(b) Affected ADs

This AD replaces AD 2021–24–06, Amendment 39–21827 (86 FR 66934, November 24, 2021) (AD 2021–24–06).

(c) Applicability

This AD applies to Airbus Helicopters Model EC130T2 helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) Emergency AD 2021–0283–E, dated December 17, 2021 (EASA AD 2021–0283–E).

(d) Subject

Joint Aircraft System Component (JASC) Code: 5300, Fuselage Structure.

(e) Unsafe Condition

This AD was prompted by a report of degradation of the rear transmission shaft bearing support and the determination that all of the attachment rivets of the transmission shaft bearing support were sheared. The FAA is issuing this AD to address sheared attachment rivets of the transmission shaft bearing support. This condition, if not addressed, could lead to failure of the tail rotor drive shaft and subsequent loss of yaw control of the helicopter.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0283–E.

(h) Exceptions to EASA AD 2021–0283–E

(1) Where EASA AD 2021–0283–E refers to November 1, 2021 (the effective date of EASA Emergency AD 2021–0235–E, dated October 28, 2021), this AD requires using December 9, 2021 (the effective date of AD 2021–24–06).

(2) Where EASA AD 2021–0283–E refers to its effective date, this AD requires using the effective date of this AD.

(3) Where EASA AD 2021–0283–E requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(4) Where paragraphs (1) and (2) of EASA AD 2021–0283–E require accomplishing inspections after each last flight of the day or ''ALF,'' this AD requires accomplishing those inspections before each first flight of the day.

(5) Where the service information referenced in EASA AD 2021–0283–E specifies that certain inspections can be done by a mechanical technician, a pilot with correct training and accreditation, or a pilot-owner, this AD requires that those inspections be done by a qualified mechanic.

(6) Where paragraphs (3) and (4) of EASA AD 2021–0283–E specify contacting Airbus Helicopters to obtain approved repair instructions and accomplishing those instructions, this AD requires repair done in accordance with a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters'' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(7) Where paragraph (6) of EASA AD 2021–0283–E requires reporting inspection results to Airbus Helicopters within 30 days after each rivet replacement, this AD requires reporting inspection results at the applicable time in paragraph (h)(7)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 10 days after each rivet replacement.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(8) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0283–E.

(i) Special Flight Permit

Special flight permits may be permitted to accomplish the actions required by paragraphs (1) and (2) of EASA AD 2021–0283–E for the before each first flight of the day compliance time only, provided that there are no passengers on board. Special flight permits are prohibited for any other actions required by this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) European Union Aviation Safety Agency (EASA) Emergency AD 2021–0283–E, dated December 17, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0283–E, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1165.

(5) You may view this material that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov*, or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on December 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–28340 Filed 12–27–21; 4:15 pm]

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DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 403 and 408

RIN 1245–AA12

Rescission of Labor Organization Annual Financial Report for Trusts In Which A Labor Organization Is Interested, Form T–1

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Final rule.

SUMMARY: This rule rescinds the final rule published in the **Federal Register** on March 6, 2020, (2020 Form T–1 rule), which established the Form T–1, Trust Annual Report, required to be filed by labor organizations about certain trusts in which they are interested pursuant to the Labor-Management Reporting and Disclosure Act (LMRDA). Upon further review of the 2020 Form T–1 rule, including the pertinent facts and legally relevant policy considerations surrounding that rulemaking, the Department of Labor (Department) withdraws the rule implementing the Form T–1, because it has determined that the 2020 rulemaking record, particularly its analysis of the burden and the benefit of the rule, was insufficient as a matter of policy to justify the trust reporting requirements set forth in the 2020 Form T–1 rule. Further, by requiring reporting on entities not controlled or dominated by

labor unions, the Department has determined that the trust reporting required under the rule is overly inclusive and is not necessary to prevent the circumvention and evasion of the Title II reporting requirements.

DATES: This rule is effective on January 31, 2022.

FOR FURTHER INFORMATION CONTACT: Karen Torre, Chief of the Division of Interpretations and Regulations, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–5609, Washington, DC 20210, (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD), *OLMS-Public@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

The Department's statutory authority is set forth in section 208 of the LMRDA, 29 U.S.C. 438. Section 208 of the LMRDA provides that ''[t]he Secretary [of Labor] shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules prescribing reports concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.''

The Secretary has delegated his authority under the LMRDA to the Director of the Office of Labor-Management Standards (OLMS) and permitted re-delegation of such authority. *See* Secretary's Order 03–2012 (Oct. 19, 2012), published at 77 FR 69375 (Nov. 16, 2012).

II. Background

A. Introduction

In enacting the LMRDA in 1959, Congress sought to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers and their labor relations consultants, and the officers, employees, and representatives of these entities. The LMRDA's various reporting provisions for labor organizations, their officers, and their employees are designed to empower labor organization members by providing them the means to maintain democratic control over their labor organizations and ensure a proper accounting of labor organization funds. Labor organization members are better able to monitor their labor organization's financial affairs and to make informed choices about the leadership of their labor organization and its direction when labor organizations disclose financial information as required by the LMRDA.

By reviewing a labor organization's financial reports, a member may ascertain the labor organization's priorities and whether they are in accord with the member's own priorities and those of fellow members. At the same time, this transparency promotes both the labor organization's own interests as a democratic institution and the interests of the public and the government. Furthermore, the LMRDA's reporting and disclosure provisions, together with the fiduciary duty provision, 29 U.S.C. 501, which directly regulates the primary conduct of labor organization officials, operate to safeguard a labor organization's funds from depletion by improper or illegal means. While the vast majority of union officers and employees do their work diligently and without incident, unfortunately civil and criminal violations sometimes occur and, when they do, the union is the victim. Timely and complete reporting helps detect instances of labor organization officers, employees, or others embezzling or otherwise making improper use of such funds and obtain relief for the benefit of the labor organization and its members when such improper use occurs.

B. The LMRDA's Reporting and Other Requirements

The LMRDA was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee, chaired by Senator John McClellan of Arkansas. In 1957, the committee began a highly publicized investigation of labor organization racketeering and corruption; and its findings of financial abuse, mismanagement of labor organization funds, and unethical conduct provided much of the impetus for enactment of the LMRDA's remedial provisions. *See generally* Benjamin Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 HARV. L. REV. 851, 851–55 (1960). During the investigation, the committee uncovered a host of improper financial arrangements between officials of several international and local labor organizations and employers (and labor consultants aligned with the employers) whose employees were represented by the labor organizations in question or might be organized by them. Similar arrangements were also found to exist between labor organization officials and the companies that handled matters relating to the administration of labor organization benefit funds. *See generally Interim Report of the Select Committee on Improper Activities in the Labor or Management Field*, S. Report No. 85–1417 (1957); *see also* William J. Isaacson, *Employee Welfare and Benefit Plans: Regulation and Protection of Employee Rights*, 59 COLUM. L. REV. 96 (1959).

Financial reporting and disclosure from labor organizations were conceived as partial remedies for these improper practices. As noted in a key Senate Report on the legislation, disclosure would discourage questionable practices (''The searchlight of publicity is a strong deterrent.''), aid labor organization governance (labor organizations will be able ''to better regulate their own affairs'' because ''members may vote out of office any individual whose personal financial interests conflict with his duties to members''), facilitate legal action by members against ''officers who violate their duty of loyalty to the members'', and create a record (''the reports will furnish a sound factual basis for further action in the event that other legislation is required''). S. Rep. No. 187 (1959) 16 reprinted in 1 NLRB LEGISLATIVE HISTORY OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, 412.

The Department has developed several forms for implementing the LMRDA's financial reporting requirements. The annual reports required by section 201(b) of the Act, 29 U.S.C. 431(b) (Form LM–2, Form LM–3, and Form LM–4), contain information about a labor organization's assets; liabilities; receipts; disbursements; loans to officers, employees, and business enterprises; payments to each officer; and payments to each employee of the labor organization paid more than $10,000 during the fiscal year. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. 29 CFR 403.4.

The labor organization's president and treasurer (or its corresponding officers) are personally responsible for filing the reports and for any statement in the reports known by them to be false. 29 CFR 403.6. These officers are also responsible for maintaining records in sufficient detail to verify, explain, or clarify the accuracy and completeness of the reports for not less than five years after the filing of the forms. 29 CFR 403.7. A labor organization ''shall make available to all its members the information required to be contained in such reports'' and ''shall . . . permit such member[s] for just cause to examine any books, records, and accounts necessary to verify such report[s].'' 29 CFR 403.8(a).

The reports are public information. 29 U.S.C. 435(a). The Secretary is charged with providing for the inspection and examination of the financial reports, 29 U.S.C. 435(b). For this purpose, OLMS maintains: (1) A public disclosure room where copies of such reports filed with OLMS may be reviewed and; (2) an online public disclosure site, where copies of such reports filed since the year 2000 are available for the public's review.

In addition to prescribing the form and publication of the LMRDA reports, the Secretary is authorized to issue regulations that prevent labor unions and others from avoiding their reporting responsibilities. Section 208 authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions, including ''prescribing reports concerning trusts in which a labor organization is interested'' as the Secretary may ''find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements.'' 29 U.S.C. 438. In other words, the Secretary may require separate trust reporting only if: (1) The union has an interest in a trust *and* (2) reporting is determined to be necessary to prevent the circumvention or evasion of LMRDA reporting requirements. 29 U.S.C. 438.

The phrase ''trust in which a labor organization is interested'' is defined the LMRDA. It ''means a trust or other fund or organization (1) which was created or established by a labor organization, or one or more of the trustees or one or more members of the governing body of which is selected or appointed by a labor organization, and (2) a primary purpose of which is to provide benefits for the members of such labor organization or their beneficiaries.'' 29 U.S.C. 402(*l*)

III. Rescission of the March 6, 2020 Final Rule Establishing the Form T–1

A. History of the Form T–1

The Form T–1 report was first proposed on December 27, 2002, as one part of a proposal to extensively change the Form LM–2. 67 FR 79280 (Dec. 27, 2002). The rule was proposed under the authority of Section 208, which permits the Secretary to issue such rules ''prescribing reports concerning trusts in which a labor organization is interested'' as he may ''find necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements.'' 29 U.S.C. 438. Following consideration of public comments, on October 9, 2003, the Department published a final rule enacting extensive changes to the Form LM–2 and establishing a Form T–1. 68 FR 58374 (Oct. 9, 2003) (2003 Form T–1 rule). The 2003 Form T–1 rule eliminated the requirement that unions report on subsidiary organizations on the Form LM–2,[1] but it mandated that each labor organization filing a Form LM–2 report also file a separate report to ''disclose assets, liabilities, receipts, and disbursements of a significant trust in which the labor organization is interested,'' increasing labor organizations'' reporting requirements generally and expanding the types of trusts for which reporting would be required. 68 FR at 58477. The reporting labor organization would make this disclosure by filing a separate Form T–1 for each significant trust in which it was interested. *Id.* at 58524.

