

built into the final rule. The steps required of unions to adjust their bookkeeping and accounting procedures are discussed in the preamble. OLMS also plans to provide compliance assistance to any labor organization that requests it. In addition, a review of the proposed revisions was undertaken to reduce paperwork burden for all Form LM-2 filers and an effort was made during the review to identify ways to reduce the impact on small entities. The Department believes it has minimized the economic impact of the form revision on small unions to the extent possible while recognizing workers' and the Department's need for information to protect the rights of union members under the LMRDA.

To reduce the burden on small labor organizations, several commenters suggested that unions be required to file annual independent audits as an alternative to filing the Form LM-2. Although some commenters argued that requiring unions to obtain annual audits is within the Department's statutory authority, no provision of the LMRDA vests the Secretary of Labor with any express authority to require unions to obtain audits and the Department has chosen not to attempt to impose such a requirement. Moreover, an annual audit requirement would require a reporting union to incur the expense of obtaining the services of an independent auditor and thus impose an additional burden on small unions, many of which, in the Department's experience, are not currently obtaining private audits. Finally, this alternative was rejected because audits typically do not reveal the detail on the financial operations of unions that is required by the statute (29 U.S.C. 431) and requiring such detail with the appropriate audit standards would be no less burdensome than the final forms.

A union, however, could meet its trust reporting obligation under the final rule by utilizing any exceptions provided for in the rule, including the submission of an independent audit of the trust that meets the minimum standards prescribed by the rule. In permitting this last exception, the Department recognizes that although most audits do not provide an adequate substitute for the full disclosure of information generally required under the LMRDA, this statutory purpose can be achieved in the trust reporting context so long as the information is verified by an independent examiner and meets the standards prescribed by the rule. By permitting a labor organization to submit an audit in place of a Form T-1, smaller labor organizations that file a Form LM-2 are

relieved of the burden of compiling a separate form and need only insist that entities with annual receipts of \$250,000 or more, to which they contribute \$10,000 or more, or to which that amount is contributed on their behalf, provide only very basic information regarding their fiscal operations.

Another commenter suggested that a reporting labor organization be permitted to file information from the "latest available" report by the trust. This commenter observed 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. Although the "latest available" report of the trust may not be a sufficient substitute for a Form T-1 (depending on whether it meets the prescribed audit criteria as discussed in the preamble), this suggestion presents a reasonable alternative that should both alleviate burden for the reporting labor organization and minimize confusion for those interested in this information. Thus, the Department has decided to require a reporting labor organization to file all Form T-1s, or qualifying audits in substitution for Form T-1s, if it so chooses, at the same time that it files its own Form LM-2.

To reduce the burden on smaller labor organizations, a few commenters, including the AFL-CIO, suggested that the Department establish a permanent waiver for electronic filing and/or pilot testing of electronic filing as alternatives to the Department's proposal. As discussed in the preamble, the Department has rejected the permanent waiver alternative because for several years Congress has urged the Department to implement the electronic filing of annual reports required by the LMRDA, along with an indexed and easily searchable computer database of the information submitted, accessible by the public over the Internet. *See* H.R. Conf. Rep. 105-390, 1997 U.S.C.C.A.N. 2061; H.R. Conf. Rep. 105-825; H.R. Conf. Rep. 106-419; H.R. Conf. Rep. 106-479; H.R. Conf. Rep. 106-1033; H.R. Conf. Rep. 107-342, 2002 U.S.C.C.A.N. 1690; H.R. Conf. Rep. 108-10, 2003 U.S.C.C.A.N. 4. Moreover, as the public comments suggest, the relevant inquiry with respect to electronic filing is not whether it should be required, but rather how and when it should be accomplished. After significant research and analysis (as discussed above), the Department has decided that the best method to address any legitimate excessive burden

associated with electronic filing is not through a permanent waiver, but through a hardship exemption (a term borrowed from the SEC's electronic filing procedures), and that, for the majority of filers, electronic filing is the least burdensome option.

The Department gave serious consideration to the comments suggesting a pilot program or a delayed phase-in of the reporting requirements, but has concluded that such alternatives are unnecessary. After reviewing the recordkeeping and reporting requirements of the current Form LM-2, the public comments that were received, and the modifications that unions may have to make to their accounting and recordkeeping systems to comply with the final rule, the Department believes that Form LM-2 filers will be able to make the adjustments before the start of their first reporting period under the final rule—a minimum of about three months from the date of the rule's publication—without incurring an undue burden. The most important change involves the tracking of receipts reported in Schedule 14 and disbursements to ensure that each disbursement is allocated to the proper disbursement category on the revised Form LM-2 with a descriptive purpose and that all of the required information (name, address, purpose, date, and amount) is captured for each "other" receipt and disbursement.

Some commenters stated that this is a dramatic change in the Form LM-2 and would impose a significant burden on unions in order to change their recordkeeping systems before the effective date of the final rule. However, this position fails to recognize that unions have always been required to allocate each disbursement to one or more disbursement categories on the current Form LM-2 (and to maintain those records). For example, unions have always been required to allocate credit card payments to multiple categories of the LM-2 based upon the purposes of each charge. A single credit card charge to a travel agent may include expenses that must be allocated to three or more different places on the current LM-2. Although the Department has changed the functional categories on the final form, the underlying method of allocating these disbursements and maintaining the records remains the same.

Changing accounting and recordkeeping systems to capture all of the required information (name, address, purpose, date, and amount) for each other receipt and disbursement can be accomplished before January 1, 2004.