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Labor Organization Officer and Employee Report, Form LM–30; Final Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 404

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Labor Organization Officer and Employee Report, Form LM–30

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

ACTION: Final rule.

SUMMARY: The Employment Standards Administration's (''ESA'') Office of Labor-Management Standards (''OLMS'') of the Department of Labor (''Department'') publishes this Final Rule to revise the Form LM–30, Labor Organization Officer and Employee Report, its instructions, and related provisions in the Department's regulations. The Form LM–30 implements section 202 of the Labor-Management Reporting and Disclosure Act of 1959 (''LMRDA'' or ''Act''), 29 U.S.C. 432, whose purpose is to require officers and employees of labor organizations to report specified financial transactions and holdings to effect public disclosure of any possible conflicts between their personal financial interests and their duty to the labor union and its members. This rule clarifies the Form LM–30 and its instructions by explaining key terms and providing examples of the financial matters that must be reported, eliminates or modifies administrative exceptions in the old Form LM–30 that impeded the full disclosure of financial matters that constitute conflicts, or potential conflicts, of interest, and improves the usability of the reports by union members and the public.

DATES: *Effective Date:* This rule will be effective August 16, 2007.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Director, Office of Policy, Reports, and Disclosure, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5609, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–1233 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: An outline of this information and a note regarding the references to statutory provisions in this document follow:

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Note: Throughout this document, the Department refers to various statutory provisions as ''section ____.'' All such references, unless otherwise noted, are to Title 29 of the U.S. Code. Further, unless otherwise noted, all the sections are part of the Labor-Management Reporting and Disclosure Act of 1959, which is set forth in Chapter 11 of Title 29, 29 U.S.C. 401–531. Following is a list of the most frequently cited LMRDA provisions in this document with corresponding citations to the U.S. Code: section 3(l), 29 U.S.C. 402(l); 201, 29 U.S.C. 431; section 202, 29 U.S.C. 432; and section 203, 29 U.S.C. 433. The only other provision of the U.S. Code frequently referred to in the document by the section number in the public law in which it was enacted is ''section 302(c),'' a reference to a provision of the Labor Management Relations Act, as amended, 29 U.S.C. 141–188. A reference to

section 302(c), 29 U.S.C. 186(c), appears in the text of section 202(a)(6) of the LMRDA, 29 U.S.C. 432(a)(6).

I. Background

A. Statutory Authority

Section 208 of the LMRDA states in part:

The [Department] 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.

29 U.S.C. 438. Today's rule prescribes the disclosure form required to be filed by a union officer or employee if such an official, his or her spouse, or minor child hold an interest in or receive payments from certain entities. The reporting requirements are contained in section 202, which provides in its entirety:

§ 202. (a) Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year—

(1) Any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;

(2) Any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(3) Any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;

(4) Any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;

(5) Any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and

(6) Any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in section 302(c) of the Labor Management Relations Act, 1947, as amended.

(b) The provisions of paragraphs (1), (2), (3), (4), and (5) of subsection (a) shall not be construed to require any such officer or employee to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, in shares in an investment company registered under the Investment Company Act or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, or to report any income derived therefrom.

(c) Nothing contained in this section shall be construed to require any officer or employee of a labor organization to file a report under subsection (a) unless he or his spouse or minor child holds or has held an interest, has received income or any other benefit with monetary value or a loan, or has engaged in a transaction described therein.

B. Departmental Authorization

Section 208 of the Act, 29 U.S.C. 438, provides that the Secretary of Labor shall have the authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under Title II of the Act and such other reasonable rules and regulations as she may find necessary to prevent the circumvention or evasion of the reporting requirements. Secretary's Order 4–2007, issued May 2, 2007, and published in the **Federal Register** on May 8, 2007 (72 FR 26159), contains the delegation of authority and assignment of responsibility of the Secretary's functions under the LMRDA to the Assistant Secretary for Employment Standards and permits the redelegation of such authority.

C. Background to and Overview of Rule

In today's rule, the Department revises the Form LM–30, Labor Organization Officer and Employee Report based on its review of public comments received in response to its Notice of Proposed Rulemaking (''NPRM''), 70 FR 51166 (Aug. 29, 2005). The Form LM–30 is used by officers and employees of labor organizations subject to the LMRDA. Section 202 of the Act requires public disclosure of certain financial interests held, income received, and transactions engaged in by labor organization officers and employees (generally referred to herein as ''union officials'' or ''officials'') and their spouses and minor children. Subject to exclusions, these interests, incomes, and transactions include:

1. Payments or benefits from, or interests in, an employer whose employees the filer's union represents or is actively seeking to represent;
2. Transactions involving interests in, or loans to or from, an employer whose employees the filer's union represents or is actively seeking to represent;
3. Interests in, income from, or transactions with a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent;
4. Interests in, income from, or transactions with a business that deals with the filer's union or a trust in which the filer's union is interested;
5. Transactions or arrangements with an employer whose employees the filer's union represents or is actively seeking to represent; and
6. Payments from an employer or labor relations consultant to an employer.

As sometimes used herein, the short-hand phrase ''payments or other financial interests'' or its equivalent is used to refer to the various payments, transactions, arrangements and other monetary and financial interests that must be reported. Payments, as a general rule, include gifts, gratuities, restaurant meals, and entertainment.

The Form LM–30 must be filed annually by a union officer or employee (other than those solely engaged in performing clerical or custodial duties) if the official, the official's spouse, or minor child (or children) receives a payment or other financial interest from a business or employer in connection with certain activities, identified in section 202. Section 202's disclosure obligations for union officials (as embodied in the Form LM–30) are an integral part of the Act's reporting structure. The Act requires annual reports by unions as ''institutions'' under section 201 (Forms LM–2, LM–3, and LM–4), by employers, who must

report payments to unions and their representatives under section 203 (Form LM–10), and by unions for trusts in which they have an interest (''section 3(l) trusts,'' a reference to section 3(l) of the Act defining such trusts) under sections 201 and 208 (Form T–1).

In the NPRM the Department invited comment with respect to the benefits of the proposed changes, the ease or difficulty with which union officials would be able to comply with these changes, and whether the changes would be meaningful, useful, and in accord with the LMRDA disclosure purposes. The initial 60-day comment period provided for in the NPRM was subsequently extended to January 26, 2006. 70 FR 61400 (Oct. 24, 2005). The Department received over 1,000 comments. Of these comments about 50 were unique; the rest were form letters. Almost 300 of the comments were from unions or union members, most of whom were critical of all or parts of the proposal; about 700 were from individuals who generally supported the proposal, about 25 were from business or trade organizations, who expressed diverse views on the proposal; about 10 were from law firms, on their own behalf or their clients, who mostly opposed the proposal; two were from benefit fund administrators, who opposed the proposal; and one was from an academic who reported on his limited study of the reactions of union officials to the proposed form and instructions from which he concluded these documents needed substantial improvement. Over 280 of the union commenters were members of one local. In their form letters, they urged rejection of the rule ''in its entirety.'' They characterized the proposed requirements as ''frivolous.'' They asserted that the existing form was adequate to ensure ''due diligence'' by union officials, adding that the proposed union-leave and no-docking requirements would turn shop stewards into accountants because of the duty to ''calculate their time.'' Of the individuals supporting the proposal, the Department received about 660 form letters. These individuals asserted that such reforms were long overdue, noting that under the current form it is difficult to determine when a report is required and that the proposed form's inclusion of clear definitions and examples would improve reporting.

The historically low filing rates during the years preceding the initiation of this rulemaking process demonstrated substantial non-compliance with the Act. The Department recognized that its own compliance assistance efforts in this area needed improvement and thus it has retargeted its resources to educate the affected community about the Form LM–30 reporting obligation and to increase its enforcement efforts. At the same time as the Department was working on the proposed rule, it announced an initiative to improve Form LM–30 compliance. As part of this effort, the Department substantially augmented its published guidance to Form LM–30 filers, primarily by posting information on OLMS Web pages and by further disseminating this information by notifying subscribers to its free, automated list serve. On April 25, 2005, the Department announced a special enforcement policy under which new Form LM–30 filers, absent extraordinary circumstances, would not have to submit reports for prior years, even if such reports should have been filed. Specifically, the Department advised the regulated community that it would not require a new filer to submit reports covering the same financial interest for any prior years absent extraordinary circumstances. To take advantage of this grace period, the new filer had to submit his or her initial report voluntarily during a ''grace period,'' which ended August 15, 2005. With the substantial voluntary assistance of the AFL–CIO and other labor organizations to educate union officials about their reporting obligations, the Department experienced a large upsurge in the number of Form LM–30 filings over historical levels. To help union officials better understand their filing obligations, the Department proposed to change the instructions to the old form by defining and explaining key concepts and terms used by the statute and the form, and providing examples of situations where reporting is required. The Department also proposed to redesign the reporting format to better assist filers and improve the utility of the collected information to union members, the Department, and the general public. Following its review of the comments and taking into account the Department's recent Form LM–30 filing experience—as requested by some commenters, the Department remains convinced that this approach is sound and therefore today's rule preserves the overall approach outlined in the NPRM. At the same time, the comments were helpful in reconsidering some aspects of the rule and improving the content of the instructions and the form. The Department has revised the layout of the form. Instead of the subsection-by-subsection approach in the proposed form and instructions that parallels the structure of section 202 and its subsections (i.e., sections 202(a)(1) through 202(a)(6)), the rule organizes the form and instructions by the source of the reportable payment to a union official. Thus, the form lists the types of employer relationships that trigger a reporting requirement and the types of business relationships that trigger a reporting requirement. The instructions identify the types of payments and other financial interests that must be reported by a union official if received from an employer, differentiating between payments received from an employer whose employees the filer's union represents or is actively seeking to represent and those received from certain other employers. The instructions also identify the types of payments that must be reported if received from businesses that maintain business dealings with the official's union, a trust in which the official's union is interested, or certain employers. In the NPRM, the Department requested comment on whether labor organizations should be required to notify their officers and employees of their Form LM–30 reporting obligations. After review of the comments and the number of recent filers, the Department has decided to not require unions at this time to provide such notification to their officials.

In the NPRM, the Department proposed to revise its longstanding de minimis exception by adopting a quantitative standard of $25 as the amount that would trigger a reporting obligation. Numerous comments attacked the $25 threshold as unreasonably low, while other commenters argued that there should be no de minimis level at all. The Department adopts $250 as the amount above which a report is required and $20 as the amount above which payments or benefits must be counted when calculating whether the union official's $250 reporting threshold has been met. The rule also includes a limited exclusion for widely attended gatherings, allowing union officials to attend two such gatherings without incurring a reporting obligation provided the employer or business paying for the gathering spent $125 or less per attendee per gathering.

One provision of the Act, section 202(a)(6), may be read to impose a requirement on union officials to report payments from all employers. The Department's proposal to construe this obligation in this manner was opposed by most of the comments that discussed this point. In light of these comments, today's rule clarifies the scope of the reporting obligation under section 202(a)(6), identifying particular situations that pose a conflict of interest

that otherwise would not be captured by the other five subsections of section 202(a).

The Department also proposed to remove certain administrative exceptions that were available to filers under the old rule: Purchases and sales in the regular course of business at prices generally available to any employee of the employer; work performed and payments and benefits received as a bona fide employee of the employer; certain loans; and specified interests relating to stock ownership. The rule generally adopts the proposals as set forth in the NPRM to narrow the scope of these exceptions and thus makes reportable interests and payments that present previously unreported potential conflicts of interest.

The Department requested comment on whether to retain the distinction between securities traded on a registered national stock exchange and securities traded elsewhere, such as the NASDAQ stock market, notwithstanding the language in the Act limiting the exception to registered securities exchanges. *See* section 202(b) (ties exception to such exchanges registered under the Securities Exchange Act of 1934 and other enumerated statutes). After reviewing the comments, the Department retains its interpretation that it should not extend this limited exception to exchanges that have not been registered. The Department, however, notes that on July 15, 2006, the Securities and Exchange Commission (''SEC'') approved NASDAQ's application for registration as a national securities exchange, effective July 31, 2006.

Payments received by union officials from employers for work done on the union's behalf are reportable because such payments are not received as a bona fide employee of the employer making the payment. The Department explained in its proposal that union officials must report any payments for other than ''productive work'' for the employer, including union-leave and no-docking payments. Similarly, the proposed definition of ''labor organization employee'' clarified that an individual who is paid by an employer to perform union work is an employee of the union if he or she is under the control of the union, while so engaged. Today's rule adopts the proposed definition of ''bona fide employee'' and ''labor organization employee,'' making union-leave and no-docking payments reportable. However, today's rule stipulates that if such payments are made pursuant to a collective bargaining agreement and the payments are made for 250 or fewer hours during the year then there is no reporting obligation.

The meaning given ''labor organization'' defines the scope of a union official's obligation to report interests in or payments by certain employers and businesses. Essentially the question presented by the Department's proposal is whether this obligation applies to only an official's immediate organization, *e.g.*, a local union or international union in which he or she holds office, or whether it extends to situations involving organizations affiliated with the immediate organization. For instance, is an international officer required to report payments received from a business that sells products or services to intermediate and local affiliates or from employers whose employees are represented by a subordinate union? Under today's rule, an international union officer must report such payments. The same obligation exists under the old rule. Today's rule further clarifies that the same reporting obligation applies to payments received by an intermediate union officer. The Department, however, does not impose a reporting obligation on local or intermediate union officials who receive payments from an entity that does business with a higher affiliated organization. The rule also excepts *employees* of international, national, and intermediate unions from this reporting requirement. Further, the reporting obligation on officers of national and intermediate unions does not extend to payments received as employment compensation by their spouse or minor child that otherwise would be reportable because of the payer's relationship with a subordinate union.

Although the Department's old rule applies to payments received from a section 3(l) trust and the Department proposed no departure from this rule, numerous comments were received arguing that the Form LM–30 reporting obligation has never been applied to payments by trusts to union officials. These commenters are mistaken. The Department always has maintained the position that payments from trusts and vendors to such trusts enjoy no special excepted status under the Act's reporting provisions. Some commenters argued that such reporting would only be duplicative of reporting already required by ERISA and could discourage union trustees from attending conferences designed to educate trustees about their duties as trustees. The Department believes that the concerns about burden and overlap with ERISA disclosure requirements are overstated. In light of the comments, however, today's rule clarifies that a payment by a trust is treated no differently than other payments by an employer or a business to union officials.

Section 202(a)(3) imposes a limited reporting obligation on a union official who has an interest in or receives payments from a business that buys, sells, leases, or otherwise deals with the business of an employer if the latter's employees are represented by the official's union or it is actively seeking to represent these employees. The obligation attaches only if the vendor's dealings with the employer comprise a ''substantial part'' of the vendor's business. The Department proposed to define ''substantial'' as more than 5% of the vendor's business. Most of the comments criticized the threshold as too low. Today's rule sets the threshold at 10%.

In addition to some of the terms discussed above, the Department has clarified some of the proposed definitions. By clarifying these terms and the concepts that underlie the Act's reporting provisions, the rule ensures transparency in the personal financial affairs of union officials that may pose conflicts between the official's duty to their union and its members and the official's personal interests.

A number of comments were received from employer and industry associations. Most of these comments focused on the obligation of employers to file a Form LM–10 on certain payments made by employers or labor relations consultants to unions or union officials. Today's rule is specific to Form LM–30 filers. It does not amend the Department's current regulations or guidance specific to the Form LM–10. The Department, however, has carefully considered all the comments submitted by these groups and addresses them herein insofar as they address particular aspects of the Form LM–30 proposal. Form LM–10 Frequently Asked Questions (FAQs) on the OLMS Web site at *http://www.olms.dol.gov* informs the public that the Department will not enforce certain Form LM–10 reporting requirements until both the Form LM–30 rulemaking is completed and further written guidance is issued on the Form LM–10. This written guidance will be issued in revisions to the FAQs that will be announced through the OLMS list serve which can be subscribed to at *http://www.dol.gov/esa/aboutesa/org/olms/olms-mailinglist.htm.*

1. The Reasons for Today's Revisions of the Form LM–30

The Form LM–30 has remained essentially unchanged since 1963.

During this time, there have been many significant changes in the ways in which unions operate and conduct their financial affairs. Individuals too have more and varied financial interests than was the case forty years ago. As explained in the NPRM, many unions manage benefit plans for their members, maintain close business relationships with financial service providers such as insurance companies and investment firms, operate revenue-producing subsidiaries, and participate in foundations and charitable activities. The complexity of these financial practices, including business relationships with outside firms and vendors, increases the likelihood that union officials may have interests in, or receive income from, these businesses. As more labor organizations conduct their financial activities through sophisticated trusts, increased numbers of businesses have commercial relationships with such trusts, creating financial opportunities for union officers and employees who may operate, receive income from, or hold an interest in such businesses. In addition, employers also have fostered multi-faceted business interests, creating further opportunities for financial relationships between employers and union officers and employees. In this context, disclosure is critical to promoting good union governance, fostering ethical behavior, and deterring and detecting self-dealing.