To address the statutory requirement that trust reporting be ''necessary to prevent the circumvention or evasion of [the LMRDA's] reporting requirements,'' the 2003 Form T–1 rule developed the ''significant trust in which the labor organization is interested'' test. It used the section 3(*l*) statutory definition of ''a trust in which a labor organization is interested'' coupled with an administrative determination of when a trust is deemed ''significant.'' 68 FR at 58477–78. A labor organization would be required to report on an entity only if both sets of criteria were met.

The 2003 Form T–1 rule set forth an administrative determination that stated that a ''trust will be considered significant'' and therefore subject to the Form T–1 reporting requirement under the following conditions:

> The labor organization had annual receipts of $250,000 or more during its most recent fiscal year, and (2) the labor organization's financial contribution to the trust or the contribution made on the labor organization's behalf, or as a result of a negotiated agreement to which the labor organization is a party, is $10,000 or more annually.

Id. at 58478.

The portions of the 2003 rule relating to the Form T–1 were vacated by the D.C. Circuit in *AFL–CIO* v. *Chao,* 409 F.3d 377, 389–391 (D.C. Cir. 2005). The court held that the form ''reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union's contribution of funds to an independent organization could circumvent or evade union reporting requirements by, for example, permitting the union to maintain control of the funds.'' *Id.* at 389. The court also vacated the Form T–1 portions of the 2003 rule because its significance test (the second set of criteria for trust status, set forth above) failed to establish reporting based on domination or managerial control of assets subject to LMRDA Title II jurisdiction.

The court reasoned that the Department failed to explain how the test—*i.e.,* selection of one member of a board and a $10,000 contribution to a trust with $250,000 in receipts—could give rise to circumvention or evasion of Title II reporting requirements. *Id.* at 390. In so holding, the court emphasized that Section 208 authority is the only basis for LMRDA trust reporting, that this authority is limited to preventing circumvention or evasion of Title II reporting, and that ''the statute doesn't provide general authority to require trusts to demonstrate that they operate in a manner beneficial to union members.'' *Id.* at 390.

However, the court recognized that reports on trusts that reflect a labor organization's financial condition and operations are within the Department's rulemaking authority, including trusts ''established by one or more unions or through collective bargaining agreements calling for employer contributions, [where] the union has retained a controlling management role in the organization,'' and also those ''established by one or more unions with union members'' funds because such establishment is a reasonable indicium of union control of that trust.'' *Id.* The court acknowledged that the Department's findings in support of its rule were based on particular situations where reporting about trusts would be necessary to prevent evasion of the related labor organizations'' own reporting obligations. *Id.* at 387–88. One example included a situation where ''trusts [are] funded by union members' funds from one or more unions and employers, and although the unions retain a controlling management role, no individual union wholly owns or dominates the trust, and therefore the use of the funds is not reported by the related union.'' *Id.* at 389 (emphasis added). In citing these examples, the

[1] The Form LM–2 Instructions define a ''subsidiary'' of a labor organization: Within the meaning of these instructions, a subsidiary organization is defined as any separate organization of which the ownership is wholly vested in the reporting labor organization or its officers or its membership, which is governed or controlled by the officers, employees, or members of the reporting labor organization, and which is wholly financed by the reporting labor organization. A subsidiary organization is considered to be wholly financed if the initial financing was provided by the reporting labor organization even if the subsidiary organization is currently wholly or partially self-sustaining. *https://www.dol.gov/sites/dolgov/files/olms/regs/compliance/GPEA_Forms/2020/efile/LM-2_instructionsRevised2020.pdf.*

court explained that ''absent circumstances involving dominant control over the trust's use of union members' funds or union members' funds constituting the trust's predominant revenues, a report on the trust's financial condition and operations would not reflect on the related union's financial condition and operations.'' *Id.* at 390. For this reason, while acknowledging that there are circumstances under which the Secretary may require a report, the court disapproved of a broader application of the rule to require reports by any labor organization simply because the labor organization satisfied a reporting threshold (a labor organization with annual receipts of at least $250,000 that contributes at least $10,000 to a section 3(*l*) trust with annual receipts of at least $250,000). *Id.*

In light of the decision by the D.C. Circuit, the Department issued a revised Form T–1 final rule on September 29, 2006. 71 FR 57716 (Sept. 29, 2006) (2006 Form T–1 rule). Following an ensuing lawsuit, the U.S. District Court for the District of Columbia vacated this rule due to a failure to provide a new notice and comment period. *AFL–CIO* v. *Chao,* 496 F. Supp. 2d 76 (D.D.C. 2007). The district court did not engage in a substantive review of the 2006 rule, but the court noted that the AFL–CIO demonstrated that ''the absence of a fresh comment period . . . constituted prejudicial error'' and that the AFL–CIO objected with ''reasonable specificity'' to warrant relief vacating the rule. *Id.* at 90–92.

The Department issued a proposed rule for a revised Form T–1 on March 4, 2008. 73 FR 11754 (Mar. 4, 2008). After notice and comment, the 2008 Form T–1 final rule was issued on October 2, 2008. 73 FR 57412. The 2008 Form T–1 rule took effect on January 1, 2009. Under that rule, Form T–1 reports would have been filed no earlier than March 31, 2010, for fiscal years that began no earlier than January 1, 2009.

Following dicta in *AFL–CIO* v. *Chao,* the 2008 Form T–1 rule stated that labor organizations with total annual receipts of $250,000 or more must file a Form T–1 for those section 3(*l*) trusts in which the labor organization, either alone or in combination with other labor organizations, had management control or financial dominance. 73 FR at 57412. For purposes of the rule, a labor organization had management control if the labor organization alone, or in combination with other labor organizations, selected or appointed the majority of the members of the trust's governing board. Further, for purposes of the rule, a labor organization had financial dominance if the labor organization alone, or in combination with other labor organizations, contributed more than 50 percent of the trust's receipts during the annual reporting period. Significantly, the rule treated contributions made to a trust by an employer pursuant to CBA as constituting contributions by the labor organization that was party to the agreement.

Additionally, the 2008 Form T–1 rule provided exemptions to the Form T–1 filing requirements. No Form T–1 was required for a trust: (1) Established as a political action committee (PAC) fund if publicly available reports on the PAC fund were filed with Federal or state agencies; (2) established as a political organization for which reports were filed with the IRS under section 527 of the IRS code; (3) required to file a Form 5500 under the Employee Retirement Income Security Act of 1974 (ERISA); or (4) constituting a federal employee health benefit plan that was subject to the provisions of the Federal Employees Health Benefits Act (FEHBA), 5 U.S.C. 8901 *et seq.* Similarly, the rule clarified that no Form T–1 was required for any trust that met the statutory definition of a labor organization, 29 U.S.C. 402(i), and filed a Form LM–2, Form LM–3, or Form LM–4, constituted a subsidiary organization (*i.e.,* a separate organization that is wholly owned, controlled, and financed by a single labor organization), or was an entity that the LMRDA exempts from reporting. *Id.*

In the Spring 2009 and Fall 2009 Regulatory Agendas, the Department notified the public of its intent to initiate rulemaking proposing to rescind the Form T–1 and to require reporting of wholly owned, wholly controlled, and wholly financed (''subsidiary'') organizations on their Form LM–2 or LM–3 reports. *See http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200904&RIN=1215-AB75 and http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=200904&RIN=1215-AB75.*

Due to the proposed rescission, on December 3, 2009, the Department issued a notice of proposed extension of filing due date to delay for one calendar year the filing due dates for Form T–1 reports required to be filed during calendar year 2010. 74 FR 63335. On December 30, 2009, following comment, the Department published a rule extending for one year the filing due date of all Form T–1 reports required to be filed during calendar year 2010. 74 FR 69023.

Subsequently, on February 2, 2010, the Department published a Notice of Proposed Rulemaking (NPRM) proposing to rescind the Form T–1. 75 FR 5456. After notice and comment, the Department published the final rule on December 1, 2010. In its rescission, the Department stated that it considered the reporting required under the rule to be overly broad and not necessary to prevent circumvention or evasion of Title II reporting requirements. The Department concluded that the scope of the 2008 Form T–1 rule was overbroad because it covered many trusts, such as those funded by employer contributions, without an adequate showing that reporting for such trusts is necessary to prevent the circumvention or evasion of the Title II reporting requirements. See 75 FR 74936.

In the Spring and Fall Regulatory Agendas for 2017 and 2018, the Department notified the public of its intent to initiate rulemaking reinstating the Form T–1 Trust Annual Report. See *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201704&RIN=1245-AA09*, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=1245-AA09*, *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201804&RIN=1245-AA09*, and *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=1245-AA09*. On May 30, 2019 the Department proposed to establish a Form T–1 Trust Annual Report to capture financial information pertinent to ''trusts in which a labor organization is interested'' (''section 3(l) trusts''). See 84 FR 25130. After notice and comment, the Department published the 2020 Form T–1 final rule on March 6, 2020. 85 FR 13414.

Under the 2020 rule, and similar to the 2008 rule, the Department requires a labor organization with total annual receipts of $250,000 or more (and, which therefore is obligated to file a Form LM–2 Labor Organization Annual Report) to file a Form T–1, under certain circumstances, for each trust of the type defined by section 3(l) of the LMRDA, 29 U.S.C. 402(l) (defining ''trust in which a labor organization is interested''). 85 FR 13417. Such labor organizations must file where the labor organization during the reporting period, either alone or in combination with other labor organizations, (1) selects or appoints the majority of the members of the trust's governing board or (2) contributes more than 50 percent of the trust's receipts. Id. When applying this financial or managerial dominance test, contributions made pursuant to a collective bargaining agreement (CBA) shall be considered the labor organization's contributions. Id. In its final rule, the Department stated that the rule helped bring the reporting requirements for labor organizations and section 3(l) trusts in line with contemporary expectations for the disclosure of financial information and prevent the circumvention or evasion of the LMRDA's reporting requirements through funds over which labor organizations exercise domination. 85 FR 13415.

Like the 2008 rule, exemptions are provided for a trust that is a political action committee (''PAC'') or a political organization (the latter within the meaning of 26 U.S.C. 527). No T–1 form is required for federal employee health benefit plans subject to the provision of the Federal Employees Health Benefits Act (FEHBA), any for-profit commercial bank established or operating pursuant to the Bank Holding Act of 1956, 12 U.S.C. 1843, or credit unions. 85 FR 13418. Similar to the 2008 rule, but unlike the 2003 or 2006 rules, the 2020 Form T–1 rule includes an exemption for section 3(l) trusts that are part of employee benefit plans that file a Form 5500 Annual Return/Report under ERISA. Id. Additionally, a partial exemption is provided for a trust for which an audit was conducted in accordance with prescribed standards and the audit is made publicly available. A labor organization choosing to use this option must complete and file the first page of the Form T–1 and a copy of the audit. Id.

