

then it should report that information in the appropriate place on the schedule and provide a definition of each category in Item 69. The union will not be required to manufacture or report information for membership categories it does not keep.

This change will address the most prominent areas of concern highlighted by the comments. First, unions, and their members, presumably have some interest in the statistics if the union is already keeping them. Second, it should be no great burden for unions to report membership statistics that they are already keeping in the normal course of business. The Department recognizes that the requirements for reporting membership in the final rule may not disclose as much information to the members as the original proposal. The Department believes, however, that the final rule will disclose more needed information to the members concerning their unions without undue burden.

At least one organization, a provider of information regarding labor organizations to companies, labor attorneys, union democracy groups and academics, cited the tendency of labor organizations that have national, intermediate and local bodies to double-count members and to report the same persons as members of more than one of the related organizations. This practice, according to this commenter, can give members an inaccurate picture of a labor organization's overall strength and is due, at least in part, to the differences in the definition of "member" used by different labor organizations. In this regard, the Department notes that the statute defines the term "member" to include

any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

29 U.S.C. 402(o). Every labor organization should use this definition to determine whether an individual is a member of the labor organization for purposes of Schedule 13. Applying this definition, however, may well result in two or more labor organizations reporting certain individuals as members because those individuals pay dues to, and fulfill all other requirements for membership in, a local labor organization and in an affiliated intermediate and/or national or international labor organization. In fact, membership in an affiliated local labor organization may well be a requirement for membership in an intermediate or

international union. In some respects—as where, for example, an international union derives substantial support and funding from the members of affiliated subordinate unions—such “double reporting” may not necessarily be an inaccurate reflection of the financial health of the labor organization.

H. Mandatory Electronic Filing

For several years, and with substantial Congressional urging, assistance and leadership, the Department has pursued the development and implementation of electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. *See* H.R. Conf. Rep. 105–390, 1997 U.S.C.C.A.N. 2061; H.R. Conf. Rep. 105–825; H.R. Conf. Rep. 106–419; H.R. Conf. Rep. 106–479; H.R. Conf. Rep. 106–1033; H.R. Conf. Rep. 107–342, 2002 U.S.C.C.A.N. 1690; H.R. Conf. Rep. 108–10, 2003 U.S.C.C.A.N. 4. In furtherance of that goal, the Department proposed that all Form LM–2 annual reports be filed electronically and proposed to develop software to enable that process.

The Department received several comments, including comments from members of Congress, accountants, and other organizations, that supported mandatory electronic filing. The commenters indicated that electronic filing is consistent with the recordkeeping requirements for human resource professionals working under other federal statutes and would bring the financial disclosure requirements of unions under the LMRDA into the modern era. The commenters pointed out that millions of people of all economic groups now conduct their financial business, including managing their 401(k) and IRA accounts, on the Internet. The commenters explained that mandatory electronic filing would also be consistent with the Congressional directives to ESA every year since 1997 to establish an electronic filing system to provide greater public access to the materials filed under the LMRDA.

A few commenters did not think the Department's proposal went far enough. These commenters suggested that all unions, even those with receipts of less than \$200,000, be required to file their LM forms electronically. In addition, at least one commenter suggested that labor organizations be required to provide a link on their own website to the union's electronically posted LM form, whether located at the Department's LM website or elsewhere on the union's website. Many labor

organizations, however, expressed their disagreement with the proposal that unions begin to file Form LM–2 and Form T–1 electronically after the issuance of the final rule. These commenters indicated that mandatory electronic filing would be a considerable burden to unions, particularly those unions with volunteer or part-time officers and staff. The union commenters noted that the Department's claim that electronic filing will be more efficient is untested, particularly because the software that will allow unions to transfer their electronic data to the reports is not yet available. One commenter also noted that the Department had indicated in a Government Accounting Office (GAO) report that any electronic filing of reports should be voluntary. The Department notes that its earlier views were shaped by the less mature technology that then existed and without the benefit of continued and repeated Congressional urging to make all such reports available on line. The Department's present view is shaped by today's technology, its impact on the ability to obtain, process, disclose, and utilize information, as well as the increased awareness of the importance of transparency to the governance of institutions.

In addition, several unions commented that the Department has overestimated unions' capability to file reports electronically. For example, the International Union of Operating Engineers (IUOE) stated that despite a concerted effort on their part to have locals file their per capita reports electronically, only 21 of the 147 IUOE locals do so. In addition, the International Longshoremen's Association (ILA) reports that none of its over 100 locals that file LM–2 reports currently files electronically. A survey conducted by the AFL–CIO indicates that only 14% of the national and international unions and only 9% of the local unions file their Form LM–2 reports electronically. The Department notes, however, that, in fact, a much smaller percentage of unions have actually filed their Form LM–2 reports electronically, a circumstance that is hardly surprising inasmuch as this filing option did not exist until December of 2002, when the Department's system became able to utilize digital signatures. The Department's experience further reflects that far more of the reports filed in paper are actually prepared electronically, even though they are submitted by mail to the Department. The fact that the AFL–CIO reports many more reports filed electronically than