider implementing a materiality standard recognized that such a standard would introduce an element of judgment in the reporting process with potential for complicating the investigative process. Although a commenter argued that such tradeoffs are similar to those necessitated by dollar thresholds for reporting, the Department believes that a dollar threshold is easier for reporting unions to apply, for the Department to enforce, and for union members to understand.

In addition to the detailed quantitative data, the annual and quarterly reports of large and small public companies must also disclose "material" qualitative data. *See Law of Securities Regulation* §§ 3.4, 3.6, 9.4. This includes narrative descriptions of "material" aspects of a company's businesses and principal products. *Id.* Public companies must also disclose information on relationships the company has that may have a "material" effect on current or future financial condition, liquidity, capital expenditures, capital resources, or significant components of revenues or expenses of the company. *Id.* This includes an explanation of a company's dependence on customers whose loss would materially affect the company's financial health and an explanation of material changes in the mode of conducting business. *Id.* "Material" legal proceedings must be reported, including full identification of parties and the circumstances and basis of the proceedings. *Id.* "Material" property holdings must also be identified and described, including their use and any encumbrances upon them. *Id.*

Public companies are also required to make forward-looking statements about the future financial performance of the company, including analysis of all "material" risks facing the company. *Id.* Public companies must also report "material" information about market risk, such as potential loss in future earnings of cash flow based on changes in interest rates, foreign currency exchange rates, commodity prices and other relevant market factors. *Id.* A detailed explanation of internal controls and procedures must also be provided. *Id.*; *see also* 68 FR 36636–01. The Department has decided not to require labor organizations to provide their members with any qualitative information on its finances, much less

the detailed qualitative analysis public companies are required to disclose.

Following the passage of Sarbanes-Oxley, the SEC and the Public Company Accounting Oversight Board ("the Board") oversee the audits of public companies; establish accounting and audit report standards and rules for public companies; and certify, investigate, inspect, and enforce compliance with standards applicable to professionals involved in the preparation of audits and financial reports by public companies. *See* Title I, 116 Stat. 750. Annual audits and financial reporting by public companies must be under the control of an audit committee composed exclusively of independent directors. *See* Title II, § 202, 116 Stat. 772–73; Title III, 116 Stat. 775–77. These independent committees must include at least one "financial expert" and are directly responsible for the appointment, compensation, and oversight of the certified firms that do private audits of public companies. *See* Title IV, § 408, 116 Stat. 790–91. To effectuate the whistleblower provisions of the Sarbanes-Oxley Act, these audit committees must also establish procedures for the receipt, retention and review of anonymous complaints by a public company's employees regarding accounting practices, internal financial controls, and auditing matters. *See* Title III, §§ 301–04, 116 Stat. 775–78. Public companies must give their audit committees the financial resources necessary to hire any independent advisors or attorneys required to carry out these responsibilities. *Id.*

The LMRDA does not require labor unions to perform any audits. It does not mandate that unions use governance structures that ensure independent oversight of financial operations, such as independent audit committees. Union members have no whistleblower rights. The Department does not enforce any independent system of certification, quality control, ethics, independence standards or other regulation of firms that some unions use to prepare annual Form LM–2 reports. There are also no restrictions on other services that a firm preparing Form LM–2 reports may perform for a labor organization. In contrast to the reviews the SEC performs on public companies not less than once every three years (*see* 15 U.S.C. 7266(c)), labor unions currently can expect, on average, to be audited by the Department of Labor approximately once every 150 years. Ten of the 25 largest unions have never been audited because of OLMS's limited resources.

Several commenters suggested that unions be required to file annual

independent audits. Many unions, one individual commented, have constitutional provisions that already require an audit by an outside accounting firm. While some commenters argued that requiring unions to obtain annual audits is within the Department's statutory authority, no provision of the LMRDA vests the Secretary of Labor with any express authority to require unions to obtain audits and the Department has chosen not to attempt to impose such a requirement, to avoid imposing on the labor organizations that are not currently obtaining private audits any need to hire financial experts to conduct a qualitative analysis of the union's records. Simply permitting those unions that currently obtain annual audits to file whatever audit is currently performed is not likely to ensure that all of the statutorily-required information is reported, nor would it ensure that the information is provided in a standard format that is both readily understandable and accessible to union members. Information that may be meaningful to trained financial analysts or auditors may not be useful to many union members.

Accordingly, the statutory requirements, and the Secretary's longstanding implementation of those requirements, have been framed in terms of assets, liabilities, disbursements and receipts, rather than more general financial terms. The Department has concluded that continuing to require unions to report holdings and transactions, rather than third-party descriptions of their financial conditions, will provide understandable information to members, permit members to compare reports of different years, permit members to compare reports with those of other unions, and enhance the detection and deterrence of fraud.

Alternatively, commenters suggested, the Department should annually conduct a compliance audit of each union. The Department's responsibility for insuring the financial integrity of unions involves both requiring adequate reporting and conducting compliance audits. The statute does not contemplate the two components as mutually exclusive; in fact, the Department intends to increase the number of compliance audits, as resources permit, at the same time it implements the revised Form LM–2. Additional compliance audits would not, however, constitute a satisfactory alternative to the reforms embodied in the revised Form LM–2, as compliance audits would address the accuracy of the information provided in the existing