

information must be filed on Form T-1 and that it may be difficult for some unions to obtain the necessary information from trusts. Though the trusts may have legal identities separate from reporting unions, the Department anticipates that in many and probably most instances the reporting union either by itself or in combination with other reporting unions will in practice exercise sufficient influence to require or persuade the trust to provide the necessary information. In this connection, if the union's members request further information about a particular trust or further details about a reported transaction, the union must disclose to the member any relevant information within its possession at the time of the inquiry and make a good faith effort to obtain additional information from the trust.

The Department recognizes that there may be some instances in which a trust will not fully cooperate in providing timely information to the reporting union. However, the Department expects that, in those infrequent instances, the reporting union officials will be able to demonstrate that they made a good-faith effort to obtain timely information from the trust. In such situations, the Department is prepared to exercise any available investigative and other authority to assist the reporting union to obtain the necessary information. One commenter, an accountant, suggested that some of the information required to be reported on Form T-1 may be reported by the trusts under other federal reporting requirements with later reporting deadlines and that unions that file reports regarding those trusts should be permitted to use those later deadlines. The Department concludes that a rule with such uncertain deadlines would be difficult to administer and would not be easily ascertained and applied by all parties, including labor organizations, their members, the trusts, the Department, and the public.

One commenter, a union business representative, urged the Department to include a procedure for granting extensions of time to labor organizations for filing their financial reports. The commenter argued that some labor organizations already find it difficult to file current LM forms in a timely manner. Section 207 of the LMRDA expressly states that each labor organization annual financial report must be filed within ninety days after the organization's fiscal year. This requirement is consistent with the evident intention of Congress that union members and others have access to regular and timely annual reports as a

means to effectuate union self-government. The statute provides no authority to waive this deadline, even when a union has made a good faith effort to comply with the deadline. The Department has concluded that neither the current nor the revised reporting forms for labor organizations are likely to pose unreasonable difficulties for union officials who are reasonably diligent in their efforts to timely file the union's Form LM-2 and any Form T-1.

Another commenter, also an accountant, suggested that a reporting labor organization be permitted to file information from the "latest available" report by the trust and that it would be simpler to require Form T-1 to be filed at the same time that the labor organization must file its annual report, namely within ninety days after the end of the labor organization's fiscal year, rather than ninety days after the end of the trust's fiscal year. As discussed above, only certain reports will be acceptable as substitutes for the Form T-1. Nonetheless, this comment suggests a reasonable approach that will ensure that union members are able to obtain relevant information about a trust in which his or her union has an interest, while reducing any burden for the reporting union. Thus, the Department has decided to require a reporting labor organization to file its Form T-1(s), or qualifying audits in substitution for Form T-1(s), at the same time as it files its own Form LM-2. The Form T-1, or qualifying audit, however, need not cover the same reporting year as the Form LM-2. Rather, the reporting labor organization must provide, at the time it files its Form LM-2, a Form T-1 or qualifying audit for the trust's most recent fiscal year that ended during the labor organization's reporting year—essentially the "latest available" report. If the trust's fiscal year coincides with the reporting labor organization, the labor organization will have 90 days in which to obtain the necessary information to complete a Form T-1, or the audit. If a trust's fiscal year ends on a different date than the labor organization's, the reporting union will have, in addition, any time between the end of the trust's most recent fiscal year and the end of the union's own fiscal year to obtain the information. Moreover, this requirement, like all other changes made by this rule, will be effective for fiscal years beginning on or after January 1, 2004. Accordingly, a union will be required to file a Form T-1 only for fiscal years beginning on or after January 1, 2004, of trusts in which it has an interest. Because a union need only file the "latest available" report for

its trusts, it is unlikely that many Form T-1 reports, if any, will be required in the first year. For example, if a union's fiscal year begins on January 1, 2004, its Form LM-2 will be due at the end of March of 2005. If that union has an interest in a trust that begins its fiscal year on October 1, the first fiscal year for which a Form T-1 will be required for such a trust is the fiscal year that ends on September 30, 2005. Obviously, no Form T-1 will be available to file with the union's first revised Form LM-2 filed in March. If, however, a union that begins its fiscal year on January 1, 2004, has an interest in a trust that also begins its fiscal year on January 1, 2004, the union should file a Form T-1 covering the trust's 2004 fiscal year when the union files its Form LM-2 in March of 2005.

V. Regulatory Procedures

A. Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is not an "economically significant" regulatory action under section 3(f)(1) of Executive Order 12866. Based on an analysis of the data the rule is not likely to: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The Department estimates the total cost of the final rule to be \$79.9 million in the first year, \$44.1 million in the second year, and \$43.2 million in the third year (see the following Paperwork Reduction Act section for a description of how these costs were estimated). The three-year average cost of the rule is \$55.7 million per year. The Department also estimates a benefit of \$2.6 million per year in savings for 501 smaller unions because they can file the less burdensome Form LM-3 as a result of increasing the new Form LM-2 reporting threshold to \$250,000. Further, there are substantial unquantifiable benefits that result from the greater transparency of labor organizations' financial information to its members and other benefits of deterring fraud or discovering it earlier. As a result, the Department has