

until about 18 months after this rule issues (and then only for unions that have fiscal years beginning on January 1, 2004). Moreover, the rule has a built-in "phase-in" component that will allow for adjustments to be made, if and when problems arise. Because each labor organization's filing date is dependent on its chosen fiscal year, the filing of annual financial reports is staggered throughout the year.

In the event that any labor organization encounters serious difficulties with electronic filing, the hardship exemption will be available. The Department proposed a hardship exemption modeled after the procedures used by the SEC (17 CFR 232.201–202) and invited comments regarding whether the hardship exemption procedures are appropriate and whether there are any alternative procedures that might better address legitimate problems. International unions commented that the hardship exemption should be broadened to permit a reasonable phase-in period and that smaller Form LM–2 filers be given permanent exemptions because of the burden and cost of electronic filing. Trade associations, on the other hand, argue that hardship exemptions should be narrowly limited and that labor organizations should be required to affirmatively prove hardship. Some commenters asked for clarification of the standards to be used when evaluating hardship claims. An attorney for a local union expressed concerns over the possible criminalization of innocent errors given the present lack of clear guidance on the proposed rule. One association commenter suggested that individual union members be permitted to appeal the grant of an exemption to their union.

The Department has decided to retain the hardship exemption and not to attempt to define with more particularity the circumstances in which it might be available. The exemption was left deliberately broad in order to permit accommodation of a wide range of variable situations. Moreover, the Department is unaware of any problem experienced by the SEC in using a similar formulation. If, however, unions have serious difficulty with electronic filing, the hardship exemption presents a fail-safe option for any reporting labor organization that needs it. With respect to the suggestion that a union member be allowed to challenge his or her union's exercise of the hardship exemption, the Department does not believe that such an appeal would be practical. Exemptions will be granted only upon a proper showing of need by the union and the exemption will be

only temporary. As noted above, the concerns expressed about "criminalization" of innocent mistakes are misplaced because sanctions are available only for willful violations and thus depend upon intentional or reckless actions by responsible officers.

Finally, the Department continues to be fully committed to providing extensive compliance assistance at all stages of implementation. OLMS is developing compliance assistance materials outlining and explaining the changes to Form LM–2 and new Form T–1 and will present seminars and workshops advising union officers of the new reporting requirements. Contemporaneously with the publication of this rule, the Department is making available a Data Specifications Document that will enable the unions' staffs to prepare their bookkeeping systems in order to submit their reports electronically to the Department. If unions do not complete this interface, they will still be able to use the Form LM–2 software by the "cut and paste" method or by keying information directly into the electronic form. The Form LM–2 software will be available to download from the OLMS website at [www.olms.dol.gov](http://www.olms.dol.gov) well before any labor organization will have to use it to file their reports, which will give the Department plenty of time to conduct compliance assistance and answer questions posed by the filing community.

The Department's extensive compliance assistance will include some or all of the following actions:

- Mass mailings to all reporting unions explaining the final rule and the effective date.
- Briefings for national/international unions, including meetings with national/international secretary-treasurers and their staffs and follow-up training sessions.
- Training OLMS staff on the new forms software and how to respond to inquiries from users.
- Establishing and publicizing a toll-free telephone number for software trouble-shooting.
- Maintaining a help desk with a toll-free telephone number and a dedicated email address for handling reporting inquiries.
- Development of users' guides for the new forms software.
- Development of Powerpoint briefings on the new forms software.
- Presentation of Powerpoint briefings by OLMS field offices in compliance assistance sessions with filers.

- Establishing a section on the OLMS website devoted to the revised Form LM–2 and making regular updates to it.

- Developing a "list serve" system to send email messages to unions, accountants, union members, and other interested individuals to provide up-to-the-minute information to assist in meeting the reporting requirements for the revised Form LM–2.

- Developing guidance to assist unions to configure off-the-shelf software to best capture the information needed to provide the data required for submitting the LM–2 and T–1 reports.

#### *I. Effective Date*

The Department proposed to make the use of the revised Form LM–2 and the new Form T–1 mandatory for reports for fiscal years commencing after the publication of the final rule. The Department specifically invited comments concerning whether one year is an appropriate time period before labor organizations are required to use the new forms and whether labor organizations should be required to use the revised form to report information for a fiscal year that begins within 30 days of the date that a final rule is issued. One commenter said the effective date was appropriate observing that "[t]he proposed electronic filing procedures and effective dates strike a reasonable balance between limiting reporting burdens and increasing members' access to important information." Two other comments from organizations proposed that the effective date should be even earlier. These commenters indicated that while the new rule would require additional reporting burdens, the essential information to be reported remained unchanged. These commenters also expressed concern that unions would file the new forms late as many unions do with the current forms.

The majority of the comments specifically dealing with the rule's effective date opposed the proposed effective date saying that it was too soon. The commenters, most of whom were labor organizations, argued that the final rule should not be imposed until the software that will be provided by the Department is tested, implemented and fully operational. Several unions suggested that the effective date be delayed six months to two years. Some commenters said that given the Department's experience with e.LORS and the SEC's experience with its reporting system, a delay of two to four years before full implementation was more realistic. Other commenters suggested that the Department's