As noted in the NPRM, on many occasions the Department has discovered during an audit or investigation that a union officer or employee received a reportable payment or other financial benefit but had failed to file the Form LM–30 as required. The Department identified several such situations in the NPRM, including the following:

- A local president owned 50% of a business that resurfaced the union's parking lot. Over two years, the business received $9,000 from the union.
- A union designated certain attorneys to represent injured members. Some of these attorneys, who were employers, furnished cash or items of value such as trips and golf clubs to union officials.
- A union hired the accounting firm of an employee's spouse. The firm received over $29,000 from the union over two years.
- An officer of a union, whose members worked at a theater, formed a business with two partners. He put his share of the business in his wife's name although he actually managed the business, which employed members of his local to work for the theater. He and his wife received almost $75,000 in profits, expense reimbursements, and salary from the business.
- A union president owned the building in which the union rented office space.
- A union employee's spouse owned an advertising company that printed materials for the union and its funds. In one year, the company received over $245,000 as payment for her company's services.
- Four local officers formed a company that provided payroll services to the local as well as to theatrical companies that employed members of the local. Two other officers of the local received over $20,000 as employees of the company.
- The spouse of a union officer owned a company that provided cleaning and maintenance services to the union and a trust in which the union was interested. In one year, the company received over $94,000 from the union and the trust.
- A union officer's spouse owned a janitorial business that provided daily janitorial services to the union at $800 per month.
- A union officer was part-owner, along with his wife and daughter, of a copier supply company. He was an officer of several unions, including one that employed his daughter as a benefit representative and union trustee. All of the unions purchased office equipment and services from the family's company.
- During a campaign for a State government office, a business agent received contributions from employers who were covered by the union's collective bargaining agreement.
- A union employee owned a heating and air conditioning business that performed HVAC work for the union.

In these instances, compliance with the Form LM–30 requirements would have provided union members with valuable information concerning financial practices of their unions' officials. This information would have assisted union members in evaluating the efficacy of the work performed by union employees and the leadership provided by union officers. Furthermore, the information would have alerted them to potential conflicts of interests and guided them as to which actions or decisions of their officers and employees might require greater scrutiny in order to determine whether the conflicts had affected the union official's service to the union. Armed with this information, union members could express their concerns at membership meetings, *see* section 101(a), 29 U.S.C. 411(a), evaluate the use of union monies as reported on the union's annual financial report, *see* section 201(b), 29 U.S.C. 431(b), cast more informed votes at internal union elections, *see* sections 401–403, 29 U.S.C. 481–483, employ union procedures for removal of officers guilty of serious misconduct, *see* section 401(h), 29 U.S.C. 481(h), and exercise their right to obtain judicial relief for violations of the official's fiduciary responsibilities. *See* section 501(b), 29 U.S.C. 501(b).

In other instances, as described in the NPRM, compliance with Form LM–30 requirements would have revealed criminal conduct. For example, the president of a national union had the sole authority to appoint or remove attorneys from a list of ''Designated Legal Counsel.'' These attorneys represented injured union members who sought compensation from the railroad for on-the-job injuries. Rather than selecting attorneys on the basis of their skills, the president awarded the designation to attorneys who gave the union president cash or other things of value. In another instance, contractors were hired to make repairs and improvements to the offices of a local union. The contractors also performed work on the officers' homes. All the expenses of the work, including about $1.2 million for work on the officers' homes, was charged to and paid by the union. A third example involved a contractor, an investment firm that managed pension and investment accounts for unions. This company collapsed in September 2000, costing its clients about $355 million. The company's former chairman was indicted on counts of fraud, money laundering, witness tampering, and making illegal payments to union benefit plan trustees. As part of its scheme to buy the influence of pension fund trustees, who were union officers, the investment firm hired relatives of pension trustees as well as provided plan trustees with gifts including rifles, season tickets to sporting events, and fishing and hunting trips to various locations in the western U.S., Canada, Africa, Argentina and Mexico.

As the above incidents demonstrate, a statement made in 1986 continues to ring true: ''The plunder of union resources remains an attractive [target for certain individuals and organizations]. * * * The most successful devices are the payment of excessive salaries and benefits to * * * union officials and the plunder of workers'' health and pension funds.'' President's Commission on Organized Crime, *Report to the President and Attorney General, The Edge: Organized Crime, Business, and Labor Unions*

(1986), at 12. Added transparency about a union official's conflicts of interest will help ensure that all union officials keep paramount the interests of their union and its members. Most union officials will never be tempted to subordinate their union's interests to their own financial interests; the rule will help them avoid the perception that their financial interests, left unreported through inadvertence or misunderstanding, may engender unfair suspicion. Others, though tempted, will be deterred from taking such action. See Archibald Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich.L.Rev. 819, 827 (1960) (''*Internal Affairs of Labor Unions*'') (''The official whose fingers itch for a ''fast buck'' but who is not a criminal will be deterred by the fear of prosecution if he files no report and by fear of reprisal from the members if he does'').

The Form LM–30 has been redesigned to facilitate full and accurate completion by the filer and review by members of the filer's union and the public. The instructions now contain useful definitions of key terms and concepts required to complete the form and numerous practical examples to assist filers in completing the form. Union officials will also better understand the disclosure obligations relating to actual or potential conflicts of interest and will be mindful of their duty to hold their union's interests above their own personal financial interests. Financial transparency, as noted above, also may deter fraud and self-dealing and facilitates discovery of such misconduct when it occurs. Transparency promotes the unions' own interests as democratic institutions. By these improvements, union members will obtain a more accurate picture of the personal financial interests of their union's officers and employees, as those interests may bear upon their actions on behalf of the union and its members. With this information, union members will be better able to understand any financial incentives or disincentives faced by their union's officers and employees and to make more informed choices about the leadership of their union and its management of its affairs. Through these actions, the Department advances the LMRDA's declared purpose ''that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations.'' Section 2(a). As such, today's rule will better achieve the purposes of the LMRDA than the old reporting regimen.

2. Legislative History

To better understand the purposes served by disclosure, a brief review of the history of the LMRDA's reporting and disclosure requirements for union officials is appropriate. As explained in the NPRM, at 70 FR 51166, the LMRDA was passed in 1959 by a bipartisan Congress that found: In labor and management fields:

> [T]here have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.

Section 2(a).

The legislation 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 union racketeering and corruption; its findings of financial abuse, mismanagement of union 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 unions and employers (and labor consultants aligned with the employers) whose employees were represented by the unions in question or might be organized by them. Similar arrangements also were found to exist between union officials and the companies that handled matters relating to the administration of union 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) (''*Interim Report*''). For examples of some of the improper arrangements directly or indirectly involving officials of these unions, *see Interim Report,* pp. 42–86, 122–30, 150–57, 222–55, 376–420, 441–50. *See also* Robert F. Kennedy, *The Enemy Within* (1960) (discussing the committee's investigation).

The statute was designed to remedy these various ills through a set of integrated provisions aimed at union governance and management. These included a ''bill of rights'' for union members, which provides for equal voting rights, freedom of speech and assembly, and other basic safeguards for union democracy, *see* sections 101–105 of the LMRDA, 29 U.S.C. 411–415, financial reporting and disclosure requirements for unions, union officers and employees, employers, labor relations consultants, and surety companies, *see* sections 201–206 and 211 of the LMRDA, 29 U.S.C. 431–436, 441; detailed procedural, substantive, and reporting requirements relating to union trusteeships, *see* sections 301–306 of the LMRDA, 29 U.S.C. 461–466; detailed procedural requirements for the conduct of elections of union officers, *see* sections 401–403 of the LMRDA, 29 U.S.C. 481–483, safeguards for unions, including bonding requirements, the establishment of fiduciary responsibilities for union officials and other representatives; and criminal penalties for embezzlement from a union, for loans over $2,000 by a union to officers or employees, for a union's employment of certain convicted felons or permitting them to hold union office, and for payments to employees for prohibited purposes by an employer or labor relations consultant, *see* sections 501–504 of the LMRDA, 29 U.S.C. 501–504; and prohibitions against retaliation for exercising protected rights, *see* sections 601–611 of the LMRDA, 29 U.S.C. 521–531.

The reporting requirement for union officials operates in tandem with the Act's establishment of a fiduciary duty for union officials and representatives. Section 501, 29 U.S.C. 501. Congress addressed conflicts of interest in both sections 202 and 501(a) of the Act. The latter section provides in part:

> The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization * * *.

Both provisions address the potential and actual conflict between a union representative's personal interests and his or her duty to the union and its

members. *See* Theodore Clark, Jr., *The Fiduciary Duties of Union Officials under Section 501 of the LMRDA,* 52 Minn. L. Rev. 437, 458–60 (1962).

The McClellan Committee hearings disclosed a history of self-dealing by certain union officials, often at the expense of their union's membership. Then Senator John F. Kennedy was the chief sponsor of the Senate bill, S. 505, which served as the foundation for the LMRDA. In introducing the bill for the Senate's consideration, Senator Kennedy addressed concerns about the involvement of union officials in matters that blurred their personal interests and their union's interests, which concerns would be remedied by the legislation. Senator Kennedy used the experience of the Teamsters union, as revealed by the investigation of the McClellan Committee, to underscore the purposes to be achieved by the Act:

> First. It will no longer be possible for the dues of Teamster members to be * * * used by [the union's] officers to build their own personal financial empires without the knowledge of the members themselves—or without investigation by the press and public authorities.
>
> Second. [A union official] would be required to disclose all his business dealings with insurance agents handling the union's welfare funds, his private arrangements with employers, his hidden partnerships in business ventures foisted upon his members, and all other possible conflicts of interest.
>
> * * * * *
>
> Sixth. [Union officials] will find future collusion with employers vastly restricted—with no more loans from employer groups, no more attacks on rival unions through middlemen * * *, and no more secrecy shrouding the use of union funds to bail out a collaborating employer.

105 Cong. Rec. S817 (daily ed. Jan. 20, 1959), *reprinted in 2 NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (''Leg. History''),* at 969.

The improper dealings by the Teamsters officials, to which Senator Kennedy refers, are detailed in the *Interim Report,* at *e.g.*, 48, 59–60, 64–86, 222–54, 443–50. These dealings, like those identified by officials of other unions in the *Interim Report,* included actions undertaken by national officers, or others acting at their behest, involving matters affecting not only the national union's operation but also matters of importance to local and intermediate bodies of their union. *See e.g., Interim Report,* at 4–7, 46–49, 51, 55, 59–60, 63, 69, 74, 81, 87, 122–25, 128, 130, 179, 186–87, 224, 228, 230–40, 244, 250, 252, 264–66, 268, 281, 284–85, 295, 297, 300, 444–48. *See also The Enemy Within,* at 97, 99, 104–05, 106, 221–24.

As explained in the Senate Committee Report, S. Rep. No. 187 (1959) (''*Senate Report*''), at 15, *reprinted in 1 Leg. History,* at 411: ''The hearings before the McClellan committee brought to light a number of instances in which union officials gained personal profit from a business which dealt with the very same employer with whom they engaged in collective bargaining on behalf of the union.'' *Id.* The committee endorsed the concern expressed in the AFL–CIO's Ethical Practices Code that the union official ''may be given special favors or contracts by the employer in return for less than a discharge of his obligations as a trade-union leader.'' *Id.*

In explaining the purpose of the disclosure rules for union officers and employees, the *Senate Report* presented ''three reasons for relying upon the milder sanction of reporting and disclosure [relative to establishing criminal penalties] to eliminate improper conflicts of interest,'' which we summarize as follows:

- Disclosure discourages questionable practices. ''The searchlight of publicity is a strong deterrent.'' Disclosure rules should be tried before more severe methods are employed.
- Disclosure aids union governance. Reporting and publication will enable unions ''to better regulate their own affairs. The members may vote out of office any individual whose personal financial interests conflict with his duties to members,'' and reporting and disclosure would facilitate legal action by members against ''officers who violate their duty of loyalty to the members.''
- Disclosure creates a record. The reports will furnish a ''sound factual basis for further action in the event that other legislation is required.''

Senate Report, at 16, *reprinted in 1 Leg. History,* at 412.

The Report further stated: ''No union officer or employee is obliged to file a report unless he holds a questionable interest or has engaged in a questionable transaction. The bill is drawn broadly enough, however, to require disclosure of any personal gain which an officer or employee may be securing at the expense of the union members.'' *Senate Report,* at 14–15, *reprinted in 1 Leg. History,* at 410–11. The House Committee Report, H.R. Rep. No. 741 (1959) (''*House Report*''), at 11, *reprinted in 1 Leg. History,* at 769, conveyed the same message. Both the Senate and House Reports recognize that a reportable interest is not necessarily an illegal practice. As the *House Report* stated:

> In some instances matters to be reported are not illegal and may not be improper but may serve to disclose conflicts of interest. Even in such instances, disclosure will enable the persons whose rights are affected, the public, and the Government, to determine whether the arrangements or activities are justifiable, ethical, and legal.

House Report, at 4, *reprinted in 1 Leg. History*, at 762. *See Senate Report*, at 38, *reprinted in 1 Leg. History,* at 434 (''By requiring reports * * *, the committee is not to be construed as necessarily condemning the matters to be reported if they are not specifically declared to be improper or made illegal under other provisions of the bill or other laws''). ''Reports are required as to matters which should be public knowledge so that their propriety can be explored in the light of known facts and conditions.'' *Id.* As stated by Senator Barry Goldwater after the LMRDA had been passed:

> Briefly, what must be reported are holdings of interest in or the receipt of economic benefits from employers who deal or might deal with such union official's union, or holdings in or benefits from enterprises which do business with such union official's union.

105 Cong. Rec. A8512 (daily ed. Oct. 2, 1959), *reprinted in 2 Leg. History*, at 1846.

Conflict of interest standards, including disclosure obligations of individuals and entities occupying positions of trust, are well grounded in U.S. law. As stated in the *House Report*, repeating almost verbatim the same point in the *Senate Report:*

> For centuries the law of fiduciaries has forbidden any person in a position of trust subject to such law to hold interests or enter into transactions in which self-interest may conflict with complete loyalty to those whom he serves. * * * The same principle * * * should be equally applicable to union officers and employees [quoting the AFL–CIO's Ethical Practices Code]: ''[A] basic ethical principle in the conduct of union affairs is that no responsible trade union official should have a personal financial interest which conflicts with the full performance of his fiduciary duties as a worker's representative.''

Senate Report, at 11, *reprinted in 1 Leg. History*, at 769. *See generally Restatement* (*Second) of Trusts* (1959) §§ 170, 173; *Restatement (Second) of Agency* (1958) §§ 381, 387–98.

Section 202 is an effort, in part, to make effective the disclosure requirements associated with the fiduciary standards applied to union officials in Title V of the LMRDA, a duty that includes an obligation to report potential conflicts of interest. Both Titles II and V of the Act represent an effort to codify various requirements

contained in an extensive code of ethics voluntarily adopted by the AFL–CIO in 1957 and applied to its affiliated unions and officials. *See Senate Report*, at 12–16, *reprinted in 1 Leg. History*, at 408–12; *House Report*, at 9–12, *reprinted in 1 Leg. History*, at 767–70. *See also Internal Affairs of Labor Unions*, 58 Mich. L. Rev. at 824–29. The following excerpts from this code demonstrate the similarities between a union official's fiduciary duty and the disclosure requirements of section 202.

> [A] basic ethical principle in the conduct of trade union affairs is that no responsible trade union official should have a personal financial interest which conflicts with the full performance of his fiduciary duties as a workers' representative.
>
> [U]nion officers and agents should not be prohibited from investing their personal funds in their own way in the American free enterprise system so long as they are scrupulously careful to avoid any actual or potential conflict of interest.
>
> In a sense, a trade union official holds a position comparable to that of a public servant. Like a public servant, he has a high fiduciary duty not only to serve the members of his union honestly and faithfully, but also to avoid personal economic interest which may conflict or appear to conflict with the full performance of his responsibility to those whom he serves.
>
> There is nothing in the essential ethical principles of the trade union movement which should prevent a trade union official, at any level, from investing personal funds in the publicly traded securities of corporate enterprises unrelated to the industry or area in which the official has a particular trade union responsibility.
>
> [These principles] apply not only where the investments are made by union officials, but also where third persons are used as blinds or covers to conceal the financial interests of union officials.

Ethical Practices Code IV: Investments and Business Interests of Union, 105 Cong. Rec.*16379 (daily ed. Sept. 3, 1959), *reprinted in 2 Leg. History*, at 1408. *See also Ethical Practices Code II: Health and Welfare Funds, id.*, 2 *Leg. History*, at 1406–07.

The Department intends by today's rule to better achieve the purposes of the LMRDA, as reflected by its legislative history.

II. Discussion of Comments Received on Proposed Rule and Department's Response

A. Why the Changes To the Form Are Needed Now

Several commenters recommended that the Department should evaluate its recent compliance experience with Form LM–30 reports submitted by union officials using the old form before considering any changes to the form. One commenter stated that there is no problem with the old form. Another asserted that the affected community has spent a ''huge amount of time getting up to speed on the present form,'' arguing that the proposed form is more confusing than the current form because it requires filers to identify for each reportable interest the particular statutory provision to which it relates.

A labor educator, noting the upsurge in Form LM–30 filings about the time of the comment period on the proposed rule, suggested that the Department should postpone any changes until it completed a thorough analysis of these submissions. Although this commenter acknowledged that the old form presents some challenges to a filer's easy understanding of the reporting requirements, he asserted that the proposed form poses greater opportunity for mistake and confusion. Two commenters argued: ''[R]adically changing the form at the same time as the Department provides comprehensive guidance on what is considered reportable [on the old form] will only impede the efforts to encourage accurate and full reporting.''