Unlike the 2008 rule, the 2020 rule exempts unions from reporting on the Form T–1 their subsidiary organizations, retaining the requirement that unions must report their subsidiaries on the union's Form LM–2 report. Id. Also unlike the 2008 rule, the 2020 rule permits the parent union (*i.e.*, the national/international or intermediate union) to file the Form T–1 report for covered trusts in which both the parent union and its affiliates meet the financial or managerial domination test. Id. The affiliates must continue to identify the trust in their Form LM–2 report, and also state in their Form LM–2 report that the parent union will file a Form T–1 report for the trust. Id. The 2020 rule also allows a single union to voluntarily file the Form T–1 on behalf of itself and the other unions that collectively contribute to a multiple-union trust, relieving the Form T–1 obligation on the other unions. Id.

On May 27, 2021, the Department published an NPRM to withdraw the March 6, 2020 final rule. 85 FR 13414. The Department stated its view that the trust reporting required under the rule is overly broad and is thus not necessary to prevent the circumvention and evasion of the Title II reporting requirements. Moreover, upon further consideration, the Department expressed concern that the 2020 rulemaking record was insufficient to justify the separate trust reporting requirements as set forth in the 2020 Form T–1 rule.

B. Reasons for Rescission of the March 6, 2020 Form T–1 Final Rule

In its NPRM, the Department proposed to rescind the 2020 Form T–1 rule for two reasons. First, the Department stated its view that the trust reporting required under the rule is overly broad, as it includes trusts that are exclusively funded by employers. Accordingly, required reporting of such employer-funded trusts is not necessary to prevent the circumvention and evasion of a union's Title II reporting requirements. Second, the Department reviewed the 2020 rulemaking record and stated its concern that, as a matter of policy, the reporting requirements set forth in the 2020 Form T–1 rule are not justified in light of the burden they impose.

The Department received nine comments in response to the proposal, with six comments supporting the rescission. Out of the three opposition comments, only one was substantive in nature. As explained below, the Department adopts its proposal to rescind the Form T–1, based upon the rationales provided in the NPRM. First, the Department will explain why the reporting requirements set forth in the 2020 Form T–1 rule, as a matter of policy, are not justified in light of the heavy burden they impose and the negligible benefits they offer. Second, the Department will explain why, even if the benefits could be said to justify the burdens, the Form T–1 rule is fatally over-inclusive, in that it requires reporting on entities that could not be used to circumvent and evade the LMRDA reporting requirements and is therefore outside the rulemaking authority established by the LMRDA.

Stated Benefits of 2020 Rule Do Not Support Form T–1 Rule in Light of Burden Imposed

As a matter of policy, the Department finds that the 2020 Form T–1 final rule's stated benefits fail to justify the extensive costs imposed. More specifically, the Form T–1 requirements capture largely redundant information already captured by the Form 990 filed with the Internal Revenue Service (IRS) [2] and the existing Forms LM–2, LM–10, and LM–30 reporting regimes under LMRDA sections 201, 202, and 203. Accordingly, even to the extent that the 2020 Rule may have provided some intangible benefits, as a matter of policy, the Department now views those benefits as outweighed by the tangible and concrete costs imposed by the 2020 Rule. Moreover, the information collected is not necessary for preventing circumvention and evasion of the LMRDA's reporting requirements. Finally, the burdens on the agency are substantial and will divert necessary resources from more core activities under the statute. The Department thus rescinds the Form T–1 with today's rule.

As discussed in the NPRM to rescind, the 2020 rule imposed significant, quantifiable burdens on Form LM–2 filing labor organizations. The Department estimated that there will be at least 810 Form LM–2 organizations filing a Form T–1 report. 85 FR 13437. In the first year of reporting, Form T–1 filers would spend approximately 121.38 hours per report, which results in a total of 251,257 burden hours. 85 FR 13433. In subsequent years, Form T–1 filers would spend approximately 84.12 hours per report, which would result in 174,128 additional burden hours. Id. The total expected first-year costs of the Form T–1 are $15,009,801, and in subsequent years the total cost would be $10,385,820.[3] 85 FR 13437. Multiple commenters—in connection with both the current NPRM and the 2020 NPRM—agreed with the Department's current policy judgment, that the burden created by the 2020 Form T–1 is unacceptably high in relation to the rule's benefits. As one commenter indicated, over $15 million in costs imposed upon plans (and then reimbursed by the unions) in the first year would be ''depriving [union members and fund participants] of benefits that would otherwise be paid to or on their behalf, benefits needed especially during the ''economic uncertainty due to the COVID–19 pandemic.'' One training fund commenter also disputed the estimates of annual burden hours. The commenter estimated that it would take twice as long as the Department determined to acquire and report the information, stating that the estimates fall short especially for unions facing the significant difficulties associated with determining whether they need to file and who will file in multiple union situations.

[2] *See https://www.irs.gov/charities-non-profits/annual-filing-and-forms.*

[3] The 10-year annualized cost of the rule would be $10,285,704 at a 3 percent discount rate and $9,608,788 at a 7 percent discount rate. 85 FR 13438.

These burdens are in addition to existing Form LM–2 recordkeeping and reporting burdens, and union members ultimately bear these costs.

In the 2020 rule, the Department declared, ''[t]he Department's position in this Final Rule and in the NPRM is that there will be a burden on unions created by the rule but that it will be outweighed and thereby justified by the benefits of the rule.'' 85 FR 13414, 13433. When attempting to articulate the benefits, the Department did not articulate with specificity the benefits that would justify the policy underlying the new Form T–1. The preamble discussed the need ''to curb embezzlement'' and ''to safeguard democratic procedures'' and ''to promote labor organization self-government'' and to ''expand the benefits of labor organization financial transparency to the members of all Form LM–2 filing labor organizations that utilize trusts to expend funds for the members'' benefit.'' Id. The narrative did not, however, adequately explain how these intangible benefits justified the burden imposed by the Form T–1's reporting requirements, given that the Form T–1 would provide a largely redundant reporting regime to the existing Form 990, as well as the existing Form LM–2, LM–10, and LM–30 reporting regimes under LMRDA sections 201, 202, and 203.

For example, as stated in the NPRM to rescind, the 2020 rule failed to adequately demonstrate how the Form T–1 would actually provide benefits in terms of detecting and deterring fraud. To the extent that the 2020 rule cited examples that purportedly demonstrate how the Form T–1 would help detect and deter fraud or prevent the circumvention and evasion of Title II reporting obligations, the 2020 rule did not sufficiently demonstrate how the Form T–1 would further these goals.

A general criticism by commenters was that the 2020 Form T–1 rule suffered from a lack of supporting evidence and examples, a position with which the Department now agrees, even concerning its primary example, UAW-Fiat Chrysler of America (FCA). While the 2020 rule relied heavily on UAW-FCA convictions as grounds for adopting the Form T–1, after consideration, the Department now believes, as both a matter of policy and a factual consideration, that the cited cases do not provide support for the 2020 rule. That those convictions were secured without a Form T–1 reporting regime instead demonstrates that the ability to obtain necessary results to adequately protect against bribery and other violations of the labor-management process already exists, undermining the need to impose the additional costs of compliance with the Form T–1. Thus, rather than reinforcing the rationale behind the 2020 rule, that argument substantially undercuts the purported need for the new reporting burden.

Indeed, in recent years and as discussed in the 2020 rule, the Department played a key role in investigating and in securing over a dozen indictments and convictions in the UAW-FCA National Training Center (NTC) bribery and embezzlement scheme, all without the Form T–1. See 85 FR 13421. Working jointly with the Department of Justice and others, the Department of Labor helped secure convictions of management and union officials associated with the NTC, pursuant to the Taft-Hartley Act, for unlawful employer payments to UAW officials. *See* 29 U.S.C. 186. The 2020 rule offered no explanation as to what additional benefit, if any, the Form T–1 would have provided in this context. Indeed, OLMS already has a well-established history of effectively enforcing the LMRDA by combatting labor-management fraud without a Form T–1. *See* the OLMS enforcement results for the period 2001–present: *https://www.dol.gov/agencies/olms/criminal-enforcement*. As discussed below more fully, having to invest in the collection and enforcement of an unnecessary Form T–1 report may actually be detrimental to detecting fraud, because it would require that the Department redirect limited resources away from proven, effective means of uncovering and prosecuting such instances of possible financial corruption.

While the 2020 rule acknowledged existing transparency safeguards, it stated that the Department needed to ''add necessary safeguards intended to deter circumvention or evasion of the LMRDA's reporting requirements.'' See 85 FR 13420. However, upon review, existing OLMS reporting requirements already provide sufficient information that enables OLMS to detect financial misconduct and deter circumvention or evasion of the existing reporting requirements. The Form T–1 added substantial burdens but no readily discernible benefits to the agency's responsibility to deter circumvention or evasion of the statute's reporting requirements. Since the LMRDA Section 202 and 203 reporting requirements would require disclosure of the FCA and similar payments, and require the parties to file reports pursuant to the Department's Form LM–30 Labor Organization Officer and Employee Report and Form LM–10 Employer Report, the Department already had investigatory authority and access to necessary financial information to effectively investigate this FCA and will continue to have that authority to investigate similar matters, all without a Form T–1. *See* 29 U.S.C. 432–433 and 531.[4] Further, even if the Form T–1 provided a marginal increase in transparency, the clear, quantified burdens would far outweigh such intangible and small benefits.

Moreover, in terms of the benefits of general transparency to union members and union self-governance, the Department now believes that the 2020 rule did not provide sufficient reason to establish that the information provided by the Form T–1 would be significantly greater than what members currently enjoy. Consequently, the Department now believes that the Form T–1 established a redundant reporting regime.

More precisely, the rule did not identify any significant, concrete benefits gained through general transparency that were not already largely available through existing, publicly-available sources. Even without the 2020 rule, union members will continue to definitively benefit from transparency via mechanisms outside of the Form T–1 reporting regime. Members will continue to receive detailed information about their union's finances, including the identity and contact information of their union's trusts, through the annual Form LM–2 report available on the OLMS website. In particular, members will see whether the trust already files a report with another agency, such as the Form 990 filed with the IRS, which provides reporting comparable to the Form T–1.[5] The IRS Form 990 requires comprehensive reporting of financial information such as assets, liabilities,

[4] Additionally, the general public, including members of labor organizations, already has access to reports containing similar, if not identical, information that would be included on the Form T–1. For example, the NTC filed a Form 990 with the Internal Revenue Service (IRS) that listed three of the six UAW officials who took unlawful payments from FCA under Part VII (Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Individuals, and Independent Contractors), and the trust should have reported payments to two other UAW officials'' sham charities on Schedule I (Grants and Other Assistance to Organizations, Governments, and Individuals in the United States). See OLMS FY 18 Annual Report. While the Form 990s filed by the trust did not properly report these payments, the Department of Justice secured indictments covering conspiring to defraud the United States by preparing and filing false tax returns for the NTC that concealed millions of dollars in prohibited payments directed to UAW officials.

