

the reporting year. The NPRM proposed that labor organizations be required to separately identify any "major" receipts during the reporting period. Although the Department proposed no changes to this category, a few comments specific to this category were received. The AFL-CIO asserted that the Department was mistaken in establishing a separate category for "contributions, gifts and grants." It noted that such funds, as recognized by the Department itself in its proposal, should be reported in any specific services category to which they relate (not as part of the residual schedule). The AFL-CIO asserted that this recognition by the Department evinces that the schedule does not constitute a separate major program service. The AFL-CIO also submitted a report prepared by Dr. Ruth Ruttenberg as an attachment to its comments, which argued, based on a survey of 65 national and international AFL-CIO affiliates, that only 60% of all reporting national and international unions capture the required data and of these unions "less than 18% of reporting unions are currently able to report contributions to an entity aggregating to \$2,000 or more and then allocate the disbursements by prescribed functional category."

These particular comments appear to reflect a misunderstanding about what unions now are required to report under the current Form LM-2. First, unions are currently required to report information about disbursements for "contributions, gifts and grants," thus calling into question the validity of the statement that only approximately 40% of unions capture data related to this category. Second, the reported inability of a few unions to report contributions at the lowest proposed threshold level and then "allocate the disbursement by prescribed functional category" suggests that the Ruttenberg report confuses this aspect of the Department's current proposal with the Department's 1992 reporting rule. While that rule contained such a requirement, the Department's current proposal requires only that contributions, gifts and grants be reported in Schedule 17, without any further allocation to any additional "functional" categories. Other aspects of the AFL-CIO's Ruttenberg report are discussed below.

Some commenters who supported the proposal suggested some modifications. One policy group recommended that "contributions, gifts, and grants" should be removed as a category and, instead, should be reported as "other disbursements" and that unions should have to specifically identify other

disbursements in order to minimize embezzlement.

In the Department's view, it is appropriate to keep this schedule. As noted in the Department's proposal, such funds should be reported in the other functional categories as appropriate (and, where in excess of the \$5,000 threshold, itemized as a contribution, gift, or grant). Nonetheless, there will be some disbursements that cannot be easily allocated to another functional category. By keeping this category, union members will be able to more easily identify such disbursements. If the reported aggregated amount warrants further inquiry, members may request further information from the union to determine whether such voluntary payments conform to the union's internal rules and to evaluate whether they were made for legitimate and worthy purposes.

8. Job Targeting

The Department received a few comments requesting that the Department establish an explicit requirement that unions report particular details for certain "job-targeting funds" (and funds serving the same purpose, but labeled as "industry advancement," or "market recovery" funds). One commenter asserted that these funds have become widespread in the construction industry and that express reporting requirements are essential to correct widespread violations of the Davis-Bacon Act. The commenter asserted that the Labor Department, the NLRB, and two courts of appeal (D.C. and Ninth Circuits) recognize that job targeting programs are antithetical to the purposes of the Davis-Bacon Act because they represent an unlawful payment from the workers' wages to the contractors performing Davis-Bacon jobs and tend to distort local prevailing wages. The commenter argued that the Department has allowed this practice to continue unchecked. As a result, according to the commenter, millions of dollars are being misappropriated by unions from their members' Davis-Bacon wages, through the device of compulsory dues (as well as payroll deductions), and returned to the benefit of employers via job targeting funds.

The commenter recommended that the Department require unions to report: the employers receiving the job targeting funds; the amounts paid to each employer; the project(s) for which the employer received the funds; and the source of the funds. As an alternative, the commenter suggested that such accounting could be avoided if a union

certifies under penalty of perjury that no funds used in a job targeting program have been derived from wages paid to employees on Davis-Bacon covered projects. The commenter also asserted that similar modifications should be made to the Department's T-1 proposals.

The Department has determined that it would be inappropriate in this rulemaking to require reporting requirements specific to job targeting funds. In the Department's view, receipts and disbursement of job targeting funds that exceed the itemization threshold will be disclosed as a result of the general reforms implemented by this rule. Additionally, the Department notes that the NPRM made no reference to the possibility of creating reporting requirements specific to job targeting funds. The unions and the organizations that engage in job targeting initiatives have an obvious interest in whether specific reporting requirements should apply. They should be provided a full opportunity to address this issue before the Department promulgates a rule specific to the concern identified by the commenter. If, however, a labor organization has an interest in, and contributes \$10,000 or more to, an entity that meets the definition of a trust and that entity makes targeted disbursements for the purpose of increasing employment opportunities for its members, the labor organization must file a Form T-1 if the entity has \$250,000 or more in annual receipts.

D. Schedules 1 and 8—Accounts Receivable and Payable Aging Schedules

The Department proposed the creation of new aging schedules for accounts receivable and accounts payable that would require labor organizations to report: (1) Individual accounts that are valued at \$1,000 or more and that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period; and (2) the total aggregated value of all other accounts (that is, those that are less than \$1,000) that are more than 90 days past due at the end of the reporting period or were liquidated, reduced or written off during the reporting period.

A number of comments criticized as too low the \$1,000 threshold for itemizing individual accounts payable and receivable that are more than 90 days past due at the end of the reporting period. Some unions with substantial receipts asserted that the Department was mistaken in stating that "[t]he threshold of \$1,000 eliminates the