The old Form LM–30 posed substantial challenges to filers. As discussed in the NPRM and as demonstrated by comments on the proposal, filers have been unsure about the kinds of payments that trigger the need to file a Form LM–30. *See* 70 FR 51172–73, 51175. Keeping the status quo would leave in place exceptions that permit union officials to avoid disclosing payments that would otherwise be reportable under the statute, denying union members information about their officials' interests in and payments by employers and businesses that raise conflict of interest questions. Deferring the final rule for an exhaustive analysis of all the Form LM–30 filings during the April through mid-August 2006 ''grace period,'' numbering about 13,000 would cause undue delay with little additional gain. The Department's preliminary and ongoing review of these filings demonstrates that the old form is unclear and that today's rule will rectify many of the problems observed in those filings.

One commenter recommended that the Department, well in advance of the filing deadline, ''should grant a reasonable extension for filing and/or make any aspects of the final rule that are more restrictive than the current rule prospective only. DOL should only apply any changes prospectively, and it should provide a reasonable opportunity for necessary recordkeeping and related efforts to facilitate accurate reports and compliance.'' Another commenter argued that no new requirements should be imposed on service providers until rulemaking on the Form LM–10 is completed. Another commenter argued that no changes in reporting should occur any sooner than a filer's fiscal year that begins after the final rule takes effect.

DOL is applying these changes prospectively only. This final rule will apply to fiscal years beginning on or after _____, 2007. Therefore, no report subject to today's rule will be due until at least _____, 2008. There is ample time from publication of this final rule until _____, 2008 for all filers to obtain any information they need to comply with the filing requirements.

B. Why the Department Is Not Presently Requiring Unions to Notify Their Officers and Employees (''Officials'') About Their Annual Reporting Obligations

In the NPRM, the Department requested comments on whether the Department should require unions to provide notice of the filing requirements to their officers and employees. The NPRM discussed possible notification options. Under one option, unions would be required to notify their officers and employees of their Form LM–30 obligations within 30 days of their installation into office or hire, respectively. Unions would be required to provide initial notification within 60 days of the enactment of the regulation, and annually thereafter to all officers and employees. Under the proposal, a union could meet this requirement by providing a copy of the Form LM–30 and its instructions. E-mail notification might be considered. As an alternative, a general notice, provided in a union publication addressed to each officer and employee, might be adequate for this purpose.

A number of comments were received on the notification question. Commenters were divided on the question. Some commenters strongly supported mandatory notification, pointing to low numbers of past filers as evidence that notification is essential. No union commenter supported the proposal. Commenters were divided as to whether the Department has authority to require notification under sections 105 or 208 of the LMRDA. One commenter asserted that the Department lacks authority to issue a notification requirement under section 105, arguing that this provision does not allow imposition of a detailed code of union conduct. Another commenter used section 105 to illustrate its position that Congress knew how to establish a notification requirement, arguing that its

failure to so provide in section 202 evinces the intention to excuse unions from any obligation to provide such notice. Another commenter argued to the contrary, stating that mandatory notification is consistent with section 105 which states, ''[e]very labor organization shall inform its members concerning the provisions of this Act.'' While acknowledging that section 208 arguably permits a notification requirement, a commenter argued that the Department must first demonstrate that such a rule is necessary to prevent the circumvention or evasion of the reporting obligation. It argued that ''circumvention'' and ''evasion'' connote a willful disregard of the filing obligation, actions that require as a premise that the filer already is aware of the filing obligation.

A commenter argued that the Department should impose a broader notification requirement on unions. Unions should be required, in its view, to provide notice to both officials *and* their members about both the filing obligations of union officials and the union's own reporting obligations to file a Form LM–2, 3 or 4. Another commenter viewed notification as a ''first-step in the right direction.'' It stated a preference for a system whereby the Department would provide annual reminders about Form LM–30; each union would be required to file with the Department the names and addresses of all its officers and employees. On the other hand, several commenters argued that reliance on voluntary efforts would better achieve the goal of informing officials about their filing obligation. One of these commenters stated that voluntary education works better than mandatory notification given that unions have a variety of governance structures and that they operate, in effect, in different industries calling for different approaches. Another commenter suggested that DOL ''work informally'' to obtain compliance. This commenter explained that under the old regulation, unions take various steps to inform their officials about Form LM–30 requirements, such as by holding meetings or providing written notices. The commenter argued that the choice of a method to inform union members should be left to the union. Several commenters argued that notification was unnecessary in light of new Department guidance, pointing to the rise in filings to support its claim.

The Department believes it possesses the authority to impose a notification requirement. However, the Department has concluded, based on its review of the comments and the recent experience with Form LM–30 filers, that a mandatory notification requirement is unnecessary on the present record to effectuate the disclosure purpose served by section 202 of the Act. After unions and their counsel became aware of the Department's increased emphasis in securing compliance with section 202, many contacted their officers and employees to inform or at least remind them of their obligation to file a Form LM–30 if they engaged in any of the activities identified by the form and its instructions. While in previous years less than 100 forms were typically filed each year, during the 2005 grace period contemporaneous with this rulemaking, 13,326 reports were filed. During FY 2006, 4,348 Form LM–30 reports were filed. Given the historic increases in Form LM–30s during the grace period with stepped up Departmental compliance assistance and voluntary efforts by major unions to educate affiliates and officials, there is currently not a sufficient record to conclude that a mandatory requirement is needed.

The Department applauds the voluntary efforts by the AFL–CIO and other unions to apprise union officials about their Form LM–30 reporting obligations. However, insufficient time has passed to conclude that union officials, without receiving regular notice by their union of these obligations, will remain aware of these obligations. If future compliance figures indicate that new union officials are uninformed about their Form LM–30 filing obligations or that others appear to have forgotten their obligations, the Department may then reassess the need for imposing a notification requirement.

C. Why the De Minimis Exemption From Reporting Insubstantial Gifts and Other Financial Benefits Has Been Simplified and Subjected to a $250 Limit, With an Exclusion for Gifts Valued at $20 or Less and Certain Widely-Attended Gatherings

Section 202(a) of the LMRDA calls for disclosure of ''any'' stock, bond or other interest, ''any'' income, ''any'' loan, and ''any'' payment or other thing of value received by a union official, his or her spouse, or minor child[ren] from employers and businesses as defined in sections 202(a)(1) through 202(a)(6). While this inclusive language may be read to require a report on any such payments regardless of amount, the Department always has excepted from reporting payments of insubstantial or de minimis value. Thus, the old instructions to the Form LM–30 inform filers: ''You do not have to report any sporadic or occasional gifts, gratuities, or loans of insubstantial value, given under circumstances or terms unrelated to the recipient's status in a labor organization.'' This exemption applies by its terms to all reports due under section 202. The *LMRDA Interpretative Manual (''LMRDA Manual'')*, as revised in March 2005, states that anything with a value of $25 or less will be considered de minimis and therefore not reportable if it is given on an ''infrequent or sporadic'' basis under circumstances unrelated to the recipient's status in a labor organization. *LMRDA Manual*, § 241.700.

The Department sought comments on the de minimis exception generally and specifically on whether the $25 threshold is appropriate, whether the burden is reasonable, and whether reporting of all transactions should be required without regard to their value. 70 FR 51175. In November 2005, following a review of Form LM–30 reports filed during the Department's grace period, which revealed the reporting of numerous payments that union members and the public would regard as trivial, and based on comments from union representatives that the threshold was too low, the Department issued guidance advising that ''gifts, gratuities or loans with a value of $250 or less'' would be considered insubstantial for the purposes of Form LM–30 reporting.

In the NPRM, the Department noted the inclusive language used by Congress in defining the scope of the reporting obligation and the absence of any general substantiality test for the LMRDA's reporting provisions. *See* section 202(a)(3); 29 U.S.C. 432(a) (limiting reports specific to certain ''substantial'' dealings). The Department also noted that exceptions based on insubstantiality are commonly read into statutes that do not expressly contain them and that the financial disclosure reports for certain Federal government employees contain a de minimis exemption.

The Department in today's rule retains a de minimis exemption. Under this exemption, payments or gifts totaling $250 or less from any one source during the reporting year need not be reported. In addition, the Department decides that payments or gifts valued at $20 or less need not be included in determining whether the $250 threshold has been met. The Department has concluded that a dollar-specific test for de minimis payments is preferable to one that requires filers to make a fact-specific determination of what is ''insubstantial'' or ''unrelated to the filer's status in a labor organization'' or ''sporadic and occasional.'' The Department also has crafted a limited reporting exclusion for a union official's

attendance at ''widely attended gatherings.'' If during the year, an officer or employee attends one or two widely-attended gatherings for which an employer has spent $125 or less per attendee per gathering, the officer or employee has no Form LM–30 obligation with regard to tracking or disclosing these events. A gathering will be considered ''widely attended'' if it is expected that a large number of persons will attend and that attendees will include both union officials and a substantial number of individuals with no relationship to a union or its section 3(l) trust.

The Department received numerous comments on the de minimis question, mostly in favor of retaining the exemption and the adoption of a quantitative threshold substantially higher than the $25 figure discussed in the NPRM. Particular comments are discussed below.

A few commenters argued that no de minimis level should be adopted at all. One commenter stated that full disclosure was appropriate because it allowed a union's members to decide whether a gift to a union official presented a negligible conflict of interest or not. The Department acknowledges that there would be some benefit in eliminating the exception; this change would allow individual union members to determine whether a particular payment poses a conflict of interest and more importantly could lead to further inquiry about a union official's actions. As stated in the NPRM, there is no statutory requirement for a de minimis level. *See Environmental Defense Fund, Inc.* v. *EPA,* 82 F.3d 451, 466 (D.C. Cir. 1996). Nonetheless, abandoning a de minimis threshold altogether would be a sharp departure from the Department's historical practice. Moreover, as further discussed below, the Department believes that elimination of the de minimis exception would only marginally increase meaningful transparency. Furthermore, the absence of a specific de minimis exception in section 202 is not determinative; exceptions based on insubstantiality are commonly read into statutes that do not expressly contain them, and this practice demonstrates their practical value. *See Wisconsin Dept. of Revenue* v. *William Wrigley, Jr., Co.,* 505 U.S. 214, 231 (1992). For these reasons, the Department retains the de minimis exception.

Many commenters noted the difficulty of applying the vague de minimis standard in the old instructions and the historical absence of helpful guidance in applying the exception. Several requested the Department to provide at least an illustrative dollar figure and to explain the meaning it attributes to the terms ''unrelated to the filer's status in a labor organization'' and ''sporadic and occasional.'' Some specifically requested the Department to provide additional examples so that filers could better understand the de minimis exception. Others argued for a test that was solely tied to the dollar value of any gift or payment.

As acknowledged in the NPRM, the qualitative aspects of the rule have proved difficult to apply. Based on its consideration of the comments and further review of this question, the Department has concluded that the purposes of section 202 can best be achieved by modifying the test so that the value of the payment or gift is the sole consideration affecting its disclosure. Additional conditions for claiming the exception would often present filers with the burden and expense of undertaking a fact-specific inquiry even though the amount of the gift or payment, as recognized by the dollar threshold, is insubstantial.

Some commenters favored replacing or at least supplementing the de minimis rule with the creation of broad exceptions to the various reporting requirements. These commenters requested exceptions for what they viewed as routine activities necessary for conducting business. Thus, exceptions, among others, were proposed for the following: any expenses related to an employee benefit plan including educational benefits, receptions and meals, routine business functions and luncheons, all marketing expenses, marketing and entertainment expenses provided equally to union and management trustees, and any promotional or branded good containing a company name or logo. Most of these comments were from employers or industry associations that anticipate that union officials will rely on the vendors to keep track of any gifts or payments so that they can readily determine whether they have incurred a reporting obligation. Another commenter suggested that no report should be required for any gratuity that would be considered a ''business expense'' by the IRS. One commenter characterized the rule as ''incredibly burdensome'' and an ''unprecedented imposition'' on service providers to trusts. Another commenter suggested, in effect, that the Department should adopt the rules and exceptions provided under the disclosure rules for Federal employees in place of the Department's proposed de minimis rule.

Several comments expressed concern about the need to report educational materials and seminars provided union trustees by vendors offering or providing services to welfare and pension plans. These commenters argued that even a high de minimis level would have a chilling effect because union trustees would refuse the materials or decline to attend a seminar in order to avoid the recordkeeping and reporting burden or the perception by union members that the trustee's attendance would be inappropriate. One commenter suggested that no report should be required for educational resources provided to union officials, so long as the sponsoring organization retained a statement of the educational purpose of the resource, a list of its total expenses relating to the otherwise reportable event, and if a seminar, the list of attendees.

The Department declines to create any suggested broad category of exceptions. Creating the broad exceptions suggested would frustrate the purpose of the statute to make transparent possible conflicts and would deny union members the ability to evaluate any concerns they might have about the possibility that a union official might put his or her own interests above those of the union and its members. Educational seminars and resources may benefit trustees to pension or welfare plans and the workers whom the plan is meant to benefit. The same event, however, may well include gifts, meals, travel, lodging and entertainment provided by service providers, or potential service providers, to these plans. By requiring reporting, the Department need not attempt the highly difficult task of crafting a rule that will identify the questionable payments. Rather, union members and the public can evaluate the situation on a case-by-case basis, and make their own decisions on the choices made by their officials. Furthermore, these commenters fail to recognize that the Secretary's authority to fashion a de minimis exception is a limited one. The LMRDA does not confer on the Secretary the authority to except from reporting matters which Congress has evinced no intention to withhold from disclosure and the de minimis principle, as evidenced by its name, only applies to matters of relative insignificance. Although the disclosure rules for Federal employees provide an alternative system for reporting financial interests that may pose a conflict with an individual's duties, that system was designed to meet the special needs and interests of Federal employment and the various laws that govern such employment. The

Department has borrowed some ideas from the disclosure rules for Federal employees but to adopt the Federal disclosure rules wholesale would be impracticable.

Most of the commenters advocated a dollar threshold substantially higher than the $25 figure mentioned in the NPRM; many urged a figure higher than $250. These commenters and others requested the Department to exclude from the aggregate amount ''hospitality gifts'' of nominal value, variously defined by particular commenters. Several commenters urged the Department to adopt a two-tier approach similar to Federal conflict of interest disclosure requirements for Office of Government Ethics (OGE) Form 450 and Form SF 278. In general, these commenters recommended that gifts totaling $250 or less from any one source need not be reported and that ''insubstantial'' gifts (ranging from $75 to $250) should not be included in determining whether the $250 threshold has been met. Otherwise, many commenters argued, the recordkeeping burden would be unreasonable because union officials would have to track every cup of coffee and every lunch to determine whether and when the $250 level was met. The general rule for employees covered by the Federal disclosure rules is that they are prohibited from accepting any gift because of their government position. Examples of prohibited gifts are those that come from persons or firms that have contracts, grants, or other business with the employee's agency, or are seeking such contracts, grants or other business. These employees are also prohibited from accepting gifts from entities that are either regulated by the employee's agency or may be affected by the performance of the employee's duties. An exception to this general rule applies to unsolicited non-cash gifts of $20 or less up to a maximum of $50 per year from a single source. 5 CFR 2635.204(a).

The Department believes that, by setting the threshold at $250 and providing that payments or gifts valued at $20 or less need not be included in determining whether the $250 threshold has been met, it has achieved the appropriate balance between ensuring transparency of potential conflicts and minimizing the reporting burden. This two-tier approach has precedent in the Federal employee disclosure regime. By excluding expenses of $20 or less from the $250 computation, the Department substantially reduces the burden associated with aggregating gifts or payments from a particular employer or business. There will be no need to keep records of coffee and pastry service, modest lunches, or similar ''hospitality gifts.''

Some commenters expressed the concern that requiring large numbers of reports on relatively small amounts of payments ''buries'' from view reports of greater value. The Department believes this fear is unfounded, especially in light of the $250 aggregate threshold established by today's rule. Even at a much lower figure, the number of reports of interest to a particular union member would constitute only a small fraction of the total number of reports filed and these reports could easily be culled electronically from the other reports.

The Department does not find persuasive the comments urging that payments higher than $20 should be excluded from the $250 reporting threshold. While there may be merit to some arguments urging a somewhat higher or lower amount, a $20 initial threshold minimizes reporting burden and ensures disclosure of financial relationships that may pose a conflict of interest. The Department, however, rejects the suggestion that items valued substantially more than $20 should go unreported. While in the Department's view, a single gift of $75 or even $100 is unlikely to be a matter of substantial concern to some members, even a few gifts of this magnitude would be of concern to most members. And almost every member would be concerned if a union official received several gifts of such value. By setting the amount at $100, for example, a union official could receive a respectable set of golf clubs, gloves, shoes, and other golfing attire through a series of $100 gifts without filing a Form LM–30. Most union members and members of the public, the Department believes, would view the gift of a complete set of clubs or other serial or packaged gifts as posing a potential conflict of interest between the union duties of the recipient and matters affecting the donor of the gifts.