[5] *See https://www.irs.gov/charities-non-profits/annual-filing-and-forms*.

officer and director payments, leases, and other financial transactions.[6] This form provides the type of financial information that interested parties, such as union members, could use to monitor the use of trust funds in order to prevent circumvention or evasion of Title II reporting obligations and to detect and deter fraud.

Additionally, the examples provided in the 2020 rule illustrate the redundancies. In particular, the 2020 rule cited examples of fraud involving apprenticeship and training plans and other ERISA-covered entities, all of which EBSA uncovered with its existing enforcement authority pursuant to ERISA. *See* 85 FR 13419–20. The 2020 rule provided other examples and hypothetical situations as purportedly demonstrating the need for the Form T–1 to detect and deter fraudulent activity. However, upon additional review, these examples do not demonstrate a need for the Form T–1. For example, the 2020 rule offered a hypothetical example of a trust making a $15,000 payment to a printing company owned by a union official. In such a situation, the ownership of the printing company would not actually appear on the Form T–1, but the 2020 rule postulated that members or the public would notice the connection. *See* 85 FR 13418–19. It is just as likely, however, that union members or the public would already recognize this financial connection more directly via the IRS Form 990, Schedule L (Transactions with Interested Persons).[7] The Form 990 actually provides greater transparency in this regard than would the Form T–1, because Schedule L of the 990 directly relates to payments to interested parties, whereas the Form T–1 would rely on union members to make inferences and then conduct separate inquiries to establish union connections to the recipients of trust payments. This greater transparency on the Form 990 undercuts this rationale as a basis for supporting a Form T–1 reporting requirement.

The 2020 rule reviewed Form LM–2 reports from FY 17 and offered examples purportedly justifying the rule, but after careful consideration, the Department believes that such examples do not adequately support the rulemaking. *See* 85 FR 13419. For example, the 2020 rule cited a local union that made expenditures to a credit union. However, the 2020 rule exempted credit unions from the Form T–1 reporting requirements because existing law already provides detailed transparency and oversight. The 2020 rule also mentioned a local union making payments to a trust that constitutes an information technology (IT) service corporation established by the local union to provide it with IT services. But after further review, the local union reported on its Form LM–2 that the trust already files the IRS Form 1065.[8] Another example discussed payments from a union to a labor college; but the labor college files a Form 990, which provides the necessary transparency the Form T–1 sought. After the rescission of the Form T–1 provided for by this rule, the Department will continue to require unions to identify their trusts on the Form LM–2 report, along with information that would enable the public to locate the Form 990 or other reports covering such trusts.

In sum, the Department does not identify any significant benefits derived from the Form T–1, but, even if the 2020 rule provided some benefits that might be used by union members and the Department to prevent circumvention or evasion of Title II reporting obligations, the concrete, quantified burdens outweigh such marginal benefits. The following observations about the 2020 rule's burdens support that conclusion and, thus, support rescission.

First, the 2020 rule's failure to consistently apply exemptions increases the burdens associated with the rule without providing commensurate benefits. In particular, the 2020 rule did not adequately explain why the Form T–1 exempted unions from submitting Form T–1 reports covering trusts that already file the EBSA Form 5500[9] and certain IRS filings, such as those filed by political organizations under 26 U.S.C. 527, but not trusts that file the Form 990 with the IRS.

The 2020 rule focused on the unique nature of union financial reporting required under the LMRDA. The Department continues to hold that IRS Form 990 reporting by labor organizations does not provide a substitute for Form LM–2, LM–3, and LM–4 reporting by labor organizations, since the LM reports provide information tailored to the unique labor-management purposes of the LMRDA. *See* 68 FR 58375, 58395 (2003). However, the 2020 rule did not provide an adequate justification as to why such Form 990 reporting is not a sufficient substitute for Form T–1 reporting. *See* 85 FR 13425–26.

Commenters largely agreed with the Department's reasoning, set forth in the NPRM, that the inclusion of a Form 5500 exemption and a Form 990 non-exemption, was unexplained and unsupported. One commenter confirmed that ''a majority (if not all) of the trusts that will be reported under the rule are tax exempt entities that are required to file an annual Form 990 with the Internal Revenue Service.'' As the commenter explained, in the 2020 rule, the Department did not indicate what information was needed beyond what would be contained in the Form 990, and because there was no evidence of need beyond that information, ''any burden imposed by the rule is unwarranted.''

The Department drew an arbitrary and unexplained line between Form 5500 and the Form 990. To be consistent, the Department should have also exempted Form 990 filers; however, such an exemption would encompass nearly the entire universe of Form T–1 filers. Thus, if it had included a Form 990 exemption, the resulting Form T–1 would then have failed to capture any reportable activity and the Form 990 would have captured that activity—as it does without the rule. Such an underlying failure supports the withdrawal of this fundamentally flawed form.

Even when the Department used an existing form to create an exemption from the 2020 rule, the exemption was inconsistent with other Department policies. As one union commenter noted, the Form 5500 exemption failed to protect trusts from undue burdens, particularly apprenticeship and training plans. ERISA gives the Department the ability to exempt filers from the long Form 5500 when it is ''unnecessarily burdensome and costly,'' which EBSA has done by allowing certain apprenticeship and training plans to file

[6] *See id.* The Form 990 includes simplified filing options for smaller organizations that require less disclosure of financial information than their more detailed versions or the Form T–1. The Form 990–N is for organizations with annual gross receipts that are normally $50,000 or less. However, the Form T–1 does not have an assets schedule and a very small entity or an entity with less than $50,000 in gross receipts is unlikely to have transactions to itemize on the Form T–1. Therefore, the Department has concluded that the marginal potential benefit gained from additional information about these smaller entities on a Form T–1 does not justify the burden imposed by the Form T–1.

[7] See: *https://www.irs.gov/forms-pubs/about-schedule-l-form-990.*

[8] Like the Form 990 and Form 5500, the Form 1065 is an information return used to report the income, gains, losses, deductions, credits, and other information from the operation of a partnership. A partnership does not pay tax on its income, but passes through any profits or losses to its partners. Partners must include partnership items on their tax or information returns. *https://www.irs.gov/forms-pubs/about-form-1065.* The term ''partnership'' includes a limited partnership, syndicate, group, pool, joint venture, or other unincorporated organization, through or by which any business, financial operation, or venture is carried on.

[9] *See https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500.*

a short notice instead. Thus, in recognizing the Form 5500 as a nearly identical form, OLMS has through the Form T–1, the commenter argued, indirectly required the sort of financial reporting that EBSA has already decided is not necessary due to the burden it creates.

Second, adding to the burden on the filing unions, the information necessary to complete the report is not in the control of the reporting union; it is in the control of the trust. Notwithstanding that many, if not most, of the trusts on which unions are required to report are operated jointly and equally with employers, the unions alone are forced to seek trust cooperation when such trusts are under no legal obligation to cooperate. The union has no ability to compel the trust to provide its records to the union for the sake of the union's reporting requirement. The 2020 rule offered no factual support suggesting that trusts, whose trustees have a fiduciary obligation to the trust participants and beneficiaries and not to the union, would agree to provide their records to the union. Compiling such records and providing them to the union could constitute a significant annual expense and a significant amount of lost time that should be devoted to the administration of the trust. It is unclear why trustees would approve complying with union requests, and it is equally unclear how a union could compel a trust that refuses to provide records to provide them.

In that regard, a number of union commenters indicated that the Department has underestimated the costly complications that arise from requiring labor organizations to acquire and accurately report information from trusts that are not required to comply with the LMRDA, making such a rule unjustified. One commenter indicated that the trust may simply choose not to comply. As the commenter explained, the trust is under no obligation to fulfil the union's request, and, therefore, the union may through no fault of its own be unable to comply with the Form T–1 reporting requirements despite a desire to do so. A trust could reasonably refuse to provide the union with the information requested based on its fiduciary obligation to beneficiaries if it were to ''determine that it is not an appropriate use of resources to track the necessary information or to turn that information over to the union.'' [10]

Another commenter cited how the preamble for the 2020 Form T–1 justified the Form T–1 reporting using cases where the administrators of plans on which unions would be required to report were guilty of '' 'preparing and filing false tax returns . . . and deliberately providing misleading and incomplete testimony.' '' The very premise of the Form T–1, the commenter reasoned, is flawed because the information supplied by the ''assertedly corrupt plans cannot be relied upon.''

One commenter indicated how auditing the Form T–1 will be practically impossible because the officers will not possess knowledge of the accuracy and completeness of information provided by the trust (assuming it agrees to provide information) and the union will not possess the underlying financial records that support the information the union was given by the trust. In such situations, the commenter argues, it is likewise unclear how labor organization officers are thus reasonably held ''responsible for maintaining records in sufficient detail to verify, explain, or clarify the accuracy and completeness of the reports,'' as the final rule required.

A union officer must sign the Form T–1 and do so under penalty of perjury; however, as another commenter stated, officers would be forced to certify, under oath, as to their knowledge of the accuracy and completeness of information provided by a trust, even though they lack a sufficient basis to vouch for its accuracy. Ignoring these concerns, as the commenter put it, ''grossly discounts the costs of filing Form T–1 reports on apprenticeship plans.''

Third, in the NPRM, the Department considered and still considers the Form T–1 reporting regime as imposing substantial and unjustified burdens from the perspective of multiple labor unions filing for a single shared trust. The Department rejects this outcome as a matter of policy in light of the substantial burdens labor unions will face to submit these redundant reports, which in turn will impose significant costs on the Department in terms of time and agency resources necessary to review those redundant reports. And even if, instead of multiple unions filing redundant, and thus unnecessary, forms for a single trust, the Department determined a means by which just a single union would file for the others, the result would be an arbitrary choice. The Department would be forcing one union to take on all the legal obligations associated with the completion and signing of the form, even in situations where it would be especially arbitrary to do so, such as when the selected union has no more a share of authority over the trust than any of the other, non-filing unions. This outcome would also impose costs on the Department in terms of needing to review redundant reports, which the Department now finds that, as a matter of policy, are not justified in light of those resource costs.

The 2020 rule acknowledged this problematic dynamic. The rule includes a provision allowing one union to file the Form T–1 report for the other unions. However, the Department now considers that solution unworkable as a matter of policy. As one commentator explained, different unions will interpret the Form T–1 reporting requirements differently and may therefore ''refuse to cede control of the reporting requirement to another for fear the report would be done incorrectly,'' resulting in the filing of duplicative reports despite the purported workaround. Furthermore, the due date for the Form T–1 for different unions may be different because the contributing unions are not on the same fiscal year and thus unions are unlikely to ''risk noncompliance and substantial penalties by agreeing to let another union file on its behalf'' on a date after the first date any union related to a particular trust would be obligated to file the Form T–1 were it solely responsible for filing. Another commenter indicated also how the burden on a minimally contributing union in such joint situations is patently unfair, their officers then being as ''personally responsible for the filing of a report and to require them to maintain data necessary to verify the reported information for at least five years . . . [even] in situations where the labor organization's contribution is minimal.''

