

These standards overlap partially with the standards required by the ERISA rule, with changes necessary to serve the particular needs of the Department in administering the "interested trust" provisions of the LMRDA, as discussed throughout this section of the preamble. See generally AICPA, Professional Standards, Special Reports, AU §§ 600 and 623; FASB, FAS 117, Final Statements for Not-for-Profit Organizations, ¶¶ 45, 47, 63.

The new audit alternative is aimed at promoting disclosure while avoiding duplication for trusts that are already subject to an independent audit. The audit option enables unions to avoid reporting the detailed financial information on a Form T-1 if they are already receiving an audit that meets the specifications set forth above, by simply filing a copy of such an audit along with the first page of a Form T-1, which provides identifying information. The criteria set forth above are in line with standard business practices (*id.*) and provide the kind of information in which union members who submitted comments on this issue demonstrated an interest. The information required in such an audit, however, is somewhat more general than that otherwise required on a Form T-1. For example, an audit need not specify the purpose for disbursements of \$10,000 or more by the trust, but need only list the identities of those with whom the trust engaged in \$10,000 transactions.

As discussed earlier, no union is required to file an audit for a covered trust. Instead, the union may choose to meet the reporting requirement by submitting either: (1) A statement that a qualifying report (as identified above in the categories listed) has been filed with a separate government agency; (2) a copy of an independent audit meeting the standards prescribed above; or (3) a completed T-1 Form. These requirements should not be read as diminishing or affecting in any way a trust's disclosure obligations under other applicable law including, but not limited to, ERISA, state and federal reporting laws governing PAC funds, IRS regulations governing political organizations, and Section 302(c) of the Labor Management Relations Act (LMRA), 29 U.S.C. 186(c).

The audit process provides a valuable qualitative check on the entity's finances by an independent examiner. Among other regulatory schemes, the SEC, as noted above, recognizes the important, rigorous role independent audits serve in its regulation of public companies. The Department recognizes that the audit option may not provide the same detail as the Form T-1, but in

this context the need for itemization is less significant than it is in reporting the union's non-trust assets because the Form T-1 does not apply to disbursements by labor organizations directly. The Form LM-2 already captures specific union disbursements and accounts payable to trusts. The Form T-1 is designed to provide information about an entity created by the labor organization, or trustees or members of the governing body of which are selected or appointed by the labor organization, a primary purpose of which is to provide benefits for the labor organization's members or their beneficiaries.

Many union members recommended generally greater scrutiny of joint employer-union funds authorized under the LMRA. Moreover, while many union members were critical of the current state of joint funds disclosure and sought greater Department oversight of these funds, these comments can be read equally as supporting the requirements that unions specify where the audit is available. At least one union member stated that the critical problem was that requests for information about these funds were ignored—not that the substance of the information provided was insufficient. Similar reasoning supports extending the opportunity to reporting labor organizations to file a qualifying audit in place of a Form T-1 for any trust. The Department believes, however, that such audits should be filed with the Department, rather than maintained separately from the labor organization's other financial information. Their filing with the Department will promote transparency and accountability by allowing union members to access all trust information quickly and easily in one location.

### 3. Form T-1 Reporting Threshold

The Department proposed a reporting threshold based on the trust's annual receipts and a union's annual contributions to the trust (or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party). The Department proposed \$200,000 in annual receipts as the trust threshold and \$10,000 as the threshold for a union's contributions to the trust. Although most of the comments received focused on the size of a labor organization's contribution, rather than the size of a reportable trust, the Department has decided to raise the reporting threshold to require unions to report only trusts with annual receipts of \$250,000 or more, consistent with the increase in the reporting threshold for the Form LM-2.

One comment suggested that in some circumstances the \$10,000 threshold for labor organization contributions to a trust was too high. That comment urged the Department to modify the proposal so that a union that contributes either \$10,000 or 10% of its total annual receipts, whichever is less, would be required to file Form T-1. The comment reasoned that amounts of less than \$10,000 may be significant, relative to the organizations overall finances, for some unions, and that members of such unions should have the benefit of knowing how their money is being spent. As noted above, the Department invited comments about the impact that the proposed trust reporting requirement would have on unions with relatively small assets. The commenters have persuaded the Department that some smaller unions could encounter significant and recurring difficulties in complying with the Department's proposal. The Department's decision to limit the requirement for filing Form T-1 to those unions with annual receipts of at least \$250,000 has rendered moot the suggestion to adopt an alternative Form T-1 filing threshold for union contributions of the lesser of \$10,000 or 10% of the union's total annual receipts.

The Department recognizes that amounts less than \$10,000 may be comparatively more significant to some unions. However, the Department believes that the value of such information to union members is outweighed by the burden such reporting could have on unions without a professional or even full-time staff. Such unions also may have comparatively more difficulty in obtaining the detailed information and preparing the detailed trust report on Form T-1, especially in electronic format.

A number of commenters expressed the view that the \$10,000 union contribution threshold for filing Form T-1 was too low and recommended various alternatives:

- Two comments suggested that the \$10,000 threshold served a limited purpose because a benefit program would readily meet that threshold; the comments cited as an example the fact that a union with as few as 49 members who work full-time and contribute \$.10 per hour to a benefit program would meet the threshold. A third comment suggested that the union annual contribution threshold be raised to \$25,000.

- Two comments stated that the Department's proposal would require a union to file detailed reports on Form