The purpose of the de minimis exception is to minimize reporting burden. A filer may not use the exception to hide the receipt of a series of payments or gifts that are purposely set at $20 or less to avoid reaching the $250 reporting threshold. For example, a filer would have to report his or her receipt of individual tickets worth $20 or less to all of a professional baseball team's home games that are provided before each game rather than given as a complete package at the start of the season. The Department is sensitive to the concern that by setting the de minimis level at $250 today's rule could lead to the unintended consequence that some union officials will choose not to attend some widely-attended gatherings of value to them and their union's members. However, the Department also believes that reporting attendance at legitimate educational gatherings will also benefit the filer by showing their union members that the filer is taking steps to learn and advance the skills needed for their position. As stated above, the Department's authority to fashion a de minimis exception is constrained by the language of section 202. In the Department's view, however, the Department is within the bounds of its discretion to craft a limited reporting exception for such gatherings. Thus, the Department concludes that no union official need report their attendance at one or two such gatherings annually provided the expense incurred by the employer or business holding the gathering is $125 or less per expected attendee. The Department believes this change meets the concern of some commenters that union officials and trustees would be discouraged from attending educational seminars related to their union or trustee duties if they were required to report such activities. The Department considered, but rejected as impractical and perhaps beyond the Department's authority, a broader qualitative exception for meetings. None of the comments provided a ready basis for distinguishing between the purposes of various meetings that would reduce the reporting burden without impeding the disclosure of information relevant to assessing the potential conflict of interest from the value of attendance at several meetings or a single meeting of significant economic value to a union official present at the meeting.

D. Why Reporting Exceptions Permitted Under the Old Rule Have Been Eliminated or Modified To Provide More Information to Union Members

In the NPRM, the Department proposed the elimination of regulatory exceptions from the reporting requirements of section 202. One of these exceptions relates to the reporting by union officials of payments received under ''union-leave'' and ''no-docking'' policies; this exception is discussed separately. Although each exception is based on statutory language excepting the reporting of specific interests in or payments from an employer, the old Form LM–30 and its instructions apply these specific exceptions more generally to other matters that otherwise would have to be reported. As discussed in the NPRM, by administratively enlarging exceptions to reporting, the Department deprived union members of information

to which they were entitled under particular provisions of section 202. 70 FR 51175–78. The Department also proposed to eliminate a provision in its regulations, 29 CFR 404.4, which now states that the Department may require a union official to file a special report in situations where the administrative exceptions departed from the language of the statute. 70 FR 51178.

Under today's rule, as discussed below, the Department generally has adopted the proposals set forth in the NPRM to narrow the scope of these exceptions in order to better adhere to the statutory design. The Department also has eliminated the ''special reports'' language as unnecessary given the Department's express statutory mandate to conduct investigations under the Act.

1. Regular Course of Business Exception

Section 202(a)(5) of the LMRDA requires union officials to report any ''business transaction or arrangement'' with an employer whose employees the union represents or is actively seeking to represent. This section excepts from reporting two categories of transactions and arrangements: (1) Payments and benefits received as a bona fide employee of an employer whose employees the official's union represents or is actively seeking to represent; and (2) *''purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer.''* (Emphasis added). Sections 202(a)(1) and 202(a)(2) require union officers and employees to report payments from and other financial interests with such an employer. These sections do not contain this ''employee discount in the regular course of business'' exception, but the prior instructions applied it to financial matters covered by these subsections.

The Department adopts its proposal to limit the exception to financial matters reportable under section 202(a)(5). Thus, this exception will no longer apply to matters reportable under sections 202(a)(1) or 202(a)(2). It will not be applicable to (1) Holdings in an employer whose employees the union represents or is actively seeking to represent, (2) transactions in such holdings, (3) loans to or from such employer, and (4) income or any other benefit with monetary value (including reimbursed expenses) received from such an employer.

The Department received a few comments specific to this issue. One commenter supported the proposal to remove the exception, while two others objected to the proposal. One commenter based its support of the Department's proposal in the statutory language, noting that the ''regular course of business/employee discount'' exception is found only in section 202(a)(5) and not in sections 202(a)(1) and 202(a)(2). Therefore, this commenter contended, ''the current instructions create an exception for transactions under the latter two subsections that Congress did not envision.'' Numerous commenters objected generally to reporting related to the routine conduct of business, especially in connection with business conducted between section 3(l) trusts and service providers, including financial institutions. For example, one commenter asserted that the Department should not focus on ''routine business transactions conducted at arms length,'' but rather on those transactions that may be evidence of a potential conflict of interest.

One commenter offered a general argument against reporting of what it considers to be routine business transactions, including payments or loans to union officials. The commenter argued, in effect, that the proviso in section 202(a)(6), excepting reporting on ''payments of the kinds referred to in section 302(c) of the Labor Management Relations Act,'' should be applied broadly to all the subsections of section 202(a). Thus, this commenter argues implicitly that section 302(c) of the Labor Management Relations Act excepts from the section's criminal prohibition the payment of money or other thing of value ''with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business.'' 29 U.S.C. 186(c)(3). This commenter apparently believes that Congress also intended to exclude such payments from any reporting by union officials, notwithstanding the absence of such exception from subsections (a)(1)–(5) of section 202.

The Department disagrees that Congress intended the section 302(c) proviso in section 202(a)(6) to supplant the specific reporting obligations prescribed by the other five subsections of section 202(a), several which have unique exceptions narrowly applicable to the types of payments for which reports must be filed. The Department concludes that this construction is contrary to the plain language of the Act, and would render superfluous specific exclusions Congress crafted for particular types of payments. It would make no sense for Congress to craft a disclosure-specific statute with explicit reporting obligations and explicit exceptions and, at the same time, undo those specific provisions by a vague reference to another statute.

Union members have an interest in knowing of such holdings, transactions in holdings, loans, and income so they can evaluate whether each is significant enough, or of such a nature, to constitute a conflict of interest. The statutory exemption for payments and other benefits received as a bona fide employee of the employer is sufficient to exempt all the ordinary payments received as part of an employment relationship; the exemption in the current form, the Department finds, may provide a means to exclude other items that present conflicts of interest for union officials. For example, a union officer who receives income from the employer of union members for contract work could, at least arguably, avoid disclosing the payment by relying on this exemption. A union employee who purchases certain types of ownership interests could avoid disclosing the holding by relying on this exemption. A union official with an employer as a client has a conflict between personal interests and union loyalties, as does an official with an ownership interest in the employer. The change is consistent with the plain language of the statute, which applies this exception only to financial matters reportable under section 202(a)(5), not to section 202(a)(1) or 202(a)(2). The elimination of this exemption will result in more detailed and transparent reporting of financial information that union members may find helpful in determining whether their union's officers and employees are subject to financial pressures inconsistent with their responsibilities to the union and its members.

2. Bona Fide Employee Exception for Transactions With an Employer Whose Employees the Official's Union Represents or Is Actively Seeking To Represent

Sections 202(a)(1) and 202(a)(5) include language that specifically excepts ''payments and other benefits received as a bona fide employee of such employer'' from reporting. Under the old Form LM–30 and the instructions, however, this exception also was applied to matters for which reports were required under section 202(a)(2). Section 202(a)(2) requires union officials to report: (1) Transactions in holdings in an employer whose employees the union represents or is actively seeking to represent, and (2) loans to or from such an employer. Section 202(a)(2) does not include the ''bona fide employee'' exception.

The Department proposed to limit this exception only to reports due under sections 202(a)(1) and 202(a)(5), thereby eliminating the old exception for reports (on payments other than loans) due under section 202(a)(2). *See* 70 FR 51176–78, 51188. The Department received only one comment on this issue. It supported the proposal. Today's rule adopts the proposal, which is consistent with the plain language of the statute. A union official's decision to purchase or divest holdings in the employer could be of significant importance to union members and its reporting would prevent a possible conflict from escaping the scrutiny of members. As noted in the proposal, sales and purchases of an ownership interest in the employer are unlikely to constitute payments received as a bona fide employee; by eliminating this exception, a union official must now, for example, report payments made to officials as stock options where the employer buys back such options.

3. Exception for Bona Fide Loans or Interest From a Banking Institution

Section 202(a)(6) requires union officials to report ''any payment of money or other thing of value (including reimbursed expenses)'' received from ''any employer'' or any labor relations consultant to an employer. Under the old Form LM–30 and its instructions, the following are excepted from reporting: ''[B]ona fide loans, interest or dividends from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions.'' *See* Part C (ii) of the instructions to the old form. The Department proposed to eliminate the exemption.

Upon review of the comments, the Department *retains* the general exception but limits its scope because the Department has determined that the exception is too broad. Under the final rule, this exception will not apply to ''national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions that constitute a 'trust in which your labor organization is interested'.''

The Department received two comments in support of the proposal to eliminate this exception *in toto*. One commenter argued that the exception in the Form LM–30 instructions had no statutory basis, and that its existence tended to shield transactions that should be reported. The Department received four comments opposed to this proposal. These commenters stated that the elimination of this exception would burden union officers and employees, employers, and the Department; interfere with the privacy of the employees as well as the financial institutions by revealing confidential information; and fail to advance the goal of disclosing potential conflicts of interest. One commenter argued that the Department's proposal to eliminate the exception was an ''unwarranted intrusion on privacy,'' while providing only minimal benefit to union members. This commenter questioned why the public should be made aware of a ''bona fide mortgage'' from a financial institution unrelated to the union and given on terms generally offered to the public. Most mortgages along with other encumbrances on property must be recorded with a government office, typically at the county level, to be effective. These filings are publicly available and as such the insinuation that the Department is now making public information that was secret is unfounded. Further, the vast majority of these loans will be made on neutral criteria not related to the filer's status with a labor organization and as such will not be reportable. The rare instance where the filer's status with the labor organization is a criterion for issuance of the loan is exactly the type of situation where a possible conflict of interest exists. As such, reporting on transactions of this type is warranted.

Another commenter recommended that the Department only require reporting of loans made to employees in whole or in part due to their union status. The commenter expressed concern over the volume and diversity of new transactions that would come under the scope of the new Form LM–30, such as payroll advances, and the burdensome recordkeeping requirements that would accompany the elimination of this exception. One commenter argued that the ''overwhelming majority'' of the estimated 206,000 union officers and employees would now have to report under the new Form LM–30.

The Department has concluded that the exception as drawn in the instructions to the old Form LM–30 is too broad. While there is a strong argument that elimination of the exception would best serve the disclosure purposes of the Act, the total burden associated with requiring reports on payments received from all financial institutions would be considerable. Loans, interest, and dividends earned during the regular course of business with a bona fide financial institution are among the most common financial transactions undertaken by individuals. For example, without this exception, a union official would have to report each mortgage or other bank loan received from any financial institution in competition with a financial institution that deals with the official's union. A union official would first have to identify all the financial transactions with the official, his or her spouse or minor children and then look at the corresponding institutions to see whether they do business with the official's union, or compete with those that deal with the official's union. In the Department's view, the burden would outweigh the value of the additional information disclosed.

The current exception has kept improper transactions from being disclosed. As noted in the NPRM, the Department only belatedly became aware of a situation where a credit union controlled by a local union made 61% of its loans to four of its loan officers, three of whom were officers of the local. 70 FR 51177. If the officials had been required to report these loans, the members would have learned that their credit union was making loans for reasons related to union status, not on a borrower's ability to repay the debt, which posed a risk to the credit union by failing to spread the lending risk more broadly. In short, the members would have been able to determine whether the officials had placed their own personal interests above the union's interest in the credit union that it ostensibly controlled. By eliminating the exception for institutions that are trusts, valuable information regarding potential conflicts of interest will be publicly disclosed.

While the Department recognizes that an official's interest in preserving the confidentiality of such information may be considerable; nonetheless, this interest is outweighed by the need for union members and the public to know of transactions between union officials and related organizations. Thus, here the balance tips in favor of disclosure in the limited situations proposed by today's rule.

This exception applies, and has always applied, only to reports due under section 202(a)(6). Where the financial institution is an employer whose employees the filer's union represents or is actively seeking to represent, the exception would not apply. Nor would it apply where the financial institution is a business that buys, sells, leases or otherwise deals with the union, a trust in which the union is interested, or in substantial part with the employer of the union members.

One commenter ''strongly'' disagreed with the proposal, arguing that it would impose a reporting obligation on union

officials, even though financial institutions are expressly relieved from reporting such loans by section 203(a)(1) of the Act. Section 203(a)(1) specifically exempts ''payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution.'' The commenter pointed out the potential ''reporting inequities'' of the Department's proposal and argued that the inconsistent reporting obligation would make comparative analysis of Forms LM–10 and LM–30 impossible. The Department acknowledges that by modifying the exception, union officials will be required to report on matters about which the financial institutions themselves have no LMRDA reporting responsibility. However, the commenter overlooked the limited scope of the divergence. Section 203(a)(1)'s exception for ''credit institutions'' does not extend to any payments or loans made by such institutions to persuade or otherwise interfere with employee collective bargaining or representation rights. *See* 29 U.S.C. 203(a)(2) and (3). Furthermore, strong policy reasons exist for requiring union officials to report their arrangements with financial institutions in the limited circumstances required by today's rule.

4. Exceptions Relating to Stocks

The Department invited comments about whether to remove or retain the administratively created exception related to the reporting of holdings, transactions or receipts of income from securities that do not meet the registration requirements of the Act, are of insubstantial value, and occur under terms unrelated to an employee's status in a labor organization. The old rule states: ''For purposes of this exclusion, holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial.'' 70 FR 51176.

On a related issue, the Department sought comments on whether to retain the distinction between, on the one hand, securities traded on a registered national stock exchange and, on the other hand, securities that while traded on a high volume exchange, are not traded on a *registered* national exchange (as was the case with NASDAQ until recently). 70 FR 51177. Section 202(b) provides that a union official is not required ''to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934, in shares in an investment company registered under the Investment Company Act of 1940, or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935, or to report any income derived therefrom.'' The NPRM listed all of the stock exchanges currently registered under the Securities and Exchange Act of 1934: ''The American Stock Exchange, Chicago Board Options Stock Exchange, International Securities Exchange, National Stock Exchange (formerly the Cincinnati Stock Exchange), New York Stock Exchange, Pacific Exchange, and Philadelphia Stock Exchange.'' The proposal noted that NASDAQ was not registered as a national securities exchange.

Two commenters favored the complete elimination of the insubstantiality exception for securities not meeting the registration requirements. One of these commenters argued that the insubstantiality exception flies in the face of clear statutory intent to require the reporting of all stock transactions apart from bona fide investments in securities traded on a national securities exchange. The other commenter argued that union members, not this Department, should determine what is and is not insubstantial. One commenter also supported the exception for small holdings of unregistered securities as long as the holdings are too small to give rise to a controlling interest. Focusing on the comprehensibility of the exceptions to ''end-user'' union officials and members, another commenter stated that the ''$1,000/100'' and ''publicly-traded securities'' exceptions are specific and easily understood. By contrast, all of the union commenters, along with a labor educator, favored the exception and supported its broadening.

The Department believes that the $1,000/$100 exception is warranted, and therefore it is *retained* in today's rule. Where the value of securities and any interest thereon is less than these threshold amounts, there is little risk of potential conflict between an official's personal interests and his or her duties to the union. Moreover, any such risk is outweighed by the burden associated with such reporting. Thus, for these and the reasons already expressed more generally herein on the application of the de minimis principle to the reporting obligation, today's rule retains this limited reporting exception.

One commenter objected to maintaining the exception for stock traded on other than a registered, national stock exchange on the ground that the statute does not provide for such an exception. Another commenter argued that there should be no exceptions for transactions involving the stock of the employer, regardless of whether the stock is traded on a registered securities exchange. This commenter expressed concern about the potential for insider trading by union officials who have knowledge about the position of the company that the rank and file members do not have. In support of his position, the commenter provides an example in which members of a union executive board sell stock options in a national exchange or private exchange shortly before authorizing a strike against the company that issued the stock.

Other commenters argued that the existing exception for securities traded on a registered, national stock exchange should be continued and extended to cover stock transactions for shares traded on NASDAQ. All of the union commenters, along with a labor educator, favored the exception and supported broadening it. A commenter supported maintaining the exception for stock that is held in a company unrelated to the filer's labor organization because, in its view, there is no potential for a conflict of interest. In support of their position, they argued that the LMRDA's legislative history demonstrates that Congress did not want to burden officials with reporting holdings of publicly traded or regulated stocks ''because of the unlikelihood that such holdings will amount to a substantial or controlling interest * * * in the company in question. The argument follows that because NASDAQ securities are publicly regulated and publicly traded, they fall within the purview of what Congress sought to exempt from reporting under section 202(b). One commenter illustrated its position with the different reporting requirements that would apply if a union official owned both Gateway and Dell stock: the Dell stock (traded on NASDAQ) would be reported, whereas the Gateway stock (traded on the NYSE) would not be reported. According to this commenter, there is no conflict of interest in either instance, and accordingly neither transaction should be reported. Another commenter noted that when the LMRDA was enacted in 1959, the shares of large corporations were exclusively traded on registered exchanges. It explains that now, however, the shares of many of those same large corporations are traded on the NASDAQ and that shares traded on NASDAQ are subject to Federal registration requirements.

The Department *retains* the rule set forth in the instructions to the old rule, continuing the obligation of union officials to report transactions with any

exchange unless and until they meet the requirements embodied in section 202(b). As a pure matter of policy, the argument for adding securities traded on a highly regulated, albeit ''unregistered,'' market to the general exception for stock traded on a registered, national stock exchange may have merit. However, such argument founders on the plain language used by Congress to craft the exception for securities traded on a registered exchange as provided in the statute. By conditioning a reporting exception on registration, Congress obviously considered whether unregistered stocks should be similarly exempted and decided against it. Similarly, the statutory language prevents the Department from adopting a rule, as suggested by one commenter, to require officials to report their holdings in such securities that he or she has purchased in a company whose employees the official's union represents or is actively seeking to represent.

