

431(b)(1)–(3). Because the current Form LM–2 requires this information, the new Form LM–2 imposes no qualitative change in the nature of union financial disclosure, even if the specific schedules for accounts payable and receivable are new. Moreover, no unions will be forced to manually review previous books and records to identify delinquent accounts because the new rule only applies to fiscal years beginning January 1, 2004, or thereafter. Every union will thus have approximately three months (at least, and as many as 14 months depending on the union's fiscal calendar) from publication of the rule to make any necessary adjustments to their record keeping practices before the first fiscal year for which such information must be reported even begins.

One union asserted that the Secretary lacks authority to require itemization of accounts payable and accounts receivable and that the Secretary is only authorized under section 201(b) of the LMRDA to require disclosure of categories of financial information—not itemized information. A number of unions similarly commented that the underlying individual financial data composing the aggregate categories is already available to union members upon a showing of just cause under 29 U.S.C. 431(c). The Department's response to these arguments is set forth above.

Several commenters raised concerns about individual privacy if unions were forced to itemize accounts payable and receivable over \$1,000, including concern that, for example, union members owing dues would be identified by name on the Department website. Commenters requested therefore that the Department clarify that all union dues—both individual and per capita—are exempt from the accounts receivable aging schedule as suggested by the notice of proposed rulemaking. The Department notes the increased threshold of \$5,000 should eliminate nearly all concerns about individual union dues appearing on the accounts receivable schedule. It would be unusual—and likely take years—for a union member to become more than \$5,000 delinquent on union dues. If a union member is more than 90 days delinquent on dues in excess of \$5,000, that fact should be disclosed. Per capita tax payments do not implicate privacy concerns and, as discussed above, must be disclosed when an account is over 90 days past due and exceeds \$5,000.

Several unions contended the accounts payable aging schedule will falter on its stated purposes of deterring financial fraud because, irrespective of

what the schedule looks like, union insiders who wish to embezzle money or to defraud the union will willfully evade Department reporting requirements. Commenters stated that corrupt officials are not likely to record their activities on disclosure forms. The Department acknowledges this problem—one that is a recurring concern in any reporting or disclosure system. While it is true that even the most thorough disclosure form will not be entirely effective in eradicating fraud, the new requirements significantly advance the cause by making financial fraud more difficult to hide. The new financial disclosure forms require greater specificity and accountability for union funds across the board, including delinquent accounts payable and receivable. In the Department's view, the more detailed reporting required by the revised Form LM–2 will allow the Department and union members to more closely scrutinize a union's finances and more easily identify “gaps” or apparent inconsistencies in reports. The greater the risk to the actual or would be perpetrator that improper conduct will be discovered, the less likely such conduct will occur or go undetected. The revised disclosure forms are thus a critical part of the oversight by the Department and union members over the financial operations of unions. Both this Department and the Department of Justice, in prosecuting criminal fraud, rely heavily on union members to review and evaluate the financial disclosures of their unions and report any suspected activity for investigation, as may be appropriate.

E. Schedule 5—Investments Other Than U.S. Treasury Securities

The Department's proposed Schedule 5 required a labor organization to list: each marketable security that has a book value of more than \$5,000 and constitutes more than 5% of the total book value of all the union's marketable securities; and each other investment (e.g., mortgages purchased on a block basis or investments in a trust) that has a book value of more than \$5,000 and constitutes more than 5% of the total book value of all the union's other investments. The current Schedule 2 of the Form LM–2 requires labor organizations to list such securities and investments if they have a book value of \$1,000 and exceed 20% of the total book value of the respective securities and investments of the union. The Department invited comments regarding whether the two thresholds of the proposal are appropriate.

None of the comments indicated that the Department's proposal would

constitute a significant burden on reporting labor organizations. Rather, the comments expressed various views of the usefulness of the information that would be disclosed under the Department's proposal as compared to information that would be disclosed under alternative thresholds suggested by the comments.

Two local labor organizations stated that the itemization of marketable securities under the Department's proposal would pose no difficulty for reporting labor organizations, but asserted that the schedule would provide no information that would assist union members. In the view of these locals, the existing schedule on the current Form LM–2 was adequate. One commenter stated that the information required to be reported under the Department's proposal would be intrusive without providing any useful information.

The AFL–CIO expressed the view that the \$1,000 threshold of the current Form LM–2, given contemporary financial reality, could be considered *de minimis*, and that only more substantial investments should be required to be itemized under the Department's proposal. The AFL–CIO also suggested that any lower threshold might exceed the Department's authority because, in the AFL–CIO's view, the Department is constrained to require unions to report only information material to the financial condition and operations of unions. In its view, most transactions lower than \$1,000 would not be material to even a union with meager revenues.

A trade association supported the Department's proposal to raise the threshold for reporting individual securities and other investments to \$5,000. In the association's view, investments worth only \$1,000 should be considered *de minimis*. The association further suggested that the Department should also set a \$5,000 threshold for individual accounts to be reported in Schedule 1—Accounts Receivable Aging Schedule and proposed Schedule 8—Accounts Payable Aging Schedule, two new schedules proposed by the Department. A labor relations foundation, contrary to the Department's proposal to raise the threshold dollar amount to \$5,000, argued that \$1,000 was not *de minimis* and that a higher threshold would invite corruption.

Two intermediate labor organizations agreed that \$5,000 was appropriate as a dollar threshold, but they urged the Department to raise the percentage threshold from 5% to 15% of the total book value of the reporting labor organization's marketable securities and