

Form LM-2, but would not improve the transparency of labor organizations' finances, increase the information available to members, or make the data disclosed in reports more understandable and accessible.

As one commenter noted, it is even more difficult to deter financial mismanagement by labor organization officials than it is in a corporate setting because of the absence of natural market influences and because there are fewer regularly occurring checks on the financial performance of unions. The same commenter noted that the additional disclosure as a result of the proposed changes would make it more difficult, and more expensive, to hide fraud. Recognizing that achieving this goal will also make it more expensive for unions to report, and that disclosure alone will reduce but not entirely overcome fraud, the Department has attempted to achieve a balance in this rule between the benefits and burdens of more detailed disclosure, and intends to follow promulgation of the rule both with more effective enforcement, using the additional information disclosed to uncover fraud when it occurs, and with more compliance assistance to respond to questions and concerns.

The Department is also not persuaded by the comments that suggest that the reporting requirements for labor organizations should be comparable to those that govern non-profit organizations. The LMRDA was enacted in the aftermath of a congressional investigation in the 1950's that found corruption in union leadership and a disregard for the rights of the rank-and-file. See *Wirtz v. Hotel, Motel & Club Emp. Union, Local 6*, 391 U.S. 492, 497-98 (1968). The over-riding purpose of the reporting provisions of the LMRDA is to provide union members with "all the vital information necessary for them to take effective action in regulating affairs of their organization." See S. Rep. 187, 86th Cong., 1st Session, p.9, 1959 U.S.C.C.A.N. 2318, 2325 (1959). The Senate Labor Committee declared: "A union treasury should not be managed as the private property of union officers, however well intentioned, but as a fund governed by fiduciary standards appropriate to this type of organization. The members who are the real owners of the money and property of the organization are entitled to a full accounting of all transactions involving their property." See S. Rep. 187 at p. 8, 1959 U.S.C.C.A.N. at 2324. In light of these congressional directives, the Department is not persuaded as a general matter that a comparison between labor organizations and ordinary non-profit organizations is apt

in the context of determining reporting standards. Nevertheless, although other reporting standards will not be treated as benchmarks or models, the Department has considered the specific comments of labor organizations and others in assessing the appropriateness of each proposed change to the reporting forms, as discussed in the succeeding sections.

D. Application of Generally Accepted Accounting Principles

Some commenters argued that the changes proposed by the Department depart from the generally accepted accounting principles (GAAP) promulgated by the FASB and the American Institute of Certified Public Accountants (AICPA). In particular, this position was advanced by a professor of accountancy whose comments were made on behalf of, and attached to the comment of, the AFL-CIO. This commenter said that many of the terms used and information required by the Department's proposal are inconsistent with various interpretations of GAAP. These assertions fail to recognize, however, that not all GAAP standards are consistent with the disclosure requirement of the LMRDA. 29 U.S.C. 431(b). Although the Department has considered the GAAP standards, and has accepted them in principle where they further the purposes of the LMRDA, the Department will not adopt GAAP standards when they are not consistent with these purposes. For example, as many commenters noted, the current Form LM-2 mandates reporting on a cash accounting basis, which is inconsistent with GAAP, but some cash accounting procedures are made necessary by the statute's requirement that the union disclose "receipts" and "disbursements." See 29 U.S.C. 431(b). Further, Form LM-2 is a special-purpose financial report prepared for compliance with the LMRDA. Special financial reports to government regulatory bodies are generally prepared in conformity with Other Comprehensive Basis Of Accounting (OCBOA).

This commenter also argued that the Department's proposal calls for the presentation of disaggregated information, which is contrary to GAAP and confusing for the user of the reported information. Although GAAP precepts do not control the inquiry, the revised Form LM-2, like the current Form LM-2, includes Statements A and B, which provide aggregated totals of financial information. Form LM-2 users do not have to rely solely on the itemized information contained in the schedules to obtain an overall

understanding of the reporting labor organization's financial performance. The Department proposed requiring labor organizations to provide certain itemized information in addition to the aggregated totals in order to provide users of the Form LM-2 with additional financial information on specific financial issues. In fact, the FASB recognizes the appropriate inclusion of disaggregated information in financial reporting:

Disaggregated information that permits users of financial information to relate components of revenues to components of expenses also is often preferable to information provided by their aggregated amounts.

Financial Accounting Standard 117 (FAS 117), ¶ 118.

Several commenters asserted that the individual items reported on the Form LM-2 supporting schedules in and of themselves are not material financial information that will be relevant to the user. The FASB states that materiality of information is not measured solely on its magnitude. SFAC No. 2. "Materiality is a pervasive concept that relates to the qualitative characteristics, especially relevance and reliability." *Id.* The Supreme Court, in deciding whether an omitted fact was material, described a general standard of materiality as:

A substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable shareholder. Put another way, there must be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.

TSC Industries Inc. v. Northway Inc., 426 U.S. 438, 449 (1976). The FASB agrees that the "usefulness of information must be evaluated in relation to the purposes to be served, and the objectives of financial reporting are focused on the use of accounting information in decision making." *Id.* The Department has concluded, based on the experience of its investigators and the comments received from many union members, that the information that will be reported as a result of this revision of the Form LM-2, in fact, will have the capacity to make a difference in the ability of union members to make decisions regarding workplace and union governance issues. As indicated in Section III(B)(3), (4), the proper threshold for when a union must itemize and separately report a receipt or expenditure is subject to competing arguments. Setting the threshold lower (or eliminating it entirely) increases the number of receipts and expenditures