Although the commenters have demonstrated that the exception crafted by Congress, differentiating between certain kinds of stock depending upon how they are traded, may lead to some perceived anomalies, they do not show that this reporting obligation will impose any undue burden on filers. Furthermore, on July 15, 2006, the SEC approved NASDAQ's application for registration as a national securities exchange, effective July 31, 2006. In announcing its decision, the SEC stated that the ''vast majority'' of the companies listed on NASDAQ have previously registered their securities under the Exchange Act. Press Release, SEC (July 31, 2006), available at *http://www.sec.gov/news/press/2006/2006–127.htm* (last visited on Nov. 21, 2006). Thus, under today's rule, the exception provided by section 202(b) applies to registered stocks traded on NASDAQ; and the instructions have been revised to reflect this change. As some of the commenters suggested, the distinction between highly regulated stocks that are traded on a national, but unregistered exchange, and those traded on a registered national exchange is not immediately apparent to many filers, particularly insofar as NASDAQ-traded securities were concerned. The Department believes that its proposed definition of ''publicly-traded securities'' (albeit something of a misnomer in that registration of a national exchange, not ''public trading,'' is the distinguishing characteristic for reporting purposes) accurately set forth the statutory reporting obligation. At the same time, however, the change in the registration status of NASDAQ has largely eliminated the need for a lengthy discussion of this point in the instructions. For this reason, the final instructions more closely follow the abbreviated discussion of this point in the current instructions, without the need for a separate definition of ''publicly-traded securities'' or an equivalent term.

5. Revision of Special Report Language

As noted, the old Form LM–30 administratively excepts union officials from reporting various matters that otherwise would have to be reported under the particular subsections of section 202(a). A special report was intended to be used to obtain such information about such unreported matters upon demand of the Department. *See* 29 CFR 404.4. The Department proposed to delete the special report provision.

At the time the Form LM–30 was created, the Department apparently believed that more complete reporting, consistent with the reporting requirements of section 202, could be realized through an ad hoc special report that could be selectively required by the Department. *See* 29 CFR 404.4. As discussed in the NPRM, these reports would allow the Department to require the disclosure of the information that was exempted from disclosure by operation of the administrative exceptions. No procedures were established, however, to identify the circumstances for which a special report would be required; and apparently the Department has never requested a union official to provide a special report. As noted in the NPRM, the elimination of the special report provision does not diminish the Department's authority to assess each Form LM–30 report for sufficiency, require amended reports, and to commence investigations where it is necessary to determine whether any person has or is about to violate any provision of the Act. 29 U.S.C. 440, 521.

E. Why Union Officials, as a General Rule, Must Report Payments Received as Members of a Company's Board of Directors

If a union official serves as a director for an employer and receives compensation or reimbursement for attendance at meetings, the official must report such payments. Such payments may not have been reported on the old Form LM–30 because of an official's reliance on an earlier opinion by the Department on this issue. In the NPRM, the proposed instructions provided the following example of a transaction to be reported under section 202(a)(4):

> You are a national union president and a trustee of a jointly administered health care trust that insures union members through an insurance company. Premiums for coverage are paid by the trust to the insurance company. You are a member of the board of directors of the health insurance company, which pays you an annual fee and reimburses expenses for your attendance at board meetings. * * * As the insurance company is doing business with a trust in which your union is interested, you must report your annual fee and reimbursed expenses under this subsection. The dealings between the health insurance company and the trust must also be reported.

70 FR 51215.

The Department only received one comment on this point. The commenter opposed the proposal, arguing that the Department should confirm its 1986 opinion that directors' fees paid to union officers serving on a corporate board need not be reported ''so long as the corporation pays the union officer/director at the same rate it pays the other directors, for the same services.'' The opposition was based on the commenter's broader premise that Congress intended to generally except any payments to union officials that are made in the regular course of business. The Department disagrees.

In the commenter's view, the old Form LM–30, in effect, applies language in section 202(a)(5)—excepting from reporting certain transactions involving the ''purchases and sales of goods or services in the regular course of business at prices generally available to any employee of [the] employer'' who sold the goods or service—to modify generally the reporting obligations under section 202. The commenter argued that the instructions to the old Form LM–30 also apply, in effect, language in section 202(a)(6)—excepting from reporting certain payments ''of the kinds referred to in section 302(c) of the Labor Management Relations Act''—to modify generally the reporting obligations of section 202. The commenter, in essence, asserts that the instructions to the old form, like the 1986 opinion on directors' fees, which draws on similar language in section 302(c), properly effectuate the intent of Congress and therefore should be preserved. The commenter further asserts that there is no justification for additional recordkeeping and reporting if the union representatives are being treated the same as their fellow directors on a corporate board.

The Department disagrees with this commenter's opposition to this reporting requirement. The commenter's reference to the 1986 opinion on directors' fees refers to a letter by a senior Department official responding to

a request for an opinion concerning directors' fees paid to union officers serving on a corporate board. The official concluded that ''so long as the corporation pays the union officer/director at the same rate that it pays the other directors, for the same services,'' the payments are not reportable. The opinion letter reversed a 1983 determination by another senior Department official that the fees must be reported. After again carefully reviewing this question and the example discussed above in the NPRM, the Department concludes that the NPRM correctly illustrated a payment that is required under section 202(a)(4) (a business dealing directly or indirectly with an official's union) and section 404.2 of the Department's regulations on reporting by union officials (a business dealing with a section 3(l) trust that involves the official's union).

If a union official serves on an employer's board of directors and receives a fee, the employer has made a payment to a union official. Such payments are typically not of the kind referred to in section 302(c) because the exception concerning compensation to employees is not applicable unless the director is employed by the company on whose board he or she sits, an atypical status for a corporate director. Further, directors' fees are not an article or commodity, and it is questionable whether such payments for these types of personal services can be said to have a prevailing market price. Significantly, these payments raise potential questions of a conflict of interest, due to the employer's role in selecting the directors and setting the amount of the fee. A union member has an interest in knowing whether decisions made by his or her union officials may have been affected by the official's competing personal financial interest. The commenter's contention that no report should be filed where union-affiliated directors receive the same compensation as non-union directors is not persuasive. The LMRDA's reach extends only to regulating the conduct of union officials, not to setting general standards of corporate governance.

Thus, under today's rule, no separate reporting exception is made for directors' fees. A union official must report his or her receipt of directors' fees when made by an employer whose employees the payment recipient's union represents or is actively seeking to represent. Sections 202(a)(1), (2) and (5). Such fees will also be reportable when made by a business, a substantial part of which consists of buying, selling, or otherwise dealing with an employer whose employees the payment recipient's union represents or is actively seeking to represent, or any part of which consists of buying, selling, or otherwise dealing with the recipient's union, or a trust in which the recipient's union is interested. Section 202(a)(4). Finally, as discussed in greater detail, the official must report his or her receipt of directors' fees from an employer defined by this rule under 202(a)(6) including an employer in competition with an employer whose employees the payment recipient's union represents or is actively seeking to represent.

F. Why Officers of International, National, and Intermediate Labor Unions, in Addition to Their Obligation to Report Payments and Other Financial Benefits Received From Businesses and Employers That Have a Direct Relationship With the Component of the Union to Which They are Elected or Appointed, Must Also Report Payments and Other Financial Benefits Received From Businesses and Employers Whose Relationship Is With a Subordinate Body of Their Union

In the NPRM, the Department proposed to clarify the obligation of a union official to report his or her interests in and payments (and those of the official's spouse and minor children) from employers and businesses that have a relationship with the official's union, albeit at a different hierarchical level than the level at which the official serves as an officer or employee. Under sections 202(a)(1) through (a)(5), union officers and employees must report payments from, holdings in, or transactions with: (1) An employer whose employees the filer's labor organization represents or is actively seeking to represent; (2) a business a substantial part of which consists of dealing with an employer whose employees the filer's labor organization represents or is actively seeking to represent; or (3) a business that deals with the filer's labor organization or a trust in which the filer's labor organization is interested. The scope of the reporting obligation thus depends on what organization constitutes the filer's ''labor organization.'' As explained in the NPRM, many labor organizations consist of a three-tier hierarchy, such as a local labor organization, an intermediate body, and a national or international labor organization. 70 FR 51182. The NPRM explained that the Department's proposal clarifies the reach of the disclosure obligation to include conflicts that arise between a union official and his or her responsibility to both the immediate unit of the union that he or she serves and any of its parent or subordinate bodies. The NPRM noted that the *LMRDA Manual* provides that an officer at the highest tier of a three-tier labor organization must report payments from businesses that deal with employers whose employees are represented by a subordinate union local. ''An international union officer must report his income from [a] business [that has dealings with an employer whose employees a local union represents] even though he is not an officer of the local which represents the employees of the business, and even though his duties as an international officer do not include representation activities.'' *LMRDA Manual,* § 241.100. The proposed rulemaking noted that members of an LMRDA-covered labor organization would have an interest in knowing if a subordinate labor organization purchases goods or services from a business entity owned by a higher level labor organization officer because local union personnel may choose to deal with this business entity out of fear of alienating the higher level officer. 70 FR 51183.

The old instructions are silent about the obligation of an officer or employee to report interests or income from businesses that have a relationship with parent or subordinate labor organizations of the filer's immediate union body, *i.e.*, the particular component of the official's union in which he or she holds office or is employed. *See* 29 U.S.C. 432(a)(4). In the same way, the instructions are silent as to whether labor unions affiliated with that of the union officer or employee are encompassed by the phrase ''an employer whose employees *such labor organization represents or is actively seeking to represent.*'' *See* 29 U.S.C. 202(a)(1), (2), (5) (emphasis added). The Department proposed to establish a rule requiring a union official to report payments he or she received from a business or employer that had a relationship with any component of the overall union hierarchy to which the official belongs or whose employees any components of that union represent or are actively seeking to represent. To accomplish this result, the Department proposed to define ''labor organization,'' for purposes of Form LM–30 reporting as ''the local, intermediate, or national or international labor organization that employed the filer, or in which the filer held office, during the reporting period, and any parent or subordinate labor organization of the filer's labor organization.'' 70 FR 51174.

Commenters were divided on the proposal, with most opposed to what

they viewed as an expanded reporting obligation. Representative of the comments favoring the proposal is the following: Union members deserve to know whether union officers or employees ''receive benefits from businesses whose employees are represented by, or are actively seeking to be represented by, a parent or subordinate union, to form an opinion about whether a conflict of interests exists.'' Representative of the opposing viewpoint is the following: Union officers do not have the resources to ''trace the repercussions of each potentially reportable interest * * * up or down the organizational hierarchy and throughout the national marketplace.'' As discussed below, the Department has decided to modify the reporting obligation by excluding local officials from reporting financial interests in businesses and employers that are involved with higher level components of their union's hierarchy and clarifying and reducing the reporting obligation of officials of national, international, and intermediate level unions. Thus, the Department has narrowed the reporting obligation from that proposed in the NPRM by adopting the existing ''top-down'' approach. *See LMRDA Manual,* § 241.100.

The Department adopts a revised definition of ''labor organization,'' which reads in the instructions as follows:

Labor organization means the local, intermediate, or national or international labor organization that employed the filer, or in which the filer held office, during the reporting period, and, in the case of a national or international union officer or an intermediate union officer, any subordinate labor organization of the officer's labor organization. Item 6 of the Form LM–30 identifies the relationships between employers and ''your labor organization'' or ''your union'' that trigger a reporting requirement. Item 7 of the Form LM–30 identifies the direct and indirect relationships between a business (such as a goods vendor or a service provider) and ''your labor organization'' that trigger a reporting requirement. The terms ''your labor organization'' and ''your union'' mean:

a. *For officers and employees of a local labor organization.*

Your local labor organization.

b. *For officers of an international or national labor organization.*

Your national or international labor organization and all of its affiliated intermediate bodies and all of its affiliated local labor organizations.

But note: A national or international union officer does not have to report, payments from, or interests in businesses that deal with employers represented by, or actively being organized by, any lower level of the officer's labor organization. Such officers are also not required to report payments and other financial benefits received by their spouses or minor children as bona fide employees of a business or employer involved with a lower level of the officer's labor organization.

c. *For employees of a national or international labor organization.*

Your national or international labor organization.

d. *For officers of intermediate bodies.*

Your intermediate body and all of its affiliated local labor organizations.

But note: An officer of an intermediate body does not have to report payments from or interests in businesses that deal with employers represented by, or actively being organized by, any lower level of the officer's labor organization. Such officers are also not required to report payments and other financial benefits received by their spouses or minor children as bona fide employees of a business or employer involved with a lower level of the officer's labor organization.

e. *For employees of an intermediate body.*

Your intermediate body.

The first sentence of the definition is also adopted as part of the definitions section of the Department's regulations (to be codified as 29 CFR 404.1(f)). A summary of the principal comments on this issue and the Department's response to the comments follows.

Some commenters expressed a belief that the proposed definition is not supported by the statutory definition of ''labor organization'' at section 3(i). Instead, they argued that the term ''labor organization'' refers to the immediate labor organization of the filer, exclusive of any parent and subordinate entities. A commenter claimed support for its argument in the legislative history of the LMRDA, specifically the *Senate Report,* which discusses the conflict of interest that develops when a union officer is involved in collective bargaining with a business in which he or she has a financial interest. *Id.,* at 15, *reprinted in 1 Leg. History,* at 411. Some commenters argued that interests and payments that would be reported under the Department's proposal do not present conflicts of interest; one commenter explained that transactions involving parent and subordinate organizations are not reportable because the union officer is not bargaining on behalf of those organizations.

The Department is not persuaded that the language of the statute compels, or even that it can be best read to support, the conclusion that Congress intended to confine a union official's reporting obligation solely to the entity of a national or international union to which a particular union official is elected, appointed, or hired. As defined by the Act:

''Labor organization'' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms and conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a state or local central body.

Section 3(i); 29 U.S.C. 402(i). This definition, broad in scope, does not answer the question posed by the Department's proposal. Section 3(i) serves mostly a functional purpose, to distinguish labor organizations from other groups or associations to which employees may belong by focusing on the organization's purpose and activities to collectively represent the employees in their dealings with employers about matters affecting various aspects of its members' employment. Section 3(j) of the Act, 29 U.S.C. 402(j), albeit focused on the nexus between an organization and its effect on interstate commerce, is more helpful in discerning whether Congress proceeded upon a general premise that it was creating rights and obligations that would be specific to only a particular component of a larger organization, *i.e.*, legislating on a separate, component-by-component basis. If Congress had that intent, the Act should provide precise boundaries between entities that otherwise are often combined in everyday usage. The statute, however, does not contain such precision. Congress instead took an approach, consistent with the common understanding of the term ''labor organization'' and its flexible usage in which the existence and overlapping responsibilities of entities that constitute or comprise a labor organization are inferred unless otherwise indicated. Thus, Congress understood that a union engages in representation through various means, including certification, or through the employer's ''recognition or acting as the representative of employees.'' *Id.* This section also recognizes that the term ''labor organization'' includes a ''local or subordinate body'' to such an organization and a higher body of which it is part. See sections 3(j)(1) through 3(j)(5).

As section 3(j) recognizes, the term ''labor organization'' requires a flexible meaning, depending upon the particular context in which it is used. For example, while section 101 of the Act establishes a bill of rights conferring on ''every member'' of a labor organization ''equal rights and privileges within such organization,'' it obviously does not

create for every member of a national ''labor organization,'' the same rights as members of a particular component of the organization in voting for that component's officers, but it does confer such rights insofar as they are exercised within the ''larger organization.'' In contrast, section 104 takes a different approach; in imposing on a ''labor organization'' the duty to provide copies of collective bargaining agreements, it distinguishes between the particular duty ''in the case of a local labor organization'' and the duty ''in the case of a labor organization other than a local labor organization.'' This approach obviously contrasts with the approach taken by Congress in crafting the reporting obligation to file labor organization annual financial reports in section 201 of the Act. Although the filing obligation is cast in terms of ''each labor organization,'' the context makes clear that the obligation applies to the financial affairs of a particular component of a labor organization. With respect to section 202, the context does not make clear whether the obligation is limited to a particular component of the union or not. Each of the particular requirements may be applied to an official's ''immediate labor organization'' or the ''larger labor organization'' to which the official belongs. As discussed below, the Department believes that this ambiguity, based on its review of the statute's legislative history and public policy considerations, should be resolved in favor of disclosure. At the same time, as discussed below, the Department has taken into account the burden which such a reporting obligation may entail and has crafted a rule that achieves a balance between disclosure and undue burden.

Although some commenters apparently would argue that the language in section 202 evinces an intention to restrict the reporting obligation to the official's immediate union, this contention begs the question of what was intended by the referent, ''such labor organization,'' as used in that section. As explained above, the structure of the LMRDA does not compel nor even strongly suggest that intention. The Department believes that the disclosure purposes of the Act are best met by giving the term ''labor organization'' its broader reach in applying the reporting obligation. As discussed above, section 3(j) recognizes that representation of employees is exercised in different ways, not merely through a union component that holds ''certified'' status. Moreover, as the statute's legislative history and the Department's own experience bear out, national and international unions often exercise authority that affects subordinate bodies (and their members) in their relationship with employers even though a subordinate union holds the certification or recognition with the employer and may have retained formal authority over such matters. Given the broad reach of the term labor organization section 202's use of the term ''such'' in combination with ''labor organization'' does not qualify or restrict the reporting obligation.