Another concern is that, with many trusts that have multiple, non-affiliated unions contributing, the individual unions would likely be unable to determine if they together with the others effectively ''dominate'' the fund. As one commenter indicated, unions in such arrangements ''will commonly not know the extent of another labor

[10] While the 2020 rule argued that such concerns of fiduciary obligation would be resolved by the union fully compensating the trust for the resources and time it spent, a trust might nonetheless refuse to comply. Staff time and resources would nonetheless be delayed in real time, being kept from their usual usage in furtherance of the trust's business of providing benefit to its members for the sake of another entity's legal obligation. A trustee with a fiduciary obligation could reasonably decline to comply merely so that staff and resources were not diverted from their duties. In other words, while the union might be able to compensate for lost time, and despite the longstanding adage to the contrary, money is not time. Work hours will be consumed, which could result in a trust being delayed in meeting its own financial filing obligations, such as completing the IRS 990 or the Form 5500. The trustee faced with the complicating factors could choose to avoid the complications and delays entirely.

organization's involvement or contribution to the entity.''

The Department believes that this, and the other practical complications mentioned above, could result in a substantial number of delinquencies, many through no fault of the unions. Such a result would force the Department to direct substantial amounts of valuable, scarce resources to investigate these delinquencies, even where the Department reasonably predicts that the substantial of such cases would not involve efforts to circumvent or evade Title II reporting requirements, but rather, technical or procedural missteps resulting from unworkable policy decisions. Further, the Department would need to expend significant resources creating and maintaining an electronic Form T–1 and database; provide compliance assistance to unions and trusts on such filing and related recordkeeping requirements; and pursue delinquent Form T–1 reports, particularly for unions unable to obtain timely and complete necessary information from the trust. The resources would thus inevitably be pulled away from other, well-settled areas of enforcement, such as officer elections, alleged financial malfeasance, delinquent reporting on unions'' annual financial reports, among many others. From the standpoint of promoting sound agency policy decision-making and resource allocation, the 2020 rule falls far short. Such unreasonable policy decisions and the ensuing unjustified costs to both the regulated community and Department justify rescission of the 2020 Form T–1 final rule.

Consequently, for all the reasons above, the Department rescinds the 2020 Form T–1 rule. The reporting requirements set forth in the 2020 Form T–1 rule are not justified in light of the heavy burden they impose and the negligible benefits they offer.

The 2020 Form T–1 Rule Is Overbroad Because It Requires Reporting on Certain Trusts That Cannot Be Used To Circumvent or Evade LMRDA Reporting

In addition to the foregoing policy reasons which alone justify rescission of the Form T–1, it is also appropriate to rescind the 2020 Form T–1 rule because it is overbroad and inconsistent with Title II's mandate. The only statutory basis for requiring reporting on the activities of entities that are not labor organizations as defined by the LMRDA is if the Department determines that such reporting is necessary to prevent circumvention or evasion of the statute's reporting requirements. *See* 29 U.S.C. 438. The 2020 rule is deficient because it requires reporting on certain entities, such as Taft-Hartley funds, without the requisite showing that such reporting is necessary to prevent circumvention or evasion of the reporting requirements. This over-breadth requires the rule to be rescinded. It is not enough that the Form T–1 may capture some transactions that could prevent the circumvention or evasion of the LMRDA's reporting requirements. The rule is defective if it necessarily captures transactions as to which there is no statutory basis permitting the capture. *American Federation of Labor & Congress of Industrial Organizations* v. *Chao,* 409 F.3d 377, 389 (D.C. Cir. 2005) (finding that although ''[t]here can be little doubt that some of the trust reporting the Secretary has required on Form T–1 is tied to a union's financial reporting requirements under LMRDA Title II,'' and therefore lawful, the rule also ''reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union's contribution of funds to an independent organization could circumvent or evade union reporting requirements,'' and thus must be vacated).

Under the Act, the Secretary's rulemaking authority is limited. The Secretary has the authority to ''issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under this title and such other reasonable rules and regulations (including rules concerning trusts in which a labor organization is interested) as he may find necessary to prevent the circumvention or evasion of such reporting requirements.'' 29 U.S.C. 438. The Secretary's regulatory authority thus includes the reporting *mandated* by the Act and *discretionary* authority to require reporting on trusts falling within the statutory definition of a trust ''in which a labor organization is interested.'' 29 U.S.C. 402(*l*). The Secretary's discretion to require separate trust reporting applies to trusts if, and only if: (1) The union has an interest in a trust as defined by 29 U.S.C. 402(*l*) *and* (2) reporting is determined to be necessary to prevent the circumvention or evasion of Title II reporting requirements. 29 U.S.C. 438. As both the Department and the court recognized, this is a two-part requirement. *See AFL–CIO* v. *Chao,* 409 F.3d 377, 386–87 (D.C. Cir. 2005) (discussion of two-part test).

A key feature of the Secretary's discretionary authority to regulate trust reporting is the requirement that the Secretary conclude that such reporting is ''necessary'' to prevent circumvention or evasion of a labor organization's requirement to report on its financial condition and operations under the LMRDA. The Department now believes that the 2020 Form T–1 rule was overly broad, requiring financial reporting by many types of trusts, including trusts funded by employers pursuant to collective bargaining agreements, without an adequate showing that such a change is necessary to prevent circumvention or evasion of the reporting requirements.

In particular, the rule provides that, for purposes of evaluating whether payments to a trust indicate that the union is financially dominant over the trust, payments made by employers to fund trusts under section 302(c) of the Labor Management Relations Act (LMRA), 29 U.S.C. 186(c) (Taft-Hartley funds) should be treated as funds of the union. Taft-Hartley funds are created and maintained through employer contributions paid to a trust fund, pursuant to a collective bargaining agreement, and must have equal numbers of union and management trustees, who owe a duty of loyalty to the trust. Taft-Hartley funds are established for the ''sole and exclusive benefit of the employees'' and are exempt from the statutory prohibition against an employer paying money to employees, representatives, or labor organizations. *See* 29 U.S.C. 186(a) and (c)(5).

The Department recognizes that the section 3(*l*) ''trusts in which a union is interested'' term is sufficiently broad to encompass Taft-Hartley plans. However, as explained above, this is only the first part of the section 208 analysis. The second part of the analysis requires that the Secretary determine that the reporting is *necessary* to prevent circumvention or evasion of the reporting of union money subject to Title II.

As explained in the 2020 Form T–1 rule, section 201 of the LMRDA requires that unions ''file annual, public reports with the Department, detailing the union's cash flow during the reporting period, and identifying its assets and liabilities, receipts, salaries and other direct or indirect disbursements to each officer and all employees receiving $10,000 or more in aggregate from the union, direct or indirect loans (in excess of $250 aggregate) to any officer, employee, or member, any loans (of any amount) to any business enterprise, and other disbursements.'' 85 FR at 13414 (citing 29 U.S.C. 431(b)). Further, section 201 requires that such information shall be filed ''in such detail as may be necessary to disclose [a labor organization's] financial condition and operations.'' 85 FR at 13414 (citing

Id.). Significantly, each financial transaction to be reported is one that reflects upon the *union's* financial condition and operations. 29 U.S.C. 201(b). Consequently, trust reporting is only permissible to prevent a labor union from using a trust to circumvent reporting of the *labor union's* finances.

However, money contributed to a Taft-Hartley plan does not bear on the labor union's finances and is not by law required to be reflected on a labor union's Title II reporting; accordingly, the T–1 Form cannot be deemed necessary to prevent circumvention or evasion of the reporting of union money subject to Title II. The 2020 Form T–1 rule presumes that employer contributions to Taft-Hartley plans establish labor union financial domination of a trust. After review, the Department has determined that money contributed by an employer to a Taft-Hartley fund is not property of the union. Thus, its disclosure does not ''disclose [the union's] financial condition and operations.'' 29 U.S.C. 201(b). Conversely, a union's nondisclosure of such funds would not be an evasion of the union's reporting requirement as ordinary employer funds—even if placed into such a trust—are not within the control of the union, and would in no instance be reported by a union under the LMRDA reporting requirements.

One union commenter in particular agreed with the Department's position in the NPRM that the 2020 Form T–1 is overbroad because it is not targeted at preventing evasion or circumvention of the labor organization's reporting requirement. It argued that the rule attempts to ''erase the distinction between benefit plan and labor organization reporting,'' in defiance of the will of Congress, which chose to address the McClellan Committee concerns regarding labor organization pension, health, and welfare fund reporting in the Welfare and Pension Fund Act of 1958 and later superseded by ERISA.

Another union commenter argued that the 2020 Form T–1 is not necessary to prevent circumvention or evasion of LMRDA reporting requirements because properly structured Taft-Hartley funds are by definition not controlled by unions. Because Taft-Hartley fund assets are not—and could not be—assets of the union, the Form T–1 cannot be said to be necessary to prevent circumvention of *union* reporting requirements.

Commenters also supported the Department's view that counting employer contributions towards union financial dominance is not justifiable. As one union commenter stated, ''[e]mployers are separate business entities that have their own assets, management, employees, and business operations.'' Further, the commenter pointed out, even in consideration of an employer's failure to contribute according to the terms of a CBA with a union, the union will file a grievance under the CBA's arbitration clause or will file a suit under LMRA section 301 for violating the contract, demonstrating that the union does not have control or authority over the disposition of the employer's assets. Rather, ''the dispute is treated [under LMRA Section 301] as one involving the employer's breach of its contractual obligation to contribute to the fund, not as a dispute over the employer holding on to the union's money.'' The commenter went on to explain, as did other commenters, that the idea of employer contributions being union controlled funds is expressly contradicted by the logic of section 302 of the LMRA; the employer willfully giving funds to the union in such a manner would be illegal, but for the explicit exception made in part (c) of that section, which acknowledges such contributions as still being employer funds. However, even when employer funds reach the plan, as one commenter reminded, under EBSA regulation and advisory opinions the assets immediately become assets of the plan. Thus, at no point in the lifecycle of the employer's contribution do the funds become ''union funds.'' *See* DOL ERISA Advisory Opinion 93–14A; Preamble to Prohibited Transaction Exemption 76–1, 41 FR 12740 at 12741 (Mar. 26, 1976).

In addition, by definition, Taft-Hartley funds may not have union managerial dominance because ''employees and employers are equally represented in the administration of such fund[s], together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon.'' *See* 29 U.S.C. 186(c)(5)(B). Disclosure of such funds is thus unnecessary to ensure that unions comply with their own financial reporting requirements under the LMRDA. One commenter argued specifically that this rationale also applied to Labor Management Cooperation Committee funds. Another union commenter made the observation that technically (and nonsensically) under the 2020 Form T–1, a fund in which 100% of the funds came from the employer and was wholly governed by an equal number of employers and union officials would nonetheless still be counted as proof of ''union dominance,'' a result that simply does not comport with the facts. Finally, the 2020 Form T–1 rule's preamble failed to establish that the Form T–1 would be ''necessary to prevent circumvention and evasion'' of the LMRDA reporting requirements.

