

and implementing that system, to facilitate the establishment of a system of mandatory electronic filing of the current Form LM-2. Although some commenters also pointed to delays in publication of recordkeeping rules by the Occupational Safety and Health Administration, those delays are irrelevant inasmuch as they were related to policy changes, not technical difficulties. See 68 FR 38601.

The Department continues to believe that labor organizations will have adequate time to conform to the revised forms and comply with the more detailed reporting requirements. As indicated above, unions will have a minimum of approximately 18 months before their first report on the new forms is due. During this time, they already will have made changes to their bookkeeping practices needed to capture the information that will be reported. Thus, the unions will be able to focus their efforts on training their staff in the new requirements of the actual reporting software. As the Department has acknowledged, there were some complications with the implementation of the previous e.LORS system. The Department has learned from this process. Building upon the existing infrastructure, the Department is employing more advanced technology in developing the reporting software than was the case in the initial e.LORS project. Similar software has proven efficient with other government agencies.

As discussed above, the Department has decided to delay the effective date of the final rule by postponing its application until unions begin their next fiscal year *after* December 31, 2003, *i.e.*, about three months after publication of this rule. Approximately two thirds ( $\frac{2}{3}$ ) of the reporting unions begin their fiscal year on January 1. The first report containing the information required under the new rule for these unions would be due on March 31, 2005. Labor organizations that use a fiscal year beginning on a date other than January 1 will have even more time to comply.

#### **IV. Summary of Changes to the Proposal to Require Form T-1 Reporting for Trusts**

The Department proposed to require all unions to report the assets, liabilities, receipts, and disbursements of all funds or organizations that are not wholly owned by the union, but that meet the statutory definition of a "trust in which a labor organization is interested," that have annual receipts of \$200,000 or more and to which the labor organization contributes at least \$10,000 during the reporting year on a new Form

T-1 (Trust Annual Report) in order to fulfill the purpose of the statutory reporting requirements.

A "trust in which a labor organization is interested" is defined in Section 3(l) of the LMRDA (29 U.S.C. 402(l)) as follows:

\* \* \* a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.

The Department sought comments on a number of issues relating to this new form, which are discussed below.

##### ***A. Who Should Be Required To File a Form T-1***

###### **1. Labor Organizations That File Forms LM-3 and LM-4**

The Department proposed that all labor organizations, including smaller labor organizations eligible to file their labor organization annual financial report on Forms LM-3 and LM-4, as well as larger labor organizations required to file Form LM-2, would be required to file Form T-1 for any trust in which a labor organization is interested if the total annual receipts of the trust were at least \$200,000 and to which the labor organization contributed at least \$10,000, or to which \$10,000 was contributed on behalf of the labor organization, during the reported year. The proposed Form T-1 is designed to require unions to report financial information about union funds that have been invested in such trusts, information that has not been disclosed under the current reporting regimen for unions. The proposed reporting scheme was established to discourage circumvention or evasion of the reporting requirements for such trusts, while imposing minimal burdens on labor organizations. The Department invited comments on whether this aspect of the Department's proposal strikes an appropriate balance between the need for transparency and any burden on labor organizations.

Numerous commenters expressed their views on the reporting burden that the proposal would entail. Some commenters discussed the likely impact on unions without substantial resources invested in covered trusts. A business/trade association asserted that the reporting burden on such unions would be significantly less than on unions with more substantial assets, given that the burden likely would be proportional to the size of a union's overall finances.

The association also suggested that it might be appropriate to require smaller labor organizations, otherwise eligible to file their labor organization annual financial report on Forms LM-3 or LM-4, to file their annual reports on the more detailed Form LM-2 for any year in which such organizations meet the requirement for filing the Form T-1.

Many unions submitted comments that would except some unions from the Department's proposal. These commenters stated that unions, regardless of the size of their membership or their financial resources would have virtually the same responsibility and tasks, even though only a small number of the unions would have the staff or other resources to obtain, prepare, and file timely and accurate information on Form T-1.

Many commenters stressed the limited human resources available to some unions. These commenters observed that many unions have no clerical employees and must rely either on part-time officers or, in very many cases, unpaid members who volunteer their services after work hours. In the view of these commenters, very few of those officials and employees have the computer or accounting experience or training sufficient to readily process and submit the necessary financial information for the Form T-1 in electronic format.

Commenters stated that many labor organizations conduct and record their financial and other union affairs by hand and seldom have ready access to current-generation computers, software, and other electronic equipment. These commenters expressed concern that these organizations, which already often find it necessary to hire professional assistance to meet current reporting requirements, in many cases would be constrained further to hire and rely on computer, accounting, legal, and other consulting assistance to comply with the Department's Form T-1 proposal. Additionally, these commenters stated that such unions would find it necessary to expend significant amounts of their resources for training on how to meet their reporting obligations. The commenters further stated that, because there is a significant turnover of the organization's part-time and unpaid officials and employees, those costs may not only be a significant but also a recurring expense for small organizations. Commenters stated that many organizations would be faced with the dilemma of raising the dues of, or cutting services to, their members.

The Department has been persuaded that the relative size of a union, as measured by its overall finances, will