

affect its ability to comply with the proposed requirements relating to trusts in which the union has an interest. For this reason, the Department has decided to limit the requirement for filing Form T-1 to labor unions that have receipts of at least \$250,000 per year, the same filing threshold that applies to organizations that must file their annual financial reports on Form LM-2. Accordingly, the Department's final rule excepts from the trust reporting requirement labor unions that are eligible to file Forms LM-3 and LM-4.

Because the proposed requirement that Form LM-3 and -4 filers file a Form T-1 for trusts in which they are interested was the only significant change proposed with respect to Forms LM-3 and LM-4, neither these forms nor the Instructions for them will be included in the appendix to this rule. In addition, a change will be made to the Instructions for Form LM-2 to make them consistent with the unchanged Instructions for Forms LM-3 and -4, which provide that the term "total annual receipts" includes receipts of any subsidiary organization, defined as * * * any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization.

While an entity that meets the definition of a subsidiary will also be a trust in which the union is interested, the assets of which would not normally be included in "total annual receipts" of the reporting union, an exception to the normal rule will be added to the Instructions to make clear that the assets of a trust should not be included unless the trust is also a subsidiary, as defined above. The NPRM pointed out that one alternative to the proposed criteria for filing a Form T-1 would be to require a report for any entity that is dominated or controlled to such a degree that assets, liabilities, receipts and disbursements of the entity effectively are those of the union itself. Commenters were specifically invited to comment on the fact that assets and receipts of such an entity "would be reportable as assets and receipts of the union itself (rather than assets of an organization in which the union has an interest)" and that the addition of such amounts might require a union to file a Form LM-2 rather than a Form LM-3 or LM-4. See 67 FR 79285. Although, as explained in Section IV. A. 3, the Department has rejected reporting based on "single entity" status in favor of the statutory definition of a trust in which

a labor organization is interested, it is appropriate to retain the existing inclusion of the receipts of a subsidiary (which is more clearly and more narrowly defined than a single entity) in the receipts of a reporting union for the sole purpose of deciding whether the union must file a Form LM-2. Otherwise, removing the requirement for unions with annual receipts of \$250,000 or less to file a report regarding trusts in which they are interested would permit unions to allocate assets to a wholly owned, controlled and financed entity and avoid even the reporting requirements imposed with respect to such entities before these reforms.

2. Other Exemptions

The Department originally proposed four express exemptions to the Form T-1 Trust Annual Report: (1) Where an organization makes freely available, and specifies the location of, an audit of the trust pursuant to 29 U.S.C. 186(c)(5)(B); (2) where an organization files publicly available reports about the trust as a Political Action Committee (PAC) with a state or federal agency; (3) where a report about the trust as a political organization is filed with the Internal Revenue Service pursuant to 26 U.S.C. 527; or (4) where the trust is required to file an annual report pursuant to ERISA (29 U.S.C. 1023). The Department invited comments concerning whether the proposed Form T-1 procedures—including the enumerated exemptions to Form T-1 filing—were appropriate given the facts and circumstances of current union reporting.

Many labor organizations supported the proposed Form T-1 exemptions as a reasonable approach that provides valuable financial disclosure, while avoiding needless duplication of effort. Other unions, apparently either mistaken about, or unaware of, the parameters of the exemptions, criticized the Form T-1 on the ground that many trusts are heavily regulated by ERISA (and other federal laws) and are already required to file similar financial reports with government agencies. In the Department's view, these comments are best read to provide implicit support for the proposed exemptions. Several commenters suggested that the Department extend the Form T-1 exemption to any entity willing to be audited by an independent certified public accountant and willing to make that audit publicly available, irrespective of whether the trust currently files an audit or report with a government agency. Finally, several trade associations suggested that the Form T-1 permit no exemptions at all.

These organizations stated that, at a minimum, unions be required to append to their Form LM-2 filings the pertinent audit or annual report filed with the other government agency.

In response to these comments, the Department has continued to provide four exceptions to the Form T-1 requirements: (1) A PAC fund, if publicly available reports on the PAC's funds are filed with federal or state agencies; (2) any political organization for which reports are filed with the IRS under 26 U.S.C. 527; (3) employee benefit plans filing a complete and timely report under ERISA; and (4) any covered trust or fund for which an independent audit has been conducted in accordance with standards prescribed in the final rule. For the first three categories, the exception is complete. No Form T-1 is required. For the fourth category, a union must file the Form T-1, but can file the independent audit in lieu of providing the financial information otherwise required by Form T-1. The audit will be required to meet either the requirements of 29 CFR 2520.103-1 *et seq.* (relating to annual reports and financial statements required to be filed under ERISA) or the standards described in detail in the Instructions to Form T-1.

The standards prescribed in the Form T-1 Instructions, generally, require that the audit be performed by an independent qualified public accountant who, after examining the financial statements and other books and records of the trust, as the accountant deems necessary, certifies that the trust's financial statements are presented fairly in conformity with accepted accounting principles. Notes to the financial statements included in the audit must disclose, for the preceding twelve month period: Losses, shortages, or other discrepancies in the trust's finances; the acquisition or disposition of assets, other than by purchase or sale; liabilities and loans liquidated, reduced, or written off without the disbursement of cash; and loans made to union officers or employees. The audit must be accompanied by schedules that disclose, for the preceding twelve month period: A statement of the assets and liabilities of the trust, valued at current value, and the same data displayed in comparative form for the end of the previous fiscal year of the trust; a statement of trust receipts and disbursements; and a list of all entities, including the name and description of the entity, with which the trust conducted \$10,000 or more of commerce during the reporting period, as well as the aggregated total of all receipts/disbursements with each such entity during the reporting period.