First, the 2020 rule states that the Form T–1 ''will make it more difficult for a labor organization to avoid, simply by transferring money from the labor organization to a trust, the basic reporting obligation that applies if the funds had been retained by the labor organization.'' 85 FR 13418. However, the rule provided no evidence that labor organizations were transferring their own funds to Taft-Hartley trusts, an objection cited by a number of comments. And, of course, if a union transferred funds to a Taft-Hartley trust, the transaction itself would be reportable on the union's LM report.

In *AFL–CIO* v. *Chao,* the Court of Appeals for the D.C. Circuit held that the 2003 Form T–1 ''reaches information unrelated to union reporting requirements and mandates reporting on trusts even where there is no appearance that the union's contribution of funds to an independent organization could circumvent or evade union reporting requirements.'' *AFL–CIO* v. *Chao,* 409 F.3d at 389. The 2020 Form T–1 rule is overly broad in the same manner, requiring many labor organizations to file the Form T–1 for independent Taft-Hartley trusts, even where there is no apparent means by which the union could use the trust as a means of circumventing or evading its Title II reporting requirements.

Second, the Department argued in the 2020 rule that ''the money an employer contributes to such trusts pursuant to a CBA might otherwise have been paid directly to a labor organization's members in the form of increased wages and benefits, the members on whose behalf the financial transaction was negotiated have an interest in knowing what funds were contributed, how the money was managed, and how it was spent.'' 85 FR 13418. Assuming this is so, these underlying wages and benefits would not have been reported on a Form LM–2. Therefore, it is not apparent that payment of these potential wages and benefits to a trust involves the circumvention or evasion of Title II reporting. Thus, with respect to these funds, it is not clear from the 2020 Form T–1 final rule how the Form T–1 would have ''close[d] a reporting gap where *labor organization finances* related to LMRDA section 3(*l*) trusts were not disclosed to members, the public, or the

Department.'' (emphasis added) 84 FR 25416.[11]

Further, the Department rescinded the Form T–1 in 2010 because it lacked statutory authority, but the 2020 rule did not adequately address this legal concern. *See* 75 FR 74938. Indeed, while acknowledging that employer contributions to a trust do not constitute the circumvention or evasion of *labor organization* funds, the 2020 rule argued that Form T–1 reporting for Taft-Hartley trusts could nonetheless prevent the circumvention of employer or labor organization officer or employee reporting under LMRDA Sections 202 and 203. *See* 85 FR 13422. However, as noted in the NPRM, 86 FR 28510, the 2020 rule provided no evidence that employer or labor organization officials circumvented or evaded their reporting requirements through a trust. Moreover, none of the comments opposing rescission addressed the issue of potential circumvention or evasion of employer or labor organization officer or employee reporting requirements.

Nor did the 2020 rule justify its imposition of the T–1 requirement solely on labor organizations. In that regard, one commenter in support of rescission agreed with the NPRM's conclusion that if the Department were to require reporting on payments made from an employer to a trust pursuant to a CBA, then such reporting requirements should be placed on the employer, not the labor organization. Because such financial reporting should be required of an employer and not the union, any failure to report employer payments made to a trust pursuant to a CBA could not constitute a union's circumvention or evasion of its LMRDA reporting requirements. The same commenter also observed how the 2020 Form T–1 rule relied in part on the LMRDA's employer reporting requirements, and not the union reporting requirements, such as ''when the employer diverted unlawfully funds intended for the trust to a union official,'' again raising the question of why the filing of the Form T–1 reports, at least in the instance of apprenticeship plans, fell solely on labor organizations and not employers.

Further, in addition to the Form T–1 reaching beyond the scope of Title II because of its application to Taft-Hartley plans, its overbreadth renders the rule unnecessary as a matter of policy, since the transparency benefits to the public and enforcement authority for the Department already exist concerning such plans. As stated above, the public already has access to disclosure for such plans through the IRS Form 990 and EBSA Form 5500. Further, the Forms LM–10 and LM–30 would capture unlawful payments from employers to unions or union officials through Taft-Hartley plans, thus ensuring that the Department has enforcement authority concerning such payments. In that regard, the Department has an extensive and successful enforcement history of over 60 years without the Form T–1, as evidenced by the FCA enforcement activities. See: *https://www.dol.gov/agencies/olms/criminal-enforcement.*

Moreover, the 2020 rule focused primarily on capturing non-exempt Taft-Hartley plans, and, indeed, the rulemaking record suggested that most Form T–1 reports filed would cover Taft-Hartley plans. However, even if the Form T–1 would capture some non-Taft Hartley plans, as detailed above in the discussion of the Department's policy justifications for rescinding the Form T–1, the burden to both the regulated community and the Department to comply with and enforce the Form T–1 reporting regime do not justify any marginal benefit.

Consequently, from a policy perspective, the Department will rescind the 2020 Form T–1 rule because its application to Taft-Hartley plans was overly broad and any marginal, unquantifiable benefit is eclipsed by the immense burden imposed. Separately, the Department will rescind the 2020 rule because its application to Taft-Hartley plans exceeds the Department's scope of authority under Title II. In the Taft-Hartley context, a union's reporting (or failure to report) on the Form T–1 could not prevent a union's use of a trust to circumvent or evade its own reporting requirement because it is the employer's, and not the union's, finances that are being contributed to the Taft-Hartley plan at issue.

Other Comments Regarding the 2020 Form T–1 Final Rule

First, as one union commenter observed, the rule also set up the prospect of creating confusion by failing to provide a *de minimis* exemption for funds. A union's contribution of a single dollar could potentially trigger the rule's stringent standards, if that contribution, in combination with contributions from other unions, establishes financial domination over the trust (as defined in the rule), thus requiring reporting on trusts that may be of minimal (or no) interest to members. Such minimal contributions may also lead to unions filing multiple reports, again for trusts that may not be of interest to members. Furthermore, if the contribution is less than $10,000, there would be greater confusion than before, because members would know that some amount of money was contributed but would not know the exact figure, whether $1 or $9,999. The Department agrees that this possibility would support a *de minimis* exemption, and the lack of one further demonstrates that the burden of the Form T–1 outweighs its potential benefits.

Two anonymous comments offered general arguments against rescission. One argued for greater ''governance'' and ''accountability'' and in favor of ''total transparency,'' without any evidence justifying why existing reporting does not provide the necessary governance and accountability. Further, even if true, this reasoning does not provide legal support for the Form T–1, as it does not demonstrate how the form would prevent the ''circumvention or evasion'' of the reporting requirements required by the statute. The commenter did not address this point. Nor did the commenter balance transparency with burden. The other anonymous comment inquired into whether the Department would bring reporting requirements for ''labor organizations and section 3(l) trusts in line with [c]ontemporary expectations for the disclosure of financial information.'' As stated, after further review, the Department has determined that existing reporting requirements already provide the necessary disclosures, so the duplicative reporting offered by the Form T–1 does not justify the significant burdens on unions.

One commenter, a union member, commented against the rescission of the Form. The commenter argued that rescission would serve as ''a disadvantage in combating corruption and a hinderance [sic] to self governance,'' and the commenter supported this argument by providing three real examples in which the commenter asserted that the 2020 Form T–1 would have been helpful. However, as the commenter indicated, each entity discussed in the examples, which included two ''betterment funds'' and a market recovery fund, filed the Form 990, a form that, as the Department concluded, and many commenters

[11] To the extent the rule was premised simply on the proposition that workers ought to know what employer payments were made to Taft-Hartley funds and whether those payments could be characterized as diversions from wages, the Department notes that Section 104 of the Act requires that unions ''forward a copy of each collective bargaining agreement made by such labor organization with any employer to any employee who requests such a copy and whose rights as such employee are directly affected by such agreement.'' Those collective bargaining agreements set out the measure of contributions employers have agreed in bargaining to contribute to Taft-Hartley funds.

concurred, provides the necessary transparency. Moreover, it appears that the union ''betterment fund'' constitutes a wholly-owned subsidiary of the member's union, which the union already reports on its annual Form LM–2 report. As for the market recovery fund mentioned by the commenter, it appears from a review of the commenter's union's Form LM–2 report that the fund constitutes a union fund that the union already reports on the Form LM–2. Thus, the Form T–1 would not have covered those funds. Further, the Form LM–2 actually provides greater detail than the Form T–1 would have provided, and OLMS retains authority to pursue an amended Form LM–2 report if the union did not submit it accurately. OLMS also retains investigative authority, in the event union officials committed fraud in maintaining the fund. The Form T–1 would also have not covered the management-side ''betterment fund,'' since it would not appear to meet either the Form T–1's union managerial control or financial domination test.

The commenter also indicated that he ''attempts to keep track of the union's financial affairs,'' and the Form T–1 would ''help rank-and-file members to put the pieces of [the] financial puzzle together.'' The Department appreciates the commenter's input but respectfully disagrees. A separate trust is not, *per se,* part of the union's financial affairs, unless the trust is being used to circumvent or evade the union's reporting. The commenter did not describe how the Form T–1 would serve such a purpose, nor how existing reporting requirements, such as the Form 990, are inadequate to provide general trust transparency (even assuming that the LMRDA authorizes such transparency, which it does not). As shown, the 2020 rule's rulemaking record does not reflect the benefits of the Form T–1 that would justify the significant, additional burden on unions, particularly since union trusts typically already file the Form 990, generally providing similar if not greater detail than does the Form T–1. The Department reiterates that greater transparency alone is not sufficient to justify LMRDA section 208 rulemaking. Instead, there must be a showing that the report is necessary to prevent circumvention and evasion of the statutory reporting requirements.

Finally, the commenter, seemingly acknowledging the costs of the Form T–1, suggested that the union could offset those costs by forgoing purportedly wasteful expenses. Even assuming that unions could or should curtail certain expenses, an assumption not supported by the rulemaking record, this fact would not independently justify the cost and burden of the Form T–1 in light of the limited benefits that the Form would provide.

Therefore, in light of the foregoing concerns, the Department rescinds the rule implementing the Form T–1 because, after reviewing the 2020 rulemaking record as well as the current rulemaking record, it no longer views the separate reporting requirements as set forth in the 2020 Form T–1 rule as justified in light of the burden they impose. Further, as it concerns Taft-Hartley plans, the trust reporting required under the rule is overly broad and thus not necessary to prevent the circumvention and evasion of the Title II reporting requirements.

IV. Specific Changes to the Form LM–2 Instructions and the LMRDA Regulations

A. Changes to the Form LM–2

The Department received no comments upon, and therefore implements, the following changes to the Form LM–2 Labor Organization Annual Report, which implement the rescission of the Form T–1:

1. Section IX—Labor Organizations In Trusteeship: The Department revises this section to remove any reference to the Form T–1.

