

confidential financial information satisfactorily address the privacy concerns raised by the comments. The comments focus primarily on the potential harm in disclosing a union's confidential information about a particular disbursement to the general public, especially individuals and entities whose interests may conflict with the union's interests. The union must report the disbursement in some form. The modified procedures enable the union to withhold the confidential information from general public disclosure while complying with the Act's reporting requirements. The union, however, may not withhold the information from its members because they have a statutory right to examine the information underlying the reported data if "just cause" exists.

Unless disclosure is prohibited by law or would endanger an individual, the concerns justifying the decision to permit nondisclosure of specific information derive from an interest in preventing members of the public, other than union members and the Department, from gaining access to that information. In the Department's view, withholding on these grounds information that should otherwise be disclosed in the Form LM-2 is a sufficient basis for "just cause." The union's concerns regarding disclosure to third parties arise outside the context of the members' right to information. In order to protect both the union's and its members' competing interests, recognizing that the failure to report specific information for a major receipt or disbursement constitutes "just cause" for examining withheld information in these circumstances, together with the aggregate reporting of disbursements for benefits, strikes an appropriate balance.

Unions will have ample opportunity to argue that the Department's interpretation of the "just cause" provision of the statute (29 U.S.C. 431(c)) is in error before it discloses information that it has reported only in the non-itemized total. Unless a union voluntarily discloses information when it is requested by a member, the member will still be forced to seek enforcement of the right to this information in federal district court and the union will be able to argue to the court that the Department's interpretation of the statutory requirement is incorrect. Even if the court agrees that use of this reporting procedure is sufficient to support a finding of just cause, the union may argue that it has a legitimate concern that a union member may further disclose the underlying records, or information about the underlying records, in a manner detrimental to the

union. In these circumstances, there is nothing in the revised regulation or forms that would prevent the union from seeking a protective order or some other means of protecting its interests.

The Department disagrees with the comment that a union's compelled disclosure of information relating to legal fees associated with an organizing campaign would improperly intrude upon the union's attorney-client privilege. This privilege does not generally extend to the fact of consultation or employment, including the payment and amount of fees. See *McCormick on Evidence*, § 90, (5th ed. 1999, updated 2003). Further, while the privilege might protect the identity of a client when sought from an attorney, a client can be required to divulge the name of its attorney, which would be relevant here. *Id.* Similarly, the Department has concluded that the rule that limits discovery about experts in litigation to "exceptional circumstances" is not relevant, in that the language of the rule protects the "facts known or opinions held" of the expert, which would not be revealed in a Form LM-2. See FRCP 26(b)(4)(B). Nor is the mere fact that a disbursement has been made likely to reveal a union's legal strategies. Further, to the extent that a payment to an attorney or expert can meet the standards for non-itemized disclosure—that is, for example, because disclosure of a payment to an attorney would somehow provide a tactical advantage to a party with whom the reporting union is engaged in contract negotiations—a union may utilize those procedures. The Department does not agree that it is necessary to permit unions to avoid the itemized reporting obligation simply because disclosure might reveal the union's political activities. Indeed, as demonstrated by the comments discussed in Section C (4), such disbursements are likely to be of particular interest to union members and no convincing argument has been advanced regarding any legitimate need to keep such information confidential.

Other comments objected to reporting a recipient's address because the information was unnecessary or impinged on the recipient's privacy through its publication. The Department disagrees. The schedules only require the disclosure of business addresses, if available, but at least the recipient's city and state. This information is necessary for verifying the recipient's existence and identity. The privacy concern is questionable given the public availability of most addresses for individuals and business entities on the Internet and in telephone books.

Finally, labor organizations may resolve any serious privacy concerns with respect to the types of information specified above by exercising their option to report the disbursement in question in the "All Other Disbursements" entry for the schedule on the Detailed Summary Page. While concealing the identity of individuals or entities receiving disbursements may raise questions concerning the disbursement's legitimacy, such questions are precisely the reason that labor organizations will be required to indicate in Item 69 ("Additional Information") that they have used this procedure and that use of this procedure will constitute "just cause" for union members who request access to the underlying information.

3. Itemization of Major Receipts

The Department proposed changes to Schedule 14 to require additional information for reporting "other receipts" in the reporting period. "Other receipts" consist of all receipts that the labor organization does not report elsewhere in Statement B of Form LM-2. Specifically, the Department proposed requiring a labor organization to identify all the other receipts that are "major" receipts. A "major" receipt is either an individual receipt of \$5,000 or more, or the aggregate receipts from an individual source over the reporting period totaling \$5,000 or more. Each such receipt must be listed by payee with the following information: the name and address of the entity providing the receipt; the type of business or job classification of the entity; the purpose of the receipt; the date of the receipt; and the amount of the receipt.

A variety of comments addressed the proposed \$5,000 threshold for "major" receipts. Some comments considered the threshold too high because \$5,000 allows a margin within which union officials may still commit financial improprieties, and prevents union members from reviewing the smaller amounts for potential improprieties, *i.e.*, complete transparency for union finances. The comments recommended thresholds ranging from zero to \$2,000 as a means of obtaining greater (or complete) information about a union's receipts. Other comments considered the threshold too low. The majority of these comments recommended \$25,000 as an appropriate figure; others suggested basing the threshold on a percentage of the union's receipts (the higher of either 4% or \$15,000, or a level related to the GAAP concept of materiality). A related recommendation applied a graduated threshold that