The argument, in effect, that Congress intended to restrict a union official's reporting obligation to the particular component of the union he or she serves as an officer or employee also is belied by the legislative history of the LMRDA. As discussed in greater detail herein, the genesis of the LMRDA's reporting provisions was the conflicts of interest between the personal financial interests of national and international union officials and their duty to promote the interest of all the members of their union. The hearings of the McClellan Committee revealed numerous instances whereby such officials took actions to advance the interests of employers with whom they had obtained financial benefits or the officials' own personal financial interests, overriding local officials and the interests of these locals. *See Interim Report*, at 4–5, 69–70, 73–74, 85–86, 122–28, 130–31, 228, 230, 240–41, 250, 252, 262, 265–66, 298, 441–45; *The Enemy Within*, at 26, 94, 97–98, 104–06, 219–20. At the same time, the hearing did not show a reciprocal pattern whereby local officials were able to interject themselves into matters handled at higher levels of their union to advance the interests of an employer with whom the local official had a financial relationship.

Apart from the question of legal authority, several commenters expressed concern about the wisdom of the Department's proposal, suggesting that the information sought by the Department did not pose a conflict of interest and that, even if it did, the burden of reporting outweighed any benefit from obtaining the information. For example, a commenter asserted that filers will be confused by the requirements and many individuals will unintentionally fail to report transactions because ''they lack knowledge of any connection between the employer involved and the newly expanded 'labor organization' of which the individual is considered to be an officer or employee.''

The Department believes that union members have an interest in knowing if an international, national, or intermediate union officer receives payments and benefits from, or holds an ownership interest in, a business that deals with subordinate labor organizations or trusts in which these labor organizations are interested. The national or international officer could use his or her position to influence subordinate labor organizations to utilize the services of that business. Moreover, his or her financial interests in those businesses create the same potential for putting the official's personal financial interests above his or her duties to the union and its members. The proposed instructions include several examples of situations that would create a tension between a union official's duty to the ''larger union'' which the official serves and his or her own personal finances. *See* 70 FR 51189–91. Union members are entitled to this information in order to determine if their interests are best served where a union official has such financial ties. Without such disclosure, it is unlikely that a union member would be able to determine whether such payments reflected a ''cut'' of the union's funds that were advanced for a particular purchase or to disguise a payment for services rendered by the official in favor of an employer whose employees are represented by or may be the target of organizing by a subordinate union of the official's union. Such reporting also prevents circumvention or evasion of the Act's other reporting obligations. Requiring union officials to report such payments not only allows members to ''follow the money'' that otherwise would be identified in the union's Form LM–2, but also increases the likelihood that the employer making the payment also will comply with its own obligations under section 203 of the Act.

The concern about the conflicts between the personal financial interests of national and international officials and the interests of the union's members at all levels of the union underlies the Department's interpretation in the *LMRDA Manual*, at § 241.100, quoted above. After carefully considering the comments received on this point and reevaluating the legislative history, the Department has decided to impose the reporting obligation only on union officers who have dealings with businesses and employers that deal with components of the union *subordinate* to the level of the union which the official serves as an officer. In reaching this decision, the Department recognized that a much greater probability exists that an official with a position higher in the union hierarchy would be able to

wield influence on matters affecting a subordinate entity than the reverse situation, and that officials in higher positions are more readily able to obtain the information needed to meet this obligation than someone lower placed in the union hierarchy. For similar reasons, the Department has determined to limit the reporting obligation to the national or international union's *officers*; under today's rule, *employees* of the national or international union are not required to report payments or other financial interests that solely relate to subordinate entities of the international. Although section 202 would allow such reporting, the Department believes that potential conflicts are much more likely to arise where a payment or other financial interest is received by a union officer rather than by an employee. Furthermore, given the typically much larger number of employees than officers in national and international unions, the overall reporting burden of the rule is minimized by excepting employees from this particular reporting obligation. To further reduce the overall reporting burden, the Department has decided to except from reporting payments or other financial interests received, as a bona fide employee, by an officer's *spouse* or *minor child* in connection with dealings relating to subordinate components of the officer's union—payments that if made to the officer would be reportable. In this way, the rule also represents a reduction in burden from the prior rule, which required officers of international unions to report all payments to their spouses and minor children from vendors to subordinate locals.

As noted, the cited interpretation in the Department's *LMRDA Manual* only refers to officers of an international union (and by extension to national unions); however, the same concerns that require such officers to report possible conflicts involving subordinate components of the union counsel for requiring intermediate union officers to report possible conflicts involving locals or members that the intermediate union oversees. The same potential for conflicts and manipulation exists as to the relationship between intermediate union officers and businesses and employers dealing with local labor organizations. For example, local union personnel may choose to deal with a business entity owned or controlled in whole or in part by an intermediate or national or international union officer out of fear of alienating the higher level officer. 70 FR 51183.

Some commenters expressed concern that the Department's proposal would impose a substantial burden on union officials, requiring them to identify the ''spider web like'' connections between the various components of their union and the businesses and employers who are represented by any of the components or who any of the components is actively seeking to represent. As a general rule, local officials need only report payments from and other financial interests in businesses that sell products or services to the local or the local's section 3(l) trusts and employers whose employees are represented by the local or it is actively seeking to represent. The only other payments or interests that they must report are those from ''other employers'' that involve identified conflicts of interest. Thus, for reporting purposes, the local official need only identify those entities which he or she holds an interest in or receives a payment from and the relationship between these entities and the official's local.

The burden is potentially greater for an officer of an international, national, or intermediate labor organization, but so too, as evidenced by the McClellan Committee hearings discussed above, is the potential for a conflict between the officer's personal finances and his or her duty both to the component of the union in which he or she serves and its subordinate bodies. In the Department's view, when officers have an ownership interest in a business, they should either have personal knowledge of whether the business deals with subordinate labor organizations or the ability to obtain this information from the business. While the information may be more difficult to obtain where the officer is an employee of the entity in question, rather than an owner, any burden is outweighed by the benefit to union members of obtaining reports of their official's conflicts of interests.

G. Why Union Officials Must Report Payments Under Union-Leave and No-Docking Practices Subject to an Exception for Payments of 250 Hours or Less Per Year Made in Accordance With a Collective Bargaining Agreement

The Department proposed to require union officials to report payments received from employers for activities engaged in by the officials on the union's behalf. The most common payments by employers to individuals for conducting union business are made pursuant to ''union-leave'' or ''no-docking'' policies established in collective bargaining agreements or by customary practice. Under a union-leave policy, the employer continues the pay and benefits of an individual who works full time for a union. Under a no-docking policy, the employer permits individuals to devote portions of their day or work week to union business, such as processing grievances, with no loss of pay. The Department proposed that an officer or employee would have to report any payments for other than ''productive work,'' including union-leave and no-docking payments. The Department explained in its proposed definition of bona fide employee that these payments are not received as a bona fide employee of the employer; rather, they are received as a representative or employee of the union.

Under the instructions to the old Form LM–30, such payments are not reportable if they are: ''(a) Required by law or a bona fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such a collective bargaining agreement, or (c) made pursuant to a policy, custom, or practice with respect to employment in the establishment which the employer has adopted without regard to any holding by such employee of a position with a labor organization.'' See instructions, Part A, exception (iv); *see also LMRDA Manual* § 248.005. This section of the Manual, as noted in the NPRM, discusses the situation where a union officer ''is excused from his regular work to handle grievances and [is] paid his regular wages while handling grievances.'' The Manual states: ''Such a situation will not normally require reports from the union officer * * * on the theory that the employee officer is being paid for work performed of value to the employer who is interested in seeing to it that grievances are immediately adjusted.'' *LMRDA Manual,* § 248.005. See 70 FR 51181.

In the NPRM, the Department explained that the exception for payments made to a bona fide employee is required by statute, but that the statute is silent on the scope of the exception and specifically its applicability to ''union-leave,'' ''no-docking,'' and similar payments. The Department explained that under its proposal ''to be exempt from reporting, payments and other benefits received as a bona fide employee of the employer must be attributable to work performed for, and subject to the control of, the employer.''

The Department also stated that the *LMRDA Manual* improperly focused on whether the employer feels the money is well-spent; the correct issue is whether or not the official is a bona fide employee of the payer-employer during the time for which payment was made. In making its proposal, the Department

endorsed the statement: ''Union-leave,'' and ''no-docking'' payments may pose a conflict of interest since there are ''union negotiators who may agree to reduced benefits for the employees in exchange for financial support for the union.'' *Caterpillar* v. *UAW,* 107 F.3d 1052, 1060 (3d Cir. 1997) (Mansmann, J., dissenting). The Department noted its view that such payments should be disclosed to union members to enable them to evaluate the effect such payments might have on an official's performance of his or her duties to the union.

The Department adopts a revised definition of ''bona fide employee,'' as set forth in the next paragraph. Under today's rule, payments to a union officer or employee under a union-leave or no-docking arrangements set forth in a collective bargaining agreement are exempt from reporting unless payment is for greater than 250 hours of union work during the filer's fiscal year. Payments for union work totaling greater than 250 hours over the course of the filer's fiscal year are reportable as are any payments that are not made pursuant to arrangements set forth in a collective bargaining agreement.

The revised definition of ''bona fide employee'' reads:

Bona fide employee is an individual who performs work for, and subject to the control of, the employer.

Note: A payment received as a bona fide employee includes wages and employment benefits received for work performed for, and subject to the control of, the employer making the payment, as well as compensation for work previously performed, such as earned or accrued wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan, leave for jury duty, and all payments required by law.

Compensation received under a ''union-leave,'' or ''no-docking'' policy is not received as a bona fide employee of the employer making the payment. Under a union-leave policy, the employer continues the pay and benefits of an individual who works full time for a union. Under a no-docking policy, the employer permits individuals to devote portions of their day or workweek to union business, such as processing grievances, with no loss of pay. Such payments are received as an employee of the union *and thus, such payment must be reported by the union officer or employee unless they (1) totaled 250 or fewer hours during the filer's fiscal year and (2) were paid pursuant to a bona fide collective bargaining agreement. If a filer must report payments for union-leave or no-docking arrangements, the filer must enter the actual amount of compensation received for each hour of union work. If union-leave/no-docking payments are received from multiple employers, each such payment is to be considered separately to determine if the 250 hour threshold has been met. For purposes of Form LM–30, stewards receiving union-leave/no-docking payments from an employer or lost time payments from a labor organization are considered employees of the labor organization.*

The filer will report, separately, for each such employer the total payments received from the employer during the filer's fiscal year for the work performed on the union's behalf. The filer must also calculate the hourly monetary value of any fringe benefits received, and include this figure in the total.

The Department sought comments about any problems (or their absence) that have arisen by not requiring the reporting of payments received for union-leave, no-docking, and similar situations where a union official was paid for unproductive time, and whether or not there should be quantitative and/or qualitative distinctions to the disclosure obligation. Numerous comments, mostly opposed to the Department's proposal, were received on this question.

A few commenters favored the Department's proposed definition of bona fide employee and the reporting of payments received by a filer in union-leave or no-docking situations. One commenter maintained that any payments made by an employer as part of no-docking or union-leave arrangements could result in union officials agreeing to trade off contract provisions that might benefit the entire bargaining unit in exchange for privileges that would benefit only union officials. Another commenter stated that union members may be unaware of such payments. His statement was based on his knowledge that one of his union's officers received payment from the employer for union-related work and that such payment was not provided for in the collective bargaining agreement. He stated that other members of his union did not know that the official received these payments from the employer.

A large majority of the comments argued in favor of retaining the no-docking and union-leave exception. One commenter argued that the Department was abandoning a ''long-standing position without adequate justification.'' This commenter cited a lack of statutory authority or legislative history of Congressional intent to require union officials to report such payments, adding that any benefit from such disclosure was outweighed by the increased burden on filers. One commenter cited the Senate subcommittee hearings on the LMRDA to support its position that bargained no-docking and union-leave provisions were ''not forbidden by the AFL–CIO Code of ethical practices.'' *Hearings on Union Financial and Administrative Practices and Procedures before the Subcommittee on Labor and Public Welfare* (1958) (''*1958 Senate Hearings*''), at 349. Many of these commenters stressed the ''long-standing nature'' of such practices by employers, and they particularly emphasized how ''commonplace'' it is to find these provisions in collective bargaining agreements. One commenter asserted that at the time the LMRDA was enacted, just over half of all collective bargaining agreements involving manufacturers contained no-docking provisions. Several comments focused upon the Labor Management Relations Act and its interaction with the LMRDA, and argued that national labor policy is to encourage collective bargaining and a ''productive and harmonious workplace.'' They noted that no-docking and union-leave provisions have been found lawful by the courts when they are part of a collective bargaining agreement. Some commenters maintained that sections 202(a)(1) and 202(a)(5) are parallel to section 302 of the Labor Management Relations Act because each is concerned with the same kind of employer payments to union officials. They further argued that because section 302 has been interpreted by the courts to provide that ''payments pursuant to union-leave or no-docking arrangements are payments 'by reason of' an officer or employee's service as an employee of an employer,'' sections 202(a)(1) and 202(a)(5) should be similarly interpreted to allow for the time union officers spend on union-related work to be considered the work of bona fide employees. *See Caterpillar, Inc.,* 107 F.3d at 1052.

Another commenter suggested that work performed under no-docking and union-leave scenarios is indirectly, if not directly, performed for the employer, and further stated that such pay by an employer is analogous to other employee benefits such as sick leave, military leave, jury leave, and similar fringe benefits. Many commentators argued that union-leave, no-docking, and similar payments are usually made under the terms of a collective bargaining agreement and that such payments are usually tied to the same rate of pay that the union representative would receive under the agreement for time worked at his or her trade. One commentator argued, in effect, that there was no conflict because the union would pay for the representative's time if it was not provided for under the parties'

negotiated agreement. Many argued that there is nothing private or secretive about such payments because the terms of the payments are disclosed by reading the negotiated agreement and that union members know that their representatives are paid for the time involved in contract administration. Many commenters explained that union stewards and other union representatives perform valuable tasks for the union and the employer; they expressed the concern that by imposing a reporting obligation on such payments future attempts to establish or continue these roles would ''be chilled'' which, in turn, could lead to ''a breakdown in labor-management relations.'' A few commenters were concerned that if the Department's proposal was adopted employees would be less likely to volunteer for such positions and that union officials would be less likely to engage in workplace activities that are mutually beneficial to employers and unions.

Some comments suggested that requiring reporting of payments included in collective bargaining agreements would burden employers. In this regard, a commenter stated that if the Department's proposal is adopted in the final rule, unions will ''inevitably want to negotiate a practice pursuant to which employers track and code any no-docking time on pay records of union officers and employees.'' Another commented that the filing of ''numerous pointless reports'' would defeat the purpose of uncovering conflicts of interest.

Two commenters offered possible alternative arrangements to the existing exception. One recommended that if the Department established a reporting obligation it should not require reports for activities that are less than two hours in length. This commenter explained that thirty minutes or less is usually required to resolve a question under a parties' agreement and that meetings only rarely extend beyond two hours. By modifying the proposal in this way, it argued, the reporting burden would be minimal. The second commenter recommended that no reports be required of any payments unless they totaled $10,000 per year, an amount, it suggested, approximates about one-quarter of a union steward's annual pay.

The LMRDA does not specifically address either the legality of payments made under union-leave or no-docking arrangements or the obligation, if any, for union officials to report such payments under section 202 of the Act. None of the commenters have identified any legislative history that would shed any light on this specific question, and the Department's own research has uncovered none. As noted in the comments, the practice whereby a union official employed by an employer would receive his or her regular compensation while engaged in contract administration on behalf of the union was commonplace at the time the LMRDA was enacted. Contrary to the view of some that the absence of any discussion in the legislative history about this common practice evinces an intention to foreclose the reporting of such payments, the Department believes that this silence suggests that Congress simply did not consider such practices to be prohibited under the LMRDA or the Labor Management Relations Act and it did not express a view one way or another on the question of reportability. Moreover, the logic of the ''intention by silence'' argument would require the exclusion of a myriad of payments and other financial benefits received by union officials, such as ''featherbedding'' or ''no show'' payments, that were not explicitly identified by the language of section 202 or its legislative history, notwithstanding their inclusion under any reasonable reading of the section's language.

The Department has reviewed the case law that has developed from employer challenges to the legality of employer payments to union officials for work performed on the union's behalf. Most courts that have considered the question have found that such payments are not subject to criminal sanctions. For example, one court has stated that: ''we see nothing in the language or logic of section 302(c)(1) [of the Labor Management Relations Act] to suggest that Congress did not intend to allow an employer to grant a bona fide employee who is a union official paid time off in order that he may attend to union duties.'' *BASF Wyandotte Corp.* v. *Local 237, International Chemical Workers Union, Local 227*, 791 F.2d 1046, 1050 (2d Cir. 1986). *See also NLRB* v. *BASF Wyandotte Corp.*, 798 F.2d 849 (5th Cir. 1986) *quoting* H.R.Rep. No. 245, 80th Cong., 1st Sess. 28–29 (1947), ''At the time of enactment of § 302, Congress was well aware that ''[e]mployers generally * * * allow representatives of the union, without losing pay, to confer not only with the employer but as well with employees, and to transact other union business in the plant.'' *See Caterpillar, Inc.* v. *United Auto Workers*, 107 F.3d 1052, 1056 (3d Cir. 1997) (''By paying production workers for the part-time hours when they leave their regular duties, the company is paying for services not actually rendered for it, since those employees are already receiving their regular hourly wages and benefits for their production line work. Yet, no-docking arrangements have been consistently upheld by the courts as not in violation of § 302''). *See also Herrera* v. *United Auto Workers*, 73 F.3d 1056 (10th Cir. 1996) (adopting the reasoning of *Herrera* v. *United Auto Workers*, 858 F. Supp. 1529, 1546 (D. Kan. 1994)); *NLRB* v. *BASF Wyandotte Corp.*, 798 at 855–57. At the same time, however, the courts have signaled that they may be less inclined to treat payments for union-leave as beyond criminal sanction. *See Toth* v. *USX Corp.*, 883 F.2d 1297, 1305; *NLRB* v. *BASF Wyandotte Corp.*, 798 F.2d at 856 n. 4; *BASF Wyandotte Corp.* v. *Local 227*, 791 F.2d at 1050. None of the cases, however, address the different, but immediate, question of whether such payments, without regard to their lawfulness, should be excepted from reporting under section 202 of the Act.

