

functional classifications are program services and supporting activities.” Id. The AFL-CIO then proceeded to argue that the categories proposed by the Department have no inherent rationality since some, like organizing and contract administration, relate to functions or programs, and others, like benefits, have no functional or programmatic relevance.

As discussed, in Section II(D), the GAAP standards do not govern the content of LM Forms, and are not entirely consistent with the congressionally imposed disclosure requirements of the LMRDA, 29 U.S.C. 431(b). Further, the Department disagrees with the assertion that the use of functional categories is either unauthorized or inappropriate in any respect. In the Department’s view, the increased use of functional reporting categories in the Form LM-2 will promote transparency and accountability in the reporting of a union’s financial condition and operations. The revised Form LM-2, utilizing both functional and “natural” categories, will provide detailed information about financial transactions of labor organizations in an easily understood format. The new reports will be usefully organized according to the services and functions provided to union members. By using the new Form LM-2, members will be able to identify major receipts and disbursements for a variety of activities. The new Form LM-2 strengthens enforcement of the LMRDA by giving members and the public a more complete account of the financial operations of a union than provided by the current Form LM-2. Moreover, achieving this improvement has been made easier and less costly by technological advances that enable electronic recordkeeping and filing.

Functional accounting is not a new concept to labor organizations. The current Form LM-2, through its use of categories, requires labor organizations to report certain disbursements by function. Although the types of functional categories are being updated to make them more useful to union members, it is unlikely that this would require Form LM-2 filers to make wholesale changes in their accounting systems. The Department has, however, included time in its burden hour estimates to account for acquiring any new or updated accounting software and modifying existing accounting, recordkeeping, and reporting systems. Moreover, functional accounting is required of not-for-profit organizations under the standards established by the FASB. Many of the labor organizations that submitted comments acknowledged

that they use functional reporting as a management tool and none of the larger unions has claimed an inability to categorize receipts and disbursements. Labor unions are not-for-profit organizations and, as such, should utilize functional reporting in preparing financial statements. FAS 117, ¶ 26. As stated by the FASB, “[S]pecialized accounting and reporting principles and practices that require certain organizations to provide information about their expenses by both functional and natural classifications are not inconsistent with the requirements of this Statement.” It also noted that not-for-profit organizations often provide that information in regulatory filings to the IRS and certain state agencies, which are available to the public. FAS 117, ¶ 3. The IRS requires not-for-profit organizations, including unions, to report their expenditures by certain categories and the IRS uses several functional categories that parallel, in many respects, the categories in the proposed Form LM-2. For example, both the Form 990 and the new Form LM-2 require political and lobbying disbursements to be reported.

There is no merit to the contention that the proposed rule would unlawfully intrude upon the ability of unions to follow their own accounting procedures for their own internal purposes. The report calls for the submission of data in certain categories, but does not preclude the use of other, internal manipulations of the data. Unions may track expenses in any way they believe appropriate and, for their own purposes or the purposes of third parties (for example, as required by a financial institution for a loan or a state agency), they may report financial matters in the manner appropriate to that purpose. Further, contrary to some commenters’ contentions, the Department’s proposals effectuate the broad purposes of the LMRDA, while, at the same time, serving the law’s purpose to ensure that members be fully apprised of their union’s financial condition and operations. As noted above, these commenters have given insufficient weight to the Department’s responsibility to determine the detail necessary to accurately disclose the unions’ financial conditions and operations and to establish categories that will identify the purpose of disbursements, 29 U.S.C. 431(b), and to “[prescribe] the form of publications and reports” required by Title II of the LMRDA, 29 U.S.C. 438.

The argument that, because neither the IRS nor the Beck line of authority require labor organizations to collect or report information in the categories

proposed by the Department, the Department cannot reasonably impose such a requirement is unpersuasive. These comments appear to overlook the Department’s responsibility to require reports that best fit the disclosure purposes of the LMRDA, not a revenue statute or a methodology developed under a statute administered by the National Labor Relations Board (NLRB). Each agency has the responsibility to require information relevant to the role established by its enabling statute.

The union commenters have provided no support for the proposition that the interests served by the LMRDA are obviated by other reporting obligations, internal or external. Similar reporting requirements apply in the regulation of securities, public utilities, and health care. In those settings, it would be inaccurate to suggest that a corporation could meet its responsibility under a particular securities, tax, employment or other statute simply by submitting a copy of a report filed with a particular agency without regard to whether it conformed to the purposes of the actual statute involved. The argument is also unpersuasive in the context of the LMRDA.

2. Beck Requirements

A number of commenters expressed views regarding the effect of the Department’s proposals on the obligation, imposed on some labor organizations by the National Labor Relations Act (NLRA), to allocate expenditures in a way that distinguishes between activities that are germane to the union’s representational function and those that are not. See *Communication Workers of America v. Beck*, 487 U.S. 735 (1988). Labor organizations that receive dues from non-member “agency fee payers” in states permitting union security agreements requiring such payments as a condition of employment must make such an allocation to ensure that agency fee payers who object to paying the equivalent of full dues are not charged more than their fair per capita share of the union’s costs involved in providing representational services to them. These reporting and allocation requirements are often referred to as *Beck* requirements, a shorthand reference to a leading Supreme Court case addressing the obligation of unions to individuals who pay agency fees to unions in lieu of membership dues.

Comments generally supportive of the Department’s various reporting proposals were received from trade associations, public interest groups, union members, agency fee payers, and individuals apparently unrepresented