

burden of individually reporting routine collections of dues and other fees,” 67 FR 79285. The unions stated that union dues would routinely be reported on the accounts receivable aging schedule under the \$1,000 threshold. Some unions stated that for unions with substantial dues it is not that unusual for union members to fall more than \$1,000 behind in dues payments. Unions stated that the itemization of \$1,000 accounts would be unduly burdensome (resulting in thousands of small entries), would invade the privacy rights of union members, and would be of little informational value. One organization commented that in the context of Schedule 5 (individual marketable securities), the notice of proposed rulemaking stated, “\$1,000 can now be considered a de minimis amount.” 67 FR 79285. This organization suggested that the Department set the thresholds for Accounts Receivable Aging Schedule (Schedule 1), Accounts Payable Aging Schedule (Schedule 8), and Investments Other Than U.S. Treasury Securities (Schedule 5) at \$5,000 in order to be consistent. Several other unions advocated raising the accounts payable and receivable threshold to at least \$5,000. One commenter proposed a new threshold of \$10,000. On the other side, one organization asserted that the \$1,000 threshold was too high and should be lowered to require disclosure of smaller accounts. One organization stated \$1,000 was the correct level, and one union stated that the requested information would not be a burden at the \$1,000 level. Finally, a few unions recommended eliminating the dollar amount altogether and replacing it with an alternative threshold, such as, for example, 10% of the union’s aggregate receipts. These commenters noted that such an approach is consistent with the Department’s regulation of employee benefit plans investments.

In response to these comments, the Department has decided to raise the threshold for itemization in Form LM-2 Schedules 1 and 8 to \$5,000. This dollar threshold is consistent with the weight of the comments and corresponds with the itemization threshold developed for other disclosure requirements under Form LM-2 including: (1) Investments Other Than U.S. Treasury Securities (Schedule 5); and (2) Itemization of Receipts and Disbursements (Schedules 14–21). In the Department’s view, the higher threshold will significantly reduce the burden identified by some unions of having to itemize accounts, such as individual union dues receivable, which

in their view are relatively insignificant in light of the very substantial finances of some unions. By setting the threshold at \$5,000, the interests of union members will still be adequately served by ensuring the disclosure of significant union accounts that have not been paid or collected in a timely manner.

Several unions also broadly criticized the itemization requirement, disputing that itemization would benefit anyone. These commenters stated that reporting aggregate numbers for accounts payable and receivable would be far less burdensome to unions without diluting the value of the information to members. The commenters explained that accounts more than 90 days past due are relevant, if at all, only as they relate to an individual union’s overall cash flow. Several organizations stated that there is no analogous requirement of itemization placed on public companies, as the SEC requires only aggregate reporting. Itemized accounting is also inconsistent with GAAP, these commenters argued. Finally, a number of unions proposed an alternative that unions disclose only those accounts payable or receivable that are liquidated or written off at the end of the reporting period.

In the Department’s view, itemized disclosure is important because it provides a vital early warning signal of financial distress. In setting the reporting threshold at 90 days, the Department took into account the typical payment cycle of 30 days for most accounts and determined that an account unpaid after three payment intervals warrants “flagging” as a matter of good business practice. Union members similarly will benefit from this information as a gauge of their union’s overall fiscal management and provide them with the ability to identify particular transactions or a series of transactions that may merit further review. Although there is no general accounting principle that holds that 90 days is a significant time period, it is a benchmark often used, inasmuch as the normal pay cycle for accounts is closer to 30 days. As one commenter pointed out, the Washington Teachers’ Union had failed to timely pay many of its bills in the years leading up to the discovery of embezzlement and misappropriation of funds by union officials.

As the commenter noted, early reporting of delinquent accounts payable might have prevented the fraud against the teachers’ union before millions of dollars were diverted. The Department’s own investigations in other cases reveal situations where a union’s failure to pay its per capita taxes is part of a pattern of delinquency on

accounts that may be symptomatic of embezzlement by union officers or employees. Under the new schedules, such delinquencies would have been reported and such disclosure might have deterred the fraud, in the first instance.

Itemization of delinquent accounts is also preferable to either aggregate reporting or sole itemization of liquidated accounts in that it provides union members with a more detailed picture of the union’s finances, including with whom the union conducts business and the manner in which that business is conducted. The itemization requirement is tailored to a union member’s legitimate interest in knowing, for example, whether the union continues to do business with an entity that fails to pay its debts or whether the union continually falls behind in payments to a certain vendor.

Some unions complained that the ordinary interaction between national and international unions and their locals regarding per capita tax payments routinely results in delayed payment of locals’ per capita taxes until more than 90 days after the tax is technically due. Reporting these payments on the accounts receivable schedule, they argued, would be burdensome and uninformative. The Department believes that a national or international union may set the specific date (and manner of collection) of these per capita tax payments, but once the date is chosen, that date controls when the per capita payment is due. If, at the end of the reporting period, a local union has failed to pay \$5,000 or more for 90 days or more past the specified date—irrespective of the customary interaction between union and local—that delinquent account must be disclosed on the Form LM-2. The union is free to provide any explanatory information concerning the delayed payment along with these per capita aged accounts.

Several unions also criticized the accounts payable and receivable schedules on the basis that these schedules require accrual-based accounting and many unions only keep accounting records on a cash basis. Many union accounting systems, other commenters argued, track only income and expenses, not receipts and disbursements. Moreover, one accounting firm commented that unions that operate on a cash basis system will have to review their books and records to tabulate each individual account irrespective of the precise threshold for itemized reporting. As noted above, the LMRDA itself requires some accrual basis accounting information, such as assets and liabilities. See 29 U.S.C.