

T-1 regarding trusts in which a union may have only a 5% ownership interest. Those comments urged the Department to revise the proposal so that the threshold was based on ownership or control of at least 50% of the trust.

- For similar reasons, three comments suggested that a threshold of 20% or 25% or some other percentage of the receipts of the trust would be a better measure of the union's relationship with the trust that would permit the union to obtain details of the trust's financial operations to be reported on the Form T-1.

The Department has not been persuaded that these comments provide a sufficiently balanced and workable alternative to the Department's proposal. The \$10,000 threshold for union contributions proposed by the Department represents, in the Department's view, the most appropriate compromise between an amount that is sufficiently high so that an undue reporting burden is not imposed on unions with limited finances and an amount that is sufficiently low so that trusts will be reported if they receive contributions equal to a significant proportion of the reporting union's other financial affairs. Thus, a threshold contribution of \$25,000 seems excessively high, especially in relation to the other financial affairs of labor organizations. Setting the threshold at this level would deny members information about financial transactions involving a significant amount of money relative to the union's overall finances and other reportable financial transactions.

Basing a union's obligation to file a trust report on the percentage of the union's ownership or control of the trust also does not appear to be a workable or appropriate approach. Union ownership and control in the context of a union's participation in a trust that provides benefits to the union membership are very difficult concepts to quantify. Even if percentages of ownership or control were susceptible to reasonably precise calculations, in view of the many variables present in these situations, there is no readily apparent figure that would ensure the cooperation of the various trusts.

In any event, it seems unlikely that significant ownership or control need be vested in a single reporting labor organization in order to ensure trust cooperation so that the labor organization may obtain trust information sufficient for filing a Form T-1. A trust in which a labor organization is interested is defined in section 3(l) of the LMRDA to mean an organization that was created or

established by a labor organization or one or more of the members of the governing body of which is selected or appointed by a labor organization. Thus, by definition one or more labor organizations probably will have significant involvement in the affairs of the trust. As a result, the Department anticipates that in most instances the reporting union, either by itself or in combination with other reporting unions, in practice will exercise sufficient influence to require or persuade the trust to provide the information necessary to file a Form T-1. It seems likely that in the great preponderance of circumstances it would not be necessary for a reporting union to have anything approaching 50% ownership or control of the trust in order to obtain the necessary information from the trust to prepare and file Form T-1.

The Department disagrees with the suggestion that a union's reporting threshold be based on the union's share of a particular trust's annual receipts. Under this approach, for example, a union would have to file a Form T-1 only if the union's per annum contribution reflects 20% or 25% of the total contributions received by the trust during this period. This approach would operate to exempt from reporting information relating to substantial contributions by a union, even though such contributions could represent the primary investment of the union. Moreover, this approach would deny members information, given the purpose of the trust, that is uniquely important to them as union members, even though the contributions of their particular union represents only a relatively small fraction of the contributions received by the trust. A formula setting the threshold at 20% or 25% of the annual receipts of the trust might exclude from the reporting requirement those large trusts that have numerous participating unions. Thus, even though the trust's entire contributions come from unions, no information would be disclosed by this trust unless a contributing union exceeds the suggested percentage of total contributions. For example, if a union need only file a Form T-1 for a trust if it contributes 20% of the trust's annual receipts, no disclosure will be required for even the smallest reportable trust, *i.e.*, a trust with annual receipts of \$250,000, unless a single union contributes at least \$50,000 annually to the trust, even though the trust receives all or most of its funding from a group of six or more unions.

The Department recognizes that where one or more labor organizations participate in a trust and fewer than all

such labor organizations meet the annual contribution threshold that would trigger the obligations to file Form T-1 under the Department's proposal, all labor organizations that are required to file Form T-1 will submit virtually the same report. Members of the other participating labor organizations that do not meet the annual contribution threshold and that are not required to file Form T-1 would have access to those trust reports because the reports are public information under section 205 of the LMRDA, 29 U.S.C. 435. However, the Department believes that it is impractical to restrict the reporting to a single labor organization. Although it might be possible to impose the reporting obligation only on the labor organization that makes the largest contribution to the trust, this rule might be difficult to apply unless trusts were mandated to maintain an easily accessible and dynamic report of contributions by each participant in the trust, a condition that the Department is unable to impose. Allowing self-selection among unions also would be a possible option, but there is no guarantee that this would be workable. There is no mechanism by which this obligation could be enforced, and a particular union's failure to abide by any voluntary arrangement would deny members of several unions information to which they are entitled. Thus, in the Department's view, this alternative does not ensure that members would receive information about their union's trust holdings on a regular, predictable, and enforceable basis.

The Department also sought comments on an alternative "single entity" test to identify those funds or other organizations for which a union should report assets, liabilities, receipts and disbursements. The NPRM defined a "single entity" as one that is "dominated or controlled by the labor organization to such a degree that assets, liabilities, receipts and disbursements of the entity effectively are those of the union itself." *Id.* The test focuses on such factors as commonality of ownership, directors and/or officers, exercise of control, personnel policies, and operations. If a related organization and the union are effectively a "single entity," then the union would be required to include the related organization's financial information as part of the union's own finances on the appropriate LM form. The Department invited comments on the following specific issues: (i) Whether requiring a union to report financial data for any organization qualifying as a "single