2. Section XI—Completing Form LM–2: The Department changes the instructions to Item 10 (Trusts or Funds). The instructions for Item 10 are changed to remove any reference to the Form T–1, although basic information about the trust would still be required, as would a cite to any report filed for the trust with another government agency, such as the Department's Employee Benefits Security Administration (EBSA) or the Internal Revenue Service (IRS).

The public can view the Form LM–2 changes in the accompanying Information Collection Request (ICR), pursuant to the PRA. See Part V (Regulatory Procedures), PRA section.

B. Changes to the LMRDA Regulations

As described in the below regulatory procedures section, and in order to implement the rescission of the 2020 Form T–1 rule, the Department also removes the references to the Form T–1 located in the Department's LMRDA regulations at 29 CFR Part 403. Additionally, as described in the below regulatory procedures section, and as proposed, the Department will now require mandatory electronic filing for labor organizations that submit simplified annual reports pursuant to 29 CFR 403.4(b). The Department's experience with Form LM–2, LM–3, and LM–4 reporting demonstrates that labor organizations can submit such reports electronically with little difficulty and with burden reductions for the labor organization filers and the Department. Further, the public benefits from more timely disclosure on the OLMS website. The Department anticipates such benefits for electronic simplified annual reports, as well. The Department did not receive any comments on mandatory electronic filing.

V. Regulatory Procedures

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Review)

Under Executive Order (E.O.) 12866, the Office of Management and Budget (OMB)'s Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of E.O. 12866 and OMB review.[12] Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. OMB has determined that this rule is significant under section 3(f) of E.O. 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has designated this rule as not a 'major rule', as defined by 5 U.S.C. 804(2).

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by

[12] See 58 FR 51735 (September 30, 1993).

law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

A. Costs of the Form T–1 for Labor Organizations

As described in the 2020 Form T–1 final rule, the Form T–1 is filed by Form LM–2 filing labor organizations with trusts that meet the dominance test, if those labor organizations are not otherwise exempted from filing. Cost savings discussed below concern the costs incurred by labor organizations to file the Form T–1 reports in subsequent years (assuming that filers have already incurred many of the first year costs discussed in the 2020 rule).[13] As a result of the Department rescinding the Form T–1, the affected labor organizations would save these future costs. Using data from LM–2 filings, the Department estimated, in the 2020 Form T–1 final rule, that there are at least 810 total affected labor organizations (*i.e.,* LM–2 filers with trusts for which they must submit at least one Form T–1). The Department estimated in the 2020 rule that each affected labor organization would be responsible for an average of 2.56 Form T–1 filings. Additionally, each affected labor organization would spend approximately 84.12 hours in each subsequent year to fill out the Form T–1.[14] The average hourly wage for Form T–1 filers, as with Form LM–2 filers, includes: $37.89 for an accountant, $20.25 for a bookkeeper or clerk, $25.15 for a Form LM–2 filing union secretary-treasurer or treasurer, and $29.21 for the Form LM–2 filing president, respectively.[15] The weighted average hourly wage is $36.53.[16] To account for fringe benefits and overhead costs, as well as any other unknown costs or increases in the wage average, the average hourly wage has been multiplied by 1.63, so the fully loaded hourly wage is $59.54 ($36.53 × 1.63 = $59.54).[17]

Therefore, the cost for each Form T–1 filer in subsequent years would be $12,822 (2.56 × 84.12 × $59.54 = $12,822), which would be eliminated if the Department rescinds the Form T–1, as proposed.

B. Summary of Costs

This final rule would save 810 Form LM–2 filers a total of $10,385,820 annually. The 10-year annualized cost is expected to be $10,285,704 at a 3 percent discount rate and $9,608,788 at a 7 percent discount rate.

C. Benefits

As explained more fully in the preamble to this final rule, the Department rescinds the Form T–1, as the 2020 Form T–1 final rule was duplicative of other existing reporting requirements, did not prevent the circumvention or evasion of the LMRDA reporting requirements, and provided no evidence that it detected or deterred labor-management fraud or corruption. Rather, the Department believes that existing reporting requirements adequately address these concerns. Further, rescission of the 2020 Form T–1 rule provides labor organizations with additional resources to devote to existing reporting requirements.

D. Alternatives and Comments Received

As mentioned in the NPRM concerning potential alternatives to rescinding the Form T–1, the Department could maintain the existing Form T–1 or propose a scaled back version. The retention of the Form T–1 would retain the burdens discussed in the 2020 Form T–1 rule, and the Department now considers that these burdens are not justified by the purported benefits. Rather, the Department now believes that existing reporting provides much if not all of the potential benefits of the Form T–1. Further, while a scaled back Form T–1 would reduce such burdens, the Department did not consider this approach, since the current Form T–1 already contains multiple exemptions and burden-reduction components.

The Department did not receive any comments that specifically address the NPRM's regulatory impact analysis.[18]

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* requires agencies to prepare regulatory flexibility analyses, and to develop alternatives wherever possible, in drafting regulations that will have a significant impact on a substantial number of small entities. The Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities because the final rule contains no new collection of information. Rather, it only relieves the additional collection burden imposed upon labor organizations through the rescission of the regulations published on March 6, 2020.

The 2020 Form T–1 rule's Final Regulatory Flexibility Analysis (FRFA) considered whether it would place a significant impact on a substantial number of small business entities. That rulemaking analysis considered a labor organization a ''small business entity'' if they had average annual receipts of less than $8 million.[19] Based on previous standards utilized in other regulatory analyses, the threshold for significance was set at 3% of annual receipts, while a substantial number of small entities would be 20 percent. The 2020 Form T–1 final rule at the time would have impacted 2,009 labor organizations at least $250,000 in size by annual receipts, with at least one trust, resulting in approximately 2,070 Form T–1 reports. Of these organizations, 1,667 had annual receipts less than $8 million. There were only 315 LM–2 filers with at least one trust whose annual receipts were small enough that the Form T–1 costs would amount to more than a 3 percent impact. The largest of the 315 had annual receipts of $614,813 for a 3.01 percent impact. The smallest of the filers had $253,475 in annual receipts for a 7.30 percent impact.

Thus, the rule would have impacted 18.90 percent of small business entities in the first year. In all subsequent years, the percentage of small entities significantly impacted is 8.94 percent (149 out of 1,667 small entities). Both these figures would have been below the threshold to constitute a ''substantial''

[13] To the extent they have not already incurred those costs, the savings set out in text would be greater.

[14] For more details, see the Paperwork Reduction Act section below.

[15] Wage rates are derived from 2018 data; more specifically, the president and treasurer wage rates are determined from FY 19 Form LM–2 report filings, while the accountant and bookkeeper wage rates come from 2018 Bureau of Labor Statistics (BLS) data available at: *https://www.bls.gov/oes/2018/may/oes_nat.htm.*

[16] The weighted average calculates the wage rate per hour weighted according to the percentage of time that the Form T–1's completion will demand of each official/employee: 90 percent of the Form T–1 burden hours will be completed by an accountant, 5 percent by the bookkeeper, 4 percent by the union's treasurer/secretary-treasurer, and 1 percent by the union president.

[17] The use of 1.63 accounts for 17 percent for overhead and 46 percent for fringe. In the case of the 46 percent for fringe, see the following link to BLS data showing that wages and salaries represent 68.6 percent (.686) of compensation (*https://www.bls.gov/news.release/ecec.t02.htm*). Dividing total compensation by the 68.6 percent represented by wages and salaries is equivalent to a 1.46 multiplier. Adding a 17 percent multiplier (.17) for overhead equals 1.63.

[18] One comment in support of rescission contended that the Form T–1 rule's estimates of the burden hours for the form should have been doubled or more, and the commenter noted the logistical difficulty of getting information from the interested trust to the labor organization.

[19] *See https://www.sba.gov/document/support--table-size-standards.*

number of small entities. See 85 FR 13439. Given that this rulemaking merely eliminates even those non-substantial costs, this rule cannot constitute a substantial cost.

Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required. The Secretary has certified this conclusion to the Chief Counsel for Advocacy of the Small Business Administration.

Unfunded Mandates Reform

This final rule does not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

A. Summary of the Final Rule

The following is a summary of the need for and objectives of the final rule. A more complete discussion of various aspects of the proposal is found in the preamble.

The final rule rescinds the Form T–1 Trust Annual Report established by final rule on March 6, 2020.

The LMRDA was enacted to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Provisions of the LMRDA include financial reporting and disclosure requirements for labor organizations and others as set forth in Title II of the Act. *See* 29 U.S.C. 431–36, 441. Under Section 201(b) of the Act, 29 U.S.C. 431(b), labor organizations are required to file for public disclosure annual financial reports, which are to contain information about a labor organization's assets, liabilities, receipts, and disbursements.

The Department has developed several forms to implement the union annual reporting requirements of the LMRDA. The reporting detail required of labor organizations, as the Secretary has established by rule, varies depending on the amount of the labor organization's annual receipts. The Form LM–2 Annual Report is the most detailed of the annual labor organization reports, and is required to be filed by labor organizations with $250,000 or more in annual receipts. The Form LM–2 requires certain receipts and disbursements to be reported by functional categories, such as representational activities; political activities and lobbying; contributions, gifts, and grants; union administration; and benefits. Further, the form requires labor organizations to allocate the time their officers and employees spend according to functional categories, as well as the payments that each of these officers and employees receive, and it requires the itemization of certain transactions totaling $5,000 or more. It must include reporting of loans to officers, employees and business enterprises; existence of any trusts; payments to each officer; and payments to each employee of the labor organization paid more than $10,000, in addition to other information. The Secretary also has prescribed simplified annual reports for smaller labor organizations. Form LM–3 may be filed by unions with $10,000 or more, but less than $250,000 in annual receipts, and Form LM–4 may be filed by unions with less than $10,000 in annual receipts. A local union that has no assets, liabilities, receipts, or disbursements, and which is not in trusteeship, is not required to file an annual report if its parent union files a simplified annual report on its behalf. In order to be eligible for this simplified annual reporting, the local must be governed solely by a uniform constitution and bylaws filed with OLMS by its parent union and its members must be subject to uniform fees and dues applicable to all members of the local unions for which the parent union files simplified reports. The parent union must submit annually to OLMS certain basic information about the local, including the names of all officers, together with a certification signed by the president and treasurer of the parent union.

On March 6, 2020, the Department issued a final rule establishing the Form T–1 Trust Annual Report, which prescribes the form and content of annual reporting by unions concerning entities defined in Section 3(*l*) of the LMRDA as ''trusts in which a labor organization is interested.'' 85 FR 13414. The objective of this final rule is to rescind the Form T–1 Trust Annual Report, as the Department has determined that it is overbroad and not necessary to prevent the circumvention and evasion of the Title II requirements.

