

2. Summary and Assessment of the Significant Issues Raised by Comments and Changes Made to the Proposed Rule as a Result of Such Comments

Many comments, although not directed specifically at the initial regulatory flexibility analysis, raised issues related to the effect of the proposed rule on small entities, and in response, the Department made many significant changes to its proposal. These issues and changes are discussed in detail above. The following addresses comments that are specifically related to the Department's initial regulatory flexibility analysis.

The AFL-CIO argues that the Department did not meet the standards of the Regulatory Flexibility Act and its requirements that agencies consider the impact of rules on small entities. Although the AFL-CIO acknowledges that the Department included a Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities, the AFL-CIO claims that a purported lack of analysis indicates that the Department's inquiry was not conducted in good faith. For example, the AFL-CIO argues that the Department never seriously considered the alternatives listed in the initial Regulatory Flexibility Act analysis. The AFL-CIO contends that these alternatives were just "straw men" that the Department considered only briefly, knowing that they would be discarded. Among the alternatives that the Department should have considered and proposed for small unions, according to the AFL-CIO, were: (1) The "phasing in" of the effective date for the rule; (2) a permanent waiver of the electronic filing requirement; and (3) an exemption from functional reporting. These alternatives are addressed in the preamble and the discussion below.

The Department noted in the NPRM that the SBA's definition of "small entity" may not be appropriate in the context of labor unions and their regulation under the LMRDA. Nonetheless, the Department performed an Initial Regulatory Flexibility Analysis for the NPRM and addressed each of the categories, applying the SBA's definition as required by 5 U.S.C. 603. The Department has also submitted a Final Regulatory Flexibility Analysis with this final rule as required by 5 U.S.C. 604. Thus, the Department has met the procedural requirements of the Act.

The Department specifically considered and discussed in some detail five options in its Initial Regulatory Flexibility Analysis. Despite the AFL-CIO's disagreement with the

Department's choice of options discussed or the Department's ultimate decisions concerning these options, the AFL-CIO has not shown and cannot show that the Department did not consider the options or acted in bad faith by not proposing them. In order to reduce the burden on smaller unions, the Department, among other revisions for the same purpose, adopted the alternative, identified in the NPRM, to raise the reporting threshold for the Form LM-2 from \$200,000 to \$250,000. As discussed in detail in the preamble, other revisions, adopted in response to comments, should make compliance by smaller unions easier than if the Department's proposal was left unchanged.

The AFL-CIO contended that the Department failed to satisfy its obligation under the Regulatory Flexibility Act to actively solicit the participation of small entities as part of its planning for this rulemaking. The Department disagrees with this view and notes that it engaged in a substantial outreach effort, even before publication of the NPRM, in order to solicit ideas for improving the effectiveness of the annual financial report to achieve the disclosure intended by Congress in establishing the LMRDA's reporting requirements. To this end, Department officials conducted numerous consultations with union representatives, including face-to-face meetings with 39 unions. After publication of the proposal, Department officials continued to meet with unions that requested meetings and added notes of meetings with six unions during the public comment period to the rulemaking record.

An alternative suggested by commenters that directly affects the smallest unions to whom the new rule applies was to adjust upward for inflation the Form LM-2 filing threshold from \$200,000, the adjusted amount set in 1994. The Department has adopted this alternative and increased the Form LM-2 threshold to \$250,000 in the final rule. As a result, 501 unions that currently file a Form LM-2 will now be able to satisfy the requirements of the LMRDA by filing the simpler Form LM-3. It should also be noted that the final \$250,000 threshold is significantly higher than the earlier thresholds for filing the Form LM-2 when they are adjusted for inflation—1959 (\$20,000), 1962 (\$30,000), and 1981 (\$100,000). The Department will continue to monitor this threshold, as well as all other thresholds established by this rule, and may make future adjustments if economic conditions warrant such a change.

Another alternative considered by the Department was to phase-in the effective date for the Form LM-2 changes in order to provide smaller Form LM-2 filers additional lead time to modify their recordkeeping systems to comply with the new reporting requirements. This alternative also was supported by a number of commenters. After reviewing the comments, the Department has changed its proposal, which would have required unions to use the new Form LM-2 to file the report for any fiscal year beginning immediately after the publication of the final rule, and instead is requiring labor organizations to use the revised Form LM-2 to file the report for the fiscal years that begin on or after January 1, 2004, about three months after publication of this rule. This change provides approximately two-thirds of reporting unions with sufficient lead time within which to adjust their procedures to keep track of the information they will need to prepare a Form LM-2 and to submit, 15 months after the start of their next fiscal year (beginning on January 1, 2004), or nearly 18 months after the publication of this rule, the report to the Department, and even more time to the remaining third of reporting unions that use different dates for their fiscal years. Thus, no union will have less than about three months to change its bookkeeping and accounting systems to capture data that later will be needed to submit the Form LM-2.

With this change, unions will have adequate time to conform to the revised forms and comply with the more detailed reporting requirements. The public comments and OLMS auditing and accounting experience confirm that many local (and therefore generally smaller) unions already collect and maintain some (and in some cases most) of the information required by the new form. Moreover, unions must already track and maintain records for all disbursements in order to report total disbursements for the variety of functional categories on the current Form LM-2. The survey data submitted by the AFL-CIO suggests that 16 to 22% of local unions already have the capability to itemize and track receipts and disbursements (including credit card transactions), as required by the final Form LM-2. Further, after the research and review of different types of commercial-off-the-shelf accounting software, the Department believes that updating and modifying accounting systems to track all of the information required by the revised forms should be accomplished easily, given the lead time