The Department believes it significant that Congress in enacting the LMRDA uses the term ''bona fide employee'' only in section 202. Elsewhere it simply uses the term ''employee'' to designate a duty or obligation. See, *e.g.*, section 203(a), 203(e), section 502(a), section 503, section 609. Thus, the Department concludes that Congress intended to limit the exception to individuals who, in fact, are receiving payment for activities performed on the payer-employer's behalf. The Department's reading also is consistent with the meaning generally given ''employee'' under the common law, where ''control'' over an individual's work is the essential component of this status. *See, e.g., Nationwide Mut. Ins. Co.* v. *Darden*, 503 U.S. 318, 322–24 (1992).

The position adopted by the Department better comports with the language of the statute, and its inferred intended application, as discussed above, than an alternative reading that would interpret the term ''bona fide employee'' to include payments made by an employer for work performed on behalf of the union. Members have an interest in knowing the amount paid to union officers or employees by the employer for time spent on union business. This information would be significant for members in assessing the effectiveness of union officers and employees and in evaluating candidates for union office. For example, during collective bargaining negotiations, an official who enjoys union-leave or no-docking payments may agree, or feel pressure to agree, to reduced benefits for employees in exchange for increases in his or her employer payments as a

union representative. Similarly, where the continuation of the no-docking or union-leave practice in the agreement becomes a possible issue in negotiations, the official might be motivated, for personal reasons and contrary to the union's best interest, to maintain what the official views as a meaningful and beneficial diversion from work at his or her trade. It also is conceivable that a union official may feel pressure to forego the zealous pursuit of a grievance on behalf of a union member for fear of alienating the employer and jeopardizing the continued availability of these payments. In such instances, the union official's personal financial interests pose a clear conflict with the official's duty to the union and its members.

The Department received a number of comments indicating that union members already know that some of their union officials are paid by their employer for union-related activities. At the same time, other comments indicated that such information is not as common or as complete as suggested. Other comments received by the Department indicate that some payments occur without members' knowledge and that members have incomplete information about the amount of such payments. The Department agrees that many union members are aware that some of their officials receive employer payments for union-related activities, especially where such payments are expressly provided for in a collective bargaining agreement, but it seems doubtful that such members are aware of the magnitude of such payments and other members are likely unaware that this practice exists. As noted by one commenter, it is unlikely that members will be aware of such payments where the collective bargaining agreement is silent about the practice Reporting such payments will allow union members to assess whether this arrangement could tempt a union official to put his personal interests in maintaining the arrangement above his or her duty to the union. A union official may well prefer to spend his or her time engaged in contract administration duties than, for example, performing manual work on a construction site or the shop floor, or processing insurance claims.

The Department recognizes that a reporting requirement may impose some burden on union officials and employers that have ''union-leave'' and ''no-docking'' practices. The Department acknowledges that payments by employers to union representatives often will benefit both union members and employers. Thus, the Department has considered carefully the comments suggesting that its reporting proposal would interfere with the effectiveness of such arrangements.

The Department concludes that its proposal will not have a significant effect on labor-management relations practices. No commenter claimed that any single employer, never mind employers generally, authorizes payments to union officials without accounting at least informally for the time expended by such individuals in conducting union business. Employers no doubt have a wide range of practices in tracking such payments, with varying levels of scrutiny, but the rule adopted requires no special procedures or expense, and nothing any more burdensome than keeping a log of the amount of time expended and compensation received while on union business paid by the employer. Moreover, by excepting any reporting where payments approved under a collective bargaining agreement do not exceed payment for over 250 hours, union officials can work for over 30 days with nothing to report. Additionally, the Department finds unpersuasive the comments that a reporting requirement will significantly impede the ability of unions to obtain members willing to perform the jobs of stewards or other union positions in which they receive compensation from their employer for union-related activities. As noted, the Department is not imposing any specific method of recordkeeping or accounting on union officials to comply with the disclosure obligation. Moreover, this practice will supplement the existing obligation of a union to report ''lost time payments'' it makes to officials and other members, either identified by a particular member (if he or she is paid more than $10,000 per annum by the union) or otherwise in aggregated form. *See* section 201(b)(3).

The Department took into consideration the various concerns about the effect of its proposal in arriving at the reporting threshold of 250 hours per year. Although union officers and employees will need to keep records to determine whether the 250-hour threshold is exceeded, there is no reporting burden for those who do not exceed this threshold. Further, the recordkeeping time needed to determine whether the threshold is exceeded consists of nothing more than keeping track of the time one spends performing union work, and the amount paid, with no need, for example, to consult with third parties or obtain records maintained by others. The threshold of 250 hours per year will help separate those who perform a significant amount of union work from those who do not. For example, a union officer who spends only four hours per week, or less than an hour per day, on union business would not have to report no-docking payments, because his union activities would correspond to 200 hours per year (subtracting two weeks for vacation), fewer than the 250-hour threshold. On the other hand, a steward, who is also a union officer or employee, who works 2 hours per day on union business must report the payments he or she receives. In a five-day work week this would convert to 10 hours of union work per week and 500 hours per year (subtracting two weeks for vacation). Here, the value of the officer's union-related work exceeds the 250-hour threshold and is reportable. The Department believes this approach to be better than one that would trigger a report if a particular meeting lasted longer than a prescribed amount of time or if an official's pay for union-related activities exceeded a particular dollar value, such as the $10,000 suggested by one commenter. (Based on the commenter's estimate of a typical steward's annual pay, the 250-hour rule requires less reporting than a flat $10,000 threshold.) The former would depend upon establishing an average for the amount of time taken to resolve a particular contract administration issue, a difficult task even if the data necessary to establish such a benchmark existed and an impossible task on the current rulemaking record. The latter would impose a burden on higher paid union officials without distinguishing between the amount of time they perform work for which they were hired and work for the union.

A commenter requested the Department to require union officials to report any ''super-seniority'' protection they receive by virtue of their union office. Some collective bargaining agreements provide layoff and similar benefits to union officials allowing them to continue on the employer's payroll, ahead of other more senior employees, in order to provide continued representation of union members. The Department believes that this request, in part, is beyond the scope of the Department's proposal, which, by its terms, is only concerned with employer payments for work performed on a union's behalf. Super-seniority, as commonly understood, allows a union official to remain on the employer's payroll for ''production purposes,'' not merely to receive payment for work undertaken on the union's behalf. A union official who receives pay from his

nominal employer for union activities is subject to the general requirements set forth above without regard to the official's super-seniority status.

H. What Payments and Other Financial Benefits, Received From an Employer or Business Whose Employees Are Not Represented by the Union and Which Does not Conduct Business With the Official's Union, Must Be Reported

In the NPRM, the Department described section 202(a)(6) as a ''catch-all'' for interests held in or payments to a union official (or his or her spouse or minor child) by an employer that would not otherwise be reportable under subsections 202(a)(1) through 202(a)(5). 70 FR 51192. Under the proposal, any such interest in or payment by any employer would have to be reported, except for those ''payments of the kind referred to in section 302(c) of the Labor Management Relations Act,'' the exception expressly provided in section 202(a)(6).

The NPRM thus proposed as a general rule that any payments by any employer to any union official would have to be reported except for payments expressly excepted under section 302(c) of the Labor Management Relations Act. A union official would have to report the payment without regard to whether a collective bargaining or other direct relationship existed between the official's union and the employer in question. In addition, the proposal identified some particular payments that would have to be reported: payments not to organize employees, to influence employees in any way with respect to their rights to organize, to take any action with respect to the status of employees or others as members of a labor organization, and to take any action with respect to bargaining or dealing with employers whose employees your organization represents or is actively seeking to represent. See 70 FR 51192.

In the NPRM, the Department invited comments on this proposal as a general matter and more particularly whether section 202(a)(6) limits the reporting obligation to only payments that present an actual conflict of interest, whether such an interpretation is a permissible reading of the statute, and, if so, how the instructions could be written to implement this interpretation, without granting impermissible discretion to the filer to determine which financial matters are reportable. The Department also requested comments regarding the reporting of ordinary payments of wages and salaries of the spouse and/or minor children of the officer/employee because section 202(a)(6) could be read to require a union official to report all employment compensation paid by any employer to his or her spouse or minor child.

After its review of the comments, the Department adopts a rule that is narrower than the proposal. Under today's rule, where a payment or financial interest is not reportable under subsections (a)(1) through (a)(5) of section 202, it is reportable as follows. A report must be filed for any payment of money or other thing of value (including reimbursed expenses) from (1) An employer that is in competition with an employer whose employees the filer's labor organization represents or is actively seeking to represent; (2) an employer that is a trust in which the filer's labor organization is interested as defined in section 3(l) of the LMRDA; (3) an employer that is a non-profit organization that receives or is actively and directly soliciting (other than by mass mail, telephone bank, or mass media) money, donations, or contributions from the filer's labor organization; (4) an employer that is a labor union that (a) Has employees represented by the filer's union, (b) has employees in the same occupation as those represented by the filer's union; (c) claims jurisdiction over work that is also claimed by the filer's union; (d) is a party to or will be affected by any proceeding in which the filer has voting authority or other ability to influence the outcome of the proceeding; or (e) has made a payment to the filer for the purpose of influencing the outcome of an internal union election; or (5) an employer whose interests are in actual or potential conflict with the interests of the filer's union or the filer's duties to his or her union. This rule recognizes that it is impossible to specifically identify all potential conflict-of-interest payments.

Today's rule also adopts the rule set forth in the NPRM and the instructions to the old Form LM–30, at Part C, requiring a report for any payment from any employer or a labor relations consultant to any union official for the following purposes:

- Not to organize employees;
- To influence employees in any way with respect to their rights to organize;
- To take any action with respect to the status of employees or others as members of a labor organization;
- To take any action with respect to bargaining or dealing with employers whose employees your organization represents or is actively seeking to represent.

Today's rule adds to this list the following: ''To influence the outcome of an internal union election.''

The discussion below addresses the principal comments submitted on this issue and the Department's response to those comments.

No comments were received on the Department's proposal to require reporting in the circumstances identified in the bulleted points above. As noted, these situations are included in the instructions to the old form and are retained. The additional point requiring disclosure where a union official receives a payment ''to influence the outcome of an internal union election'' has been added to clarify a point already encompassed by ''take any action with respect to the status of employees * * * as members of a labor organization.''

Two commenters supported an expansive reading of section 202(a)(6) to require a union official to report any and all interests in or payments from any employer. They argued that only by strictly limiting exceptions could the Department achieve the Act's goal of full disclosure. A third commenter asserted that only an expansive reading of section 202(a)(6) would provide union members and the public with the information necessary for them to determine whether an interest in or payment by an employer could pose a conflict of interest. This commenter stated that Congress did not intend section 202(a)(6) to be given such a limited reading and that even if such a gloss was added to the statutory language filers would likely be unable to ''honestly, fairly, and accurately'' determine whether a conflict exists.

Several commenters expressed a contrary point of view. They asserted that unless section 202(a)(6) was narrowly applied, the Department would be creating a ''general reporting'' mandate, something that Congress intended to avoid in crafting section 202 of the Act. As stated in one comment (citing to *Senate Report,* at 15, *reprinted in 1 Leg. History,* at 411): ''The bill requires only the disclosure of conflicts as defined therein. The other investments of union officials and their sources of income are left private because they are not matters of public concern.'' The same commenter saw evidence of a narrow construction from a statement in the *House Report* that section 202(a)(6) was intended to reach both ''the union official who may receive a payment from an employer not to organize the employees,'' *and* payments that may conflict with the official's ''fiduciary duties as a worker's representative.'' Other commenters relied on statements by Senator Goldwater as support for a narrow reading of section 202(a)(6). See 105

Cong. Rec. A5812 (daily ed. Oct. 2, 1959), *reprinted in 2 Leg. History,* at 1846) (the reporting requirements were directed at those transactions ''which would constitute a conflict of interest,'' such as ''holdings or interest in or the receipt of economic benefits from employers who deal or might deal with such union official's union'').

One commenter cited to testimony by Professor Archibald Cox before the Senate subcommittee that was considering this legislation: ''The bill is narrowly drawn to meet a specific evil. It requires only the disclosure of conflicts of interest. The other investments of union officials and their other sources of income are left private because they are not matters of public concern.'' *See Senate Report,* at 15, *reprinted in 1 Leg. History,* at 411. Cox was a Harvard law professor who played a pivotal role in drafting the legislation that ultimately became the LMRDA. Professor Cox also noted that the Kennedy bill that presaged the LMRDA was based, in part, upon the Ethical Practices Code formulated by the AFL–CIO. Professor Cox stated that an officer who followed this Code would have ''virtually nothing to disclose to the public.'' *Hearings on S. 505 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare* (1959) (*''1959 Senate Hearings''*), at 123.

A few commenters conceded that the statute does not refer to ''conflicts of interest,'' but noted that forty years of Department enforcement have limited this section to conflict of interest situations. In this connection, they cited *LMRDA Manual* § 248.005 that states, in part: ''[Section] 202(a)(6) is designed for those situations which pose conflict of interest problems which are not covered in the previous five sections of 202.'' Other commenters argued that the inclusion of ''labor relations consultant'' and the reference to section 302(c) of the Labor Management Relations Act evince an intention to tie the reporting obligation to matters that directly involve labor-management activities. Two comments expressed opposition to the reporting of ordinary payments of wages and salaries to the spouse and/or minor children of the officer/employee.

The Department is persuaded that section 202(a)(6) is best read to require reporting by union officials only where such interests in or payments by employers have the evident potential to pose a conflict between the official's own financial interests and the official's duty to his or her union and which would not otherwise be captured by the other provisions of section 202(a). While the language of the statute can be read more broadly, the Department believes that a better reading is one which avoids redundant reporting of matters already included in the previous five subsections but ensures that all significant transactions and other payments to the official, his or her spouse, or minor children that may impact upon the responsibilities of a union official to the union he or she represents are reported. The Department believes that its construction of section 202(a)(6) hews to the accepted premise that Congress did not intend that union officials would have to disclose virtually all their financial affairs, while also ensuring that members receive information about situations other than those identified in sections 202(a)(1) through 202(a)(5) that may pose potential conflicts of interest for union officials. The Department's construction reasonably targets employers that could influence the conduct of union officers and employees and requires the disclosure of an official's financial information only in those situations.

Four of the first five subsections of section 202(a) have as their focus transactions and interests, on the one hand, between a union official (or indirectly through his or her spouse or minor child) and, on the other, the official's own union or an employer whose employees the union represents or seeks to represent. The other subsection (section 202(a)(3)) has a similar focus, but requires reporting on interests and payments involving a business that conducts a substantial part of its business with an employer whose employees the union represents or seeks to represent.

The Department believes that the focus of these provisions is instructive in discerning the scope of the reporting obligation encapsulated by section 202(a)(6). In each instance, the object of the reporting is the official's union status and an employer whose employees the union represents or seeks to represent. From this, the Department infers that section 202(a)(6) also has as its object the relationship between the official's union and a particular employer that could pose a conflict between the official's own personal interests and the obligation his or her union holds to employees it represents or is actively seeking to represent, or who provide a suitable target for representation. Thus, from this vantage section 202(a)(6) can be seen to target payments by or interests held in an employer only when the employer has a direct interest in the relationship between the official's union and an employer whose employees the union represents or would seek to represent. And by its terms, section 202(a)(6) only captures payments by ''employers.'' Thus, the Department cannot require a union official to report payments under section 202(a)(6) from an individual or an entity that is not an ''employer.''

A relationship between, on the one hand, a union official and, on the other hand, a section 3(l) trust, labor organization, and not-for-profit organization, including charities, along with ''competitors'' to employers whose employees the union represents or would seek to represent, may trigger a reporting obligation under today's rule. These entities usually are ''employers,'' but sometimes not. A union official is under no obligation to report these payments unless they are received from an employer. As noted, section 202(a)(6) excepts ''payments of the kinds referred to in section 302(c) of the Labor Management Relations Act.'' These payments notably include payments received as compensation for services as a current or former employee of the employer making the payment and *as a general rule* payments made to or received from a trust fund set up for the sole and exclusive benefit of employees and their dependents. *See* sections 302(c)(1) and (5) (note that the latter contains several provisions that could affect reportability in some specific circumstances). As implied by the section 302(c) proviso to section 202(a)(6), Congress presumed that a payment that arises from a bona fide employment relationship between an employer and its employee typically will be above board with little potential to pose a conflict between the union official's personal interests and the official's duty to his or her union. For the same reasons, a union official is not required under today's rule to report payments received by the official's spouse or minor child as regular compensation from their employer or as a benefit under the arrangements permitted under section 302(c).