Further, the Department has reviewed the 2020 rulemaking record and no longer views the separate reporting requirements as set forth in the 2020 Form T–1 rule as justified in light of the burden they impose. The rescission of the Form T–1 constitutes a decrease in reporting burdens for those labor organizations associated with reportable trusts. As detailed in the 2020 Form T–1 rule, the Form T–1 represented a total burden, for the estimated 810 Form LM–2 filers affected by the rule, of approximately 251,257 hours in the first year and 174,128 in the subsequent years. 85 FR at 13433. Additionally, the projected total cost on filers in the first year was approximately $15 million in the first year and approximately $10.4 million in subsequent years. 85 FR at 13437. This final rule eliminates these burdens and costs for future years. This final rule would also eliminate any first-year costs that unions have not yet incurred.

B. Overview of Trust Reporting on Form T–1

Every labor organization whose total annual receipts are $250,000 or more and those organizations that are in trusteeship must currently file an annual financial report using the current Form LM–2, Labor Organization Annual Report, within 90 days after the end of the labor organization's fiscal year, to disclose their financial condition and operations for the preceding fiscal year. The current instructions state that receipts of an LMRDA section 3(*l*) trust in which the labor organization is interested (as described in Information Item 10) should not be included in the total annual receipts of the labor organization when determining which form to file, unless the 3(*l*) trust is a subsidiary organization of the union. *See* Form LM–2 Instructions, Part II: What Form to File.

The current Form LM–2 consists of 21 questions that identify the labor organization and provide basic information (in primarily a yes/no format); a statement of 11 financial items on different assets and liabilities (Statement A); a statement of receipts and disbursements (Statement B); and 20 supporting schedules (Schedules 1–10, Assets and Liabilities related schedules; Schedules 11–12 and 14–20, receipts and disbursements related schedules; and Schedule 13, which details general membership information).

The Form LM–2 requires such information as: Whether the labor organization has any trusts (Item 10); whether the labor organization has a political action committee (Item 11); whether the labor organization discovered any loss or shortage of funds (Item 13); the number of members (Item 20); rates of dues and fees (Item 21); the dollar amount for seven asset categories, such as accounts receivable, cash, and investments (Items 22–28); the dollar amount for four liability categories, such as accounts payable and mortgages payable (Items 30–33); the dollar amount for 13 categories of receipts such as dues and interest (Items 36–49); and the dollar amount for 16 categories of disbursements such as payments to officers and repayment of loans obtained (Items 50–65).

Schedules 1–10 require detailed information and itemization on assets and liabilities, such as loans receivable and payable and the sale and purchase of investments and fixed assets. There are also nine supporting schedules (Schedules 11–12, 14–20) for receipts and disbursements that provide members of labor organizations with more detailed information by general groupings or bookkeeping categories to identify their purpose. Labor organizations are required to track their receipts and disbursements in order to correctly group them into the categories on the current form.

The Form T–1 provides similar but not identical reporting and disclosure for section 3(*l*) trusts, currently including subsidiaries, of Form LM–2 filing labor organizations. The Form T–1 requires information such as: Losses or shortages of funds or other property (Item 16); acquisition or disposal of any goods or property in any manner other than by purchase or sale (Item 17); whether or not the trusts liquidated, reduced, or wrote-off any liabilities without full payment of principal and interest (Item 18); whether the trust extended any loan or credit during the reporting period to any officer or employee of the reporting labor organization at terms below market rates (Item 19); whether the trust liquidated, reduced, or wrote-off any loans receivable due from officers or employees of the reporting labor organization without full receipt of principal and interest (Item 20); and the aggregate totals of assets, liabilities, receipts, and disbursements (Items 21–24). Additionally, the union must report detailed itemization and other information regarding receipts in Schedule 1, disbursements in Schedule 2, and disbursements to officers and employees of the trust in Schedule 3.

Although the Form T–1 has a higher reporting threshold for receipts and disbursements than does the Form LM–2, it provides nearly identical information regarding receipts and disbursements as does the Form LM–2. For example, unions must itemize receipts of trusts with virtually identical detail on Form T–1, Schedule 1, as on the Form LM–2, Schedule 14. Further, the information required on Form T–1 Schedules 2 and 3 correspond almost directly to the information required on Form LM–2 Schedules 15–20 and 11–12, respectively, although the format does not directly correlate. However, as discussed earlier, Form T–1 does not provide as much detail regarding assets and liabilities of trusts as the Form LM–2 requires. For example, although Form T–1 Items 16 and 17 correspond directly to Form LM–2 Items 13 and 15, and the information required in Form T–1 Items 18–20 is required in a different format in Form LM–2, Schedules 2 and 8–10, there is also significant information required on the Form LM–2 and not on the Form T–1. Chief among the material excluded on the Form T–1 is the detailed information regarding assets and liabilities required by Form LM–2, Schedules 1–10. In sum, under the 2020 rule unions would need to report such information on the Form LM–2, while they would not need to do so under the existing Form T–1.

Additionally, the Department provided the public with separate burden analyses for the Form LM–2 and the Form T–1, in addition to the other forms required to be filed with the Department under the LMRDA. These analyses include the time for reviewing the respective set of instructions, searching existing data sources, gathering and maintaining data needed, creating needed accounting procedures, purchasing software, and completing and reviewing the collection of information. This rule eliminates the need for a Form T–1 burden analysis, as it proposes to eliminate that form and its separate reporting regime. Thus, many of the areas analyzed in other LMRDA reporting and disclosure burden analyses are not relevant to this discussion, as the existence and basic structure and procedures of the present Form LM–2 reporting regime is not amended by this final rule.

C. Methodology for the Burden Estimates

Initially, as stated above, this document proposes a reduction of burden hours for respondents included within ICR 1245–0003, as a result of the rescission of the Form T–1. The rescission of the Form T–1 results in a reduction of 174,128.4 hours in future years that an estimated 2,292 Form LM–2 filers would incur. 85 FR 13433. Additionally, the rule would eliminate the total cost to filers of $10,385,820 in subsequent years. See 85 FR at 13437.

The accompanying ICR discusses changes to the other LMRDA forms and instructions included within ICR 1245–0003, which the Department will implement as proposed. These changes include mandatory electronic filing for the simplified annual reports and Forms LM–15, 15A, 16, 30, and Form S–1 as well clarification concerning the OLMS use of email addresses for the signatories of each of the forms included within the ICR. As explained in the ICR, the Department does not believe that such revisions will result in a change to the burden estimates, since electronic filing does not result in greater burden than paper filing and filers already provide email addresses as part of the electronic filing process. The Department did not receive any comments on these proposed changes.

D. Conclusion

As this final rule requires a revision to an existing information collection, the Department is submitting, contemporaneous with the publication of this document, an ICR to remove the Form T–1 and its associated burden from OMB Control Number 1245–0003 and revise the PRA clearance to address the clearance term. A copy of this ICR, with applicable supporting documentation, including among other items a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov website at *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1245-0003* (this link will be updated following publication of this rule) or from the Department by contacting Andrew Davis on 202–693–0123 (this is not a toll-free number)/email: *OLMS-Public@dol.gov.*

Agency: DOL—Office of Labor-Management Standards (OLMS).

Type of Review: Revision of a currently approved collection.

OMB Control Number: 1245–0003.

Title of Collection: Labor Organization and Auxiliary Reports.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Estimated Number of Respondents: 33,021.

Estimated Number of Annual Responses: 35,297.

Frequency of Response: Varies.

Estimated Total Annual Burden Hours: 4,644,849.

Estimated Total Annual Other Burden Cost: $0.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule would not constitute a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects

29 CFR Part 403

Labor unions, Reporting and recordkeeping requirements, Trusts.

29 CFR Part 408

Labor unions, Reporting and recordkeeping requirements, Trusts and trustees.

Accordingly, the Department amends 29 CFR parts 403 and 408 as set forth below:

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 1. The authority citation for part 403 continues to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 403.2 [Amended]

■ 2. Amend § 403.2 by removing paragraph (d).

■ 3. Amend § 403.4 by revising paragraphs (b)(3) and (b)(6) introductory text to read as follows:

§ 403.4 Simplified annual reports for smaller labor organizations.

* * * * *

(b) * * *

(3) The national organization with which it is affiliated assumes responsibility for the accuracy of a statement filed electronically, through the electronic filing system made available on the Office of Labor-Management Standards website, covering each local labor organization covered by this paragraph (b) and containing the following information with respect to each local organization:

(i) The name and designation number or other identifying information;

(ii) The file number which the Office of Labor-Management Standards has assigned to it;

(iii) The mailing address;

(iv) The beginning and ending date of the reporting period which must be the same as that of the report for the national organization;

(v) The names and titles of the president and treasurer or corresponding principal officers as of the end of the reporting period;

* * * * *

(6) The national organization with which it is affiliated assumes responsibility for the accuracy of, and submits with its simplified annual reports filed electronically pursuant to § 403.4(b)(3) for the affiliated local labor organizations, the following certification properly completed and signed by the president and treasurer of the national organization:

* * * * *

§ 403.5 [Amended]

■ 4. Amend § 403.5 by removing paragraph (d).

§ 403.8 [Amended]

■ 5. Amend § 403.8 by removing paragraph (b)(3).

PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

■ 6. The authority citation for part 408 continues to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

■ 7. Revise § 408.5 to read as follows:

§ 408.5 Annual financial report.

During the continuance of a trusteeship, the labor organization which has assumed trusteeship over a subordinate labor organization, shall file with the Office of Labor-Management Standards on behalf of the subordinate labor organization the annual financial report required by part 403 of this chapter, signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship, and the trustees of the subordinate labor organization on Form LM–2.

Signed in Washington, DC, this 22nd day of December, 2021.

Jeffrey R. Freund,

Director, OLMS.

[FR Doc. 2021–28266 Filed 12–29–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 31

[EPA-HQ–2020–03508; FRL–8540–01–OECA]

On-Site Civil Inspection Procedures; Rescission

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; rescission of regulations.

SUMMARY: In accordance with the Presidential directive of January 20, 2021, ''Revocation of Certain Executive Orders Concerning Federal Regulation,'' and in order to ensure appropriate flexibilities to site-specific inspection work, the Environmental Protection Agency (EPA) is rescinding its March 2, 2020 final rule describing certain Agency procedures for conducting on-site civil inspections. This rule applies to on-site civil inspections conducted by federally credentialed EPA civil inspectors, federally credentialed contractors and Senior Environmental Employment employees conducting inspections on behalf of EPA.

DATES: This rule is effective on December 30, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ–2020–03508. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov*. For information on the EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Chad Carbone, Monitoring, Assistance, and Media Programs Division, Office of Enforcement and Compliance Assurance (Mail Code 2221A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–2523; email address: *carbone.chad@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What action is the Agency taking?

In accordance with E.O. 13992, ''Revocation of Certain Executive Orders Concerning Federal Regulation,'' issued by President Biden on January 20, 2021 (86 FR 7049, January 25, 2021), and in order to ensure appropriate flexibilities to site-specific inspection work, the EPA is rescinding the final rule (85 FR 12224, March 2, 2020) that described certain Agency procedures for conducting on-site civil inspections. The prior final rule was promulgated to implement the now revoked E.O. 13892, ''Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication'' (84 FR 55239, October 9, 2019).