

form and publication of reports required to be filed under Title II. *See* 29 U.S.C. 438. Neither sections 205 and 208 nor any other provision of the Act expressly vest the Secretary of Labor with any authority to require labor organizations to disseminate information filed with the Department of Labor on labor organization annual financial reports at membership meetings, on labor organization websites, in labor organization newsletters or otherwise by mail to the members, or on union or employer bulletin boards. Neither the terms of section 105, nor of any other provision of the LMRDA, vest the Secretary of Labor with any express authority to enforce section 105. *See* 29 U.S.C. 415.

The Department, however, has developed and implemented, with direction from Congress to do so, an extensive system for making available on the Internet the labor organization annual financial reports filed with the Department for the years 2000 and thereafter, as well as reports filed under section 203 of the LMRDA by labor relations consultants who engage in persuader activity and the employers who enter into agreements for such services. *See* 29 U.S.C. 433. Using this system, any member of a labor organization or the general public with Internet access can review all such reports (at <http://union-reports.dol.gov>) except those for the approximately 600 very small labor organizations whose national organizations file summary reports on their behalf pursuant to 29 CFR 403.4(b) because those small unions had no assets, liabilities, receipts, or disbursements during the reporting period.

III. Responses to Comments on Proposed Changes to Form LM-2

A. Which Labor Organizations Must File a Form LM-2

1. The Filing Threshold

Since 1994, only labor organizations with \$200,000 or more in annual receipts have been required to file a Form LM-2; smaller unions are permitted to use the simpler Forms LM-3 or LM-4. Although the Department considered raising the threshold for filing a Form LM-2 in its 2002 NPRM, thus reducing the number of labor organizations affected by most of the changes proposed, it did not propose an increase. The Department did solicit comments, however, on the appropriate level of annual receipts to trigger a Form LM-2 obligation. Some commenters expressed the view that the current threshold is too high and some argued that all unions should be required to file

the expanded form, without regard to the amount of their annual receipts. Other commenters argued that the current threshold is too low and should be raised.

Shortly after the LMRDA was enacted in 1959, the threshold for filing the more detailed Form LM-2 was set by the Secretary at \$20,000. The threshold was raised by the Secretary in 1962 to \$30,000 and again in 1981 to \$100,000. If any of these levels were now adjusted for inflation, the amount would be less than the current threshold of \$200,000. Nevertheless, the Department has decided to raise the threshold to \$250,000, an amount that approximates an inflation adjustment of the current threshold. Although the overwhelming majority (79%) of all reporting labor organizations are currently exempt from filing Form LM-2, changing the threshold to \$250,000 will reduce the recordkeeping and reporting burden for approximately 500 labor organizations. The Department will continue its past practice of periodically assessing the appropriateness of the filing threshold to ensure that it is relevant in terms of the current economy.

A number of labor organizations commented that the Department should permit unions to “pass through” funds received during the reporting period like per capita fees collected by local unions for transmission to a national or international labor organization and/or to use net dollar figures in order to avoid meeting the filing threshold. This concern should be alleviated somewhat by increasing the filing threshold to \$250,000 but, more importantly, the Department does not agree that the concern is valid. Labor organizations should be accountable for all funds received and in their custody or control during the reporting period. Members who pay dues and per capita fees to their locals have a right to know what action their local took with respect to those funds. Similarly, members have a right to know how much money came into their union during the year, not just the net amount left at year’s end.

Several commenters, including the AFL-CIO, cited the situation where a small labor organization with a history of filing either Form LM-3 or LM-4, *i.e.*, one with annual receipts below \$200,000, by virtue of an unusual event during the year had receipts boosted to in excess of \$200,000. For example, a small union with consistent annual receipts of \$50,000 sells a surplus piece of real estate for \$200,000, resulting in annual receipts for that year of \$250,000. Under current practice, the union would be required to file Form

LM-2, and under the new rule it would also meet the Form LM-2 filing level.

In this example, by virtue of a one-time-only event, annual receipts would be quintupled. This union would likely not keep records conducive to providing the kind of details required by Form LM-2—and particularly the details and new schedules envisioned in the revised Form LM-2. In addition, labor organizations with such small annual receipts would be less likely to have electronic recordkeeping than their larger counterparts.

In this situation, if a labor organization lacks the capability of filing electronically, it could invoke the continuing hardship exemption, and thereby be excused from filing electronically for that year. The Department has concluded that providing any other relief is unnecessary and could undermine the purpose of these reforms in situations where transparency and full disclosure are most important. First, union members are likely to be especially interested in how “windfall” funds are handled. Second, if a union’s annual receipts meet the filing threshold only because of a one-time event, the union is unlikely to have many other transactions within the reporting period and fewer subject to the disclosure thresholds of the final rule. The union therefore will not face substantial burdens in collecting the information necessary to file a Form LM-2, even though it has not been required to keep track of this information in the past. There is no sound reason to permit a union that has \$250,000 in annual receipts to avoid the reporting obligation imposed on all other unions with similar receipts simply because the union has not had similar receipts in other years.

2. Intermediate Unions Without Private Employee Members

Three labor organizations—the National Education Association (NEA), the American Federation of Teachers (AFT), and the AFL-CIO—and one individual union member submitted comments on the Department’s proposal to adopt the holding of the U.S. Court of Appeals for the Ninth Circuit in *Chao v. Bremerton Metal Trades Council, AFL-CIO*, 294 F.3d 1114 (2002), interpreting section 3(j) of the LMRDA. In that case, the court of appeals ruled that an intermediate labor organization that has no dealings itself with private employers and no members who are employed in the private sector may nevertheless be a labor organization engaged in an industry affecting commerce within the meaning of