

entity” would provide better information to interested union members than the current requirements for reporting trusts in which the union has an interest; (ii) whether a union could easily identify organizations that satisfy the “single entity” test; and (iii) whether the proposed “single entity” rule may affect some smaller unions if the combined assets and receipts of the union and the related organization exceed the \$200,000 threshold for requiring use of the proposed Form LM-2.

The Department received very few comments addressing the “single entity” test, all of which opposed the proposal. One comment criticized the proposed test because it would be more costly to enforce and less effective than the current “bright-line” standard (*i.e.*, the \$10,000 contribution threshold). The comment suggested that a union could simply deny that a related organization qualifies as a deemed “single entity” and not disclose the financial information; interested union members would then have to litigate the issue. According to the commenter, the relationship between the union and the other organization might not be apparent to the union members and, as a consequence, members would have no reason to make inquiries about the relationship between the organizations. With respect to the impact on smaller unions, the comment noted that the proposal might encourage those unions to under-report assets to avoid the Form LM-2 threshold. The comment suggested lowering the Form LM-2 threshold or importing the proposed Form LM-2 changes into the Form LM-3 if the Department is concerned about under-reporting. Another comment rejected the Department’s view that the related organization’s finances must be combined with the union’s finances for all purposes. The comment believed “single entity” reporting only requires the union to report the related organization’s finances, but not to combine the two organizations’ income to determine the applicable LM form. Determining the LM Form filing threshold on the combined receipts of both entities is “absurd on its face,” stated the comment, because a “single entity” finding recognizes two discrete legal entities and is thus unlike a finding that an organization is a “subsidiary” of a labor organization under the current Form LM-2. A third comment broadly rejected the “single entity” test because it would create “misleading” information about local unions and generate “useless” financial data.

After consideration of the comments received, the Department has decided against adopting the proposed “single entity” test. The Department agrees that the test is less effective than other criteria for determining whether a union is responsible for reporting financial information from related organizations. The criticisms underscore the difficulties faced by union members in obtaining financial information from a union: A union could conceal its relationship with the related organization, which would deny interested union members the information necessary for initiating inquiries; or a union could refuse to disclose information on the basis that the organization does not meet the standard for a “single entity” relationship. In either case, the Department would have to resort to litigation to obtain the withheld financial information. The “single entity” test does not reduce these obstacles. Moreover, the Department acknowledges that the test may be difficult to apply in some cases. The test requires close scrutiny of the related organization to determine whether a sufficient commonality of personnel, policies and operations exists to deem the union and the organization a “single entity.” Union members may encounter significant difficulties in obtaining the necessary information to make the comparison, which could reduce the incentive to conduct such inquiries. Even a fully informed investigation may not produce a conclusive answer because reasonable minds could differ about the relationship between the organizations. In contrast, a “bright line” standard based on a specified dollar threshold is unambiguous and easy to apply. The threshold determines whether the union’s “interest” in another entity is sufficient to require its disclosure. This approach imposes no significant burden on interested union members.

B. Information Required for a Trust in Which a Labor Organization Is Interested

The Department proposed requiring labor organizations to report, on a Form T-1, itemized receipts and disbursements of a covered trust. The comments on this proposal, in large part, mirrored those with respect to itemization on Form LM-2. Several commenters suggested that itemization was likely to significantly burden affected unions with little corresponding benefit. Labor organizations, they argued, do not currently have accounting systems for this type of itemization and the number

of entries alone for large trusts would be overwhelming. Other commenters supported itemization of Form T-1 receipts and disbursements. One organization cited the recent Washington Teachers’ Union embezzlement case as an example of financial corruption that might have been prevented by Form T-1 itemization. Commenters noted that the Form T-1 included a schedule to report officer and employee salaries but comments that argued generally that the form was too burdensome did not specifically address that schedule. After carefully considering the comments, the Department continues to believe that unions should provide their members with financial information about its significant financial investments with covered trusts. However, the final rule reduces the burden of reporting information about such trusts.

As is the case with respect to itemization on Form LM-2, the Department believes the benefits of disclosure to union members will outweigh any corresponding burdens upon union officials. Union members have expressed through their comments serious concern over union dues that are deposited into trusts and joint ventures and unaccounted for thereafter. Large trusts will be required to itemize numerous entries. These trusts, however, will have available to them the same bookkeeping and accounting software available to unions. Thus, for the reasons discussed with respect to the Form LM-2, no undue burden is imposed upon covered trusts in compiling the information needed for the union to file the Form T-1. Moreover, there has been no suggestion that covered trusts are ill equipped to comply with the bookkeeping or reporting requirements established by the final rule. Moreover, the trust information will be readily accessible to any union member with access to the Internet. In sum, unions have not asserted that a trust in which a union is interested will encounter any significant burden in connection with the collection of information needed to complete a Form T-1, and none is apparent. The unions also have failed to demonstrate that they will encounter any significant burden in providing the information to the Department, a burden that, in any event, is less significant than the preparation of the Form LM-2. Unlike the Form T-1, the Form LM-2 imposes on the reporting union the direct responsibility to capture the information needed to prepare the required report with this Department.

Many commenters opposed the specific threshold of \$10,000 for