Thus, under this interpretation of section 202(a)(6), a union official would have to report a payment received from an employer that competes with a company whose employees are represented by the official's union unless it was received by the official as regular compensation for his current or past employment. For example, if a union official receives a benefit such as a paid vacation or a gift of golf clubs from an employer that competes with an employer whose employees the official's union represents or is actively seeking to represent, the official must report the benefit. In this example, the union official would have to disclose the gift, even if the official is an employee of the donor, except in the unlikely event that

such benefit is part of the official's regular compensation as an employee of the donor. In this situation, the union official faces an obvious potential conflict between his personal finances and the duties he or she owes to the union and its members. Where, for example, the union's negotiations will set the going wage rate for particular work within the relevant market, an official may be more attuned to concerns about rising labor costs if he or she is receiving payments from a company whose operations are less efficient than those of the represented employer. Similarly, a union official may be less vigilant in challenging a represented employer's decision to withdraw employer-paid dental coverage if he or she holds an interest in or receives payments from a vendor that would provide alternative coverage sponsored by the official's union.

Similarly, a union official must report a payment he or she receives from a trust that is an employer unless it is a ''payment[ ] of the kind referred to in section 302(c) of the Labor Management Relations Act.'' As just discussed, a union official will not have to report compensation received as an employee of a trust or as a general rule payments received as a beneficiary of the trust. Any ''special payments'' or gifts, however, will have to be reported unless they are insubstantial as defined in today's rule.

Under today's rule, a union official will have to report a payment or other financial interest he or she receives from a not-for-profit employer that receives or is actively and directly soliciting (other than by mass mail, telephone bank, or mass media) money, donations, or contributions from the official's union. The potential conflict arises because such a payment could influence the official's activities in approving or overseeing the union's contribution to the charity.

The remaining situations for which a report will be required relating to an employer (other than one whose relationship is described by sections 202(a)(1) through 202(a)(5)) involve payments received by a union official from a union-employer (other than his or her own) where the official's personal financial situation poses a plain conflict with his or her duties to the union in which the official serves as an officer or employee. Payments must be reported where the payment received by the union official is made by a union-employer that

- Has employees represented by the official's union, e.g., the official's union represents the support and professional staff at the headquarters of a national or international union, or it actively seeks to represent;
- Has employees in the same occupation as those represented by the official's union;
- Claims jurisdiction over work that is also claimed by the official's union;
- Is a party to or will be affected by any proceeding in which the official has voting authority or other ability to influence the outcome of the proceeding;
- Has made the payment to the filer for the purpose of influencing the outcome of an internal union election.

In each of these situations, a payment could serve as an inducement to receive favorable treatment from a union whose interests are clearly adverse to the official's own union—either in their labor-management relationship, as actual or potential competitors for the same members or work for such members, or actual or potential protagonists on disputes or other inter-union matters. In the first situation, any payment could serve as an inducement to agree to lower negotiated wages for the members of the official's own union. In the second and third situations, the two unions are ''competitors'' for the same or potential members and the work they perform, thus placing them in an adversarial position. In the fourth situation, the payment could reflect an inducement for favorable treatment in the proceeding at the expense of the official's own union that may have an interest adverse to the party making the payment. In the last situation, the union official, either directly or indirectly, has received a personal benefit (gaining money to advance the official's own political agenda within his or her own organization) that could serve as an inducement to advance the interests of the party making the payment at the expense of the interests of the official's own union.

The Department has attempted to clarify the form by describing these situations that present actual or potential conflicts of interest. Union officials who receive payments in these situations can know, without ambiguity, of the need to file Form LM–30. It is impossible, however, to delineate with precision all potential conflict-of-interest payments. For that reason, the Department has chosen to retain its rule that, under section 202(a)(6), all payments from employers whose interests are in actual or potential conflict with the interests of a filer's labor organization or a filer's duties to his or her labor organization must be reported.

I. When Is a Union ''Actively Seeking To Represent'' Employees, Thereby Triggering a Union Official's Obligation To Report Payments and Other Financial Benefits Received From the Employer That Is the Subject of the Organizing Drive

The term ''actively seeking to represent'' appears several times in section 202; this term does not appear elsewhere in the LMRDA. The old instructions do not define this term. In the NPRM, the Department proposed to define ''actively seeking to represent'' to mean that a labor organization has taken steps during the filer's fiscal year to become the bargaining representative of the employees of an employer, including but not limited to:

- Sending an organizer to an employer's facility;
- Placing an individual in a position as an employee of an employer that is the subject of an organizing drive and paying that individual subsidies to assist in the union's organizing activities;
- Circulating a petition for representation among employees;
- Soliciting employees to sign membership cards;
- Handing out leaflets;
- Picketing; or
- Demanding recognition or bargaining rights or obtaining or requesting an employer to enter into a neutrality agreement (whereby the employer agrees not to take a position for or against union representation of its employees); or otherwise committing labor or financial resources to seek representation of employees working for the employer.

Comments were invited as to the merit and clarity of the listed activities and whether other examples would be helpful. 70 FR 51180. Comments were sought as to whether it is appropriate to trigger the reporting obligation on the decision to organize an employer's workforce distinct from taking the first concrete step to organize. After review and consideration of the comments, the Department has concluded that the definition should be modified to clarify that a report need only be filed where the active steps have occurred during the filer's fiscal year. As discussed below, this clarification partly addresses the concern of some commenters that such reporting may disclose prematurely a union's efforts to organize an employer. The Department has also modified the definition to clarify that leafleting and picketing by a union, though presumptive evidence of actively seeking to represent employees of an employer whose operations are

targeted by the union, will not trigger the reporting obligation with respect to the targeted employer if the union's activity is entirely without any organizational object. Otherwise, the definition of ''actively seeking to represent'' is identical to that proposed.

As noted in the NPRM, the proposed definition, in large part, is based on a statement from the legislative history. *See Senate Report,* at 15, *reprinted in 1 Leg. History,* at 411 (The phrase ''actively seeking to represent'' denotes ''more than that the union hopes some day to become the bargaining representative of a group of employees or claims jurisdiction to organize them. It requires specific organizational activities such as sending organizers into a community, handing out leaflets, picketing, or demanding recognition and bargaining rights''). *House Report,* at 11; *reprinted in 1 Leg. History,* at 769. As noted in the NPRM, the Department believes that the term ''actively seeking to represent'' is intended to distinguish between situations where a union has taken concrete steps to organize and those where the union merely has an interest in organizing employees of the employer in question. For example, a union may wish to represent employees of a certain employer, and may even have finalized an organizing plan, but has not yet begun to implement the plan. The Department explained that in such circumstances the union is not yet actively seeking to represent employees of this employer.

Commenters argued that the Department's proposal would improperly impede a union's organizing efforts. One commenter stated that Congress intended to limit this term to only those instances where the union had instituted some kind of organizational activity, either sending organizers into the plants or picketing or distributing leaflets within the plant. The Department disagrees with the suggestion that its proposal departs from the legislative history. The Department's proposal is consistent with the illustrations provided in the Houses and Senate reports on the LMRDA, as quoted in the NPRM. These reports explicitly recognize that this reporting obligation is not solely triggered by in-plant activity. Among the illustrated situations that would trigger a reporting obligation is where a union ''send[s] organizers out into the community.'' In context, it is plain that this term refers to a community in the sense of the geographic area within which an employer's facilities are located, not a limited application to employees comprising a community delimited by the employer's facilities.

Some commenters expressed concern about the difficulty of applying the general requirement to report payments that arise after a union ''otherwise commits labor or financial resources to seek representation of employees working for a particular employer.'' They also argue that this proviso may go beyond the asserted limitation intended by Congress in describing this aspect of the reporting obligation to ''specific organizational activities.'' The Department recognizes that this factor lacks the specificity of the other factors used to describe the reach of the term ''actively seeking to represent.'' Its wording, however, is deliberate in order to capture the general purpose of the test and reduce any prospect that a filer would read the list of factors as exhaustive. At the same time, this factor was designed to distinguish between general union strategizing or planning, which would not be reportable, and concrete activities that have been directed at a particular employer. In this connection, one commenter raised a concern that the test proposed by the Department failed to clearly indicate whether a decision by the union to undertake organizing activity in the future triggers the reporting obligation or whether the concrete, future action triggers the reporting requirement. The instructions have been clarified to make plain that the former does not trigger the reporting obligation.

Another commenter asserts that the Department should establish ''a bright line rule'' where the Department would define ''actively seeking to represent'' as (1) Having a pending election petition before the NLRB during the reporting period at issue, *or* (2) demanding voluntary recognition from the employer during the reporting period involved. The Department disagrees that the bright line suggested above would be beneficial. The suggested rule is unnecessarily narrow and would fail to effectuate the clearly expressed intention to include other concrete steps that evidence ''actively seeking to represent,'' including leafleting and picketing, as identified in the House and Senate reports discussed in the NPRM.

Commenters suggest that payments and activities relating to ''area standards'' picketing should not be considered as steps taken to actively represent an employer's workers. Instead, these commenters asserted leafleting and picketing often are used in area pay and benefit standards disputes, serving as just a preliminary step to determine whether or not to initiate an organizing campaign. Therefore, according to the commenter, such steps should not trigger a reporting obligation. The Department believes that there is a reasonable basis for treating leafleting and picketing by a union as evidence that a union is ''actively seeking to represent'' the employees of the targeted employer and for triggering a reporting obligation where there are other indicia of a union's effort to ''actively seeking to represent'' such employees. In this regard, the Department notes that there is no evidence that Congress intended a limited application of the reporting obligation to situations where the leafleting or picketing is solely undertaken for the object of organizing an employer's workforce. Moreover, although the commenter suggests otherwise, it is the Department's view that in many instances informational or standards picketing reflects a union's first concrete steps to organize an employer and, as such, is an action within the intended reach of ''actively seeking to represent.'' At the same time, the Department recognizes that there are instances where such picketing or leafleting is wholly unrelated to organizational or representational objectives. For example, if a union pickets a sporting goods retailer solely for the purpose of alerting the public that the retailer is selling goods that are made by children working in oppressive conditions in violation of accepted international labor standards, the picketing in these circumstances would not meet the ''actively seeking to represent'' standard. The revised Form LM–30 instructions in today's rule alert filers to this distinction.

A commenter endorses the inclusion of ''requesting an employer to enter into a neutrality agreement'' in the proposed definition as a concrete example of ''actively seeking to represent'' an employer's employees. It asserted that neutrality agreements have become the preferred method of organizing employees. No comments were received suggesting that entry into a neutrality agreement does not reflect an active step to represent the employer's employees. Thus, the Department will continue to recognize the execution of such agreements as evidence that a union is actively seeking to represent the employees of the employer with whom the agreement was reached.

Some commenters expressed the concern that exposing a union's use of ''salts'' in an organizing campaign would make the employer aware of the campaign and hinder organizing efforts and might target the official, his or her spouse, or minor child for dismissal by the employer if any of them are working as the ''salt.'' As reflected in the Department's proposal, the term ''salt''

refers to an individual who applies for a position with an employer that is the subject of an organizing drive intending to surreptitiously work on the ''inside'' in support of the union's organizing activities and as it directs.

The Department recognizes that some organizing activities are initiated without notice to the public or an employer, but there would appear to be few situations, where the disclosure of a reported interest on the Form LM–30 would be the first open acknowledgment of the union's active efforts to represent employees. In response to the concern that the disclosure of a reportable interest would alert an employer to the presence of a ''salt'' in the employer's workforce, the Department notes that payments from the employer for whom the salt performs the manufacturing or other work for which he was hired are payments to a bona fide employee; as such, these payments would not be reportable. Likewise, any payments by the union to the salt as an employee of the union also would not be reportable on the Form LM–30. The Department recognizes that there may be some instances, however, where an official would have to file a Form LM–30 because of the employment of salts by a particular employer. For example, if a union official owns a cleaning service that does substantial business with a company in which the official's union has placed ''salts,'' the union official would have to file a report, disclosing payments from the company to the official's cleaning service. Although this report if it came to the attention of the target employer would disclose the union's objective to organize its employees, if and when the employer becomes aware of such information, the employer likely would already have learned of the union's campaign. There would ordinarily be a substantial delay between the salt activity and the report's filing. Form LM–30s are filed annually and are due 90 days after the end of the filer's fiscal year. Thus, the definition of actively seeking to represent is not expected to significantly compromise the use of salts in organizing.

The Department acknowledges, however, that the timely submission of the Form LM–30, in some instances, may put at risk the secrecy of a union's organizing campaign and the relationship that gives rise to the reporting obligation. For this reason, the Department has carefully considered whether it would be appropriate to take steps to minimize the risks from such disclosure.

In crafting the Form LM–2, the Department, sensitive to union concerns about the premature disclosure of their organizing tactics, established reporting categories and itemization rules designed to minimize similar risks, while at the same time adhering to the requirements of section 202 of the Act, 29 U.S.C. 431. *See* 68 FR 58395–97. Although, for example, the Department chose to allow the disaggregated reporting of some organizing expenditures, it rejected the option to shield from disclosure all expenditures related to ''salts.'' The Department recognized that section 201(b)(3) expressly provided that unions annually report the ''salary, allowances, and other direct or indirect disbursements (including reimbursed expenses) to each officer and also to each employee who * * * received more than $10,000 in the aggregate from such labor organization and any other labor organization affiliated with it or with which it is affiliated * * *.'' 29 U.S.C. 431(b)(3). Thus, as recognized in the preamble to the Form LM–2: ''[I]f a ''salt'' is paid $10,000 or more per year as an employee of the union, the union is obliged by statute to list him by name on the Form LM–2 and to report the amount of his compensation.'' The statutory language added support to the policy determination in the Form LM–2 context that ''salt'' information was necessary for union members to be properly informed about their union's finances. In contrast, the same policy reasons did not, in the Department's view, compel that a union itemize organizational expenses (other than these payments to union officials). The Department reasoned that even without such itemization, the particular information would be available to union members upon request pursuant to section 201(c), 29 U.S.C. 431(c). See 68 FR 58397; see also 68 FR 58386–87. Thus, the Department decided to allow Form LM–2 filers the option to report such payments without itemization, recognizing that the information relating to these expenditures would be made available to union members under section 202(c) of the LMRDA.

With regard to the immediate Form LM–30 reporting issue, the Department is guided by the language of section 202(a)(1), (2) & (5) of the LMRDA, requiring union officials to disclose specified conflicts of interest, including ''any income or other benefit with monetary value * * * derived * * * from an employer whose employees such labor organization * * * is actively seeking to represent.'' 29 U.S.C. 432(a)(1), (2) & (5). In the Department's view, this language evinces a particular concern by Congress about conflicts that arise while a union is actively seeking to represent employees. The same concern is the basis for the Department's determination, as a matter of policy, that such payments pose serious questions regarding conflicted loyalties (including the possibility of collusion in some instances). As such this information is particularly important to union members, the Department, and the public. The need for transparency, thus outweighs, in the Department's view, any risk to a union's covert organizing activities by requiring the disclosure of any interests, transactions, and payment that arise while the filer's union is actively seeking to represent the targeted employees. Further, the statute authorizing the Form LM–30, 29 U.S.C. 432, contains no provision that would mitigate the lack of transparency caused by crafting a filing exemption for payments that would disclose the use of salts in organizing. Unlike the statute authorizing the Form LM–2, 29 U.S.C. 431, there is no statutory provision for union members to obtain records from union officers and employees necessary to verify the Form LM–30.

Two commenters argued that the proposed definition poses particular difficulties for a local official who may be unaware of organizing activities undertaken by his or her international union or an international official that is unaware of a local's efforts to organize a particular employer. Similarly, several officers from large construction unions felt that the reporting requirement was too broad since it would be difficult for officers and employees to know about all instances of picketing, billing and other initial organizing efforts that go on in a single reporting year. The Department recognizes that the expanded scope of reporting may pose some difficulties for particular union officials. In consideration of this concern, as reflected in the comments summarized above, the Department has narrowed the scope of the reporting obligation for local and intermediate officers from that proposed in the NPRM. They do not have to report on matters affecting higher levels within their union. Officers of a national or international union, however, remain responsible for reporting activities affected by picketing or leafleting by subordinate units of their organization. Further, union officers and employees voluntarily receive reportable payments from or hold reportable interests in employers. The union officer or employee is perfectly free to refrain from taking such payments or holding such interests. If there is a fear that an organizing campaign could possibly be

exposed by filing a Form LM–30 the union officer or employees does not have to take the payment or hold the reportable interest.

One commenter recommended that the Department clarify that payments from employers not to organize an employer, *i.e.*, attempts at ''labor peace,'' should be reported. Another suggested that neutrality agreements ''are especially ripe for sweetheart deals'' where union officers and union employees can benefit at the expense of bargaining unit employees as, without reporting requirements for these instances, ''it is nearly impossible'' for workers to learn what gifts an employer has given a union or the union's officials during an organizing drive. Apart from the asserted vulnerability of neutrality agreements to manipulation by employers and union officials, these commenters express a concern oft repeated in the comments that union officials should be required to report all payments they receive from employers. As discussed herein, Congress did not intend to impose such a sweeping obligation. Moreover, the Department is confident that today's final rule requires the disclosure of any payments that would impede the collective bargaining or internal union rights of a union's members.

J. How Union Officials Will Determine Whether an Entity From Which They Receive a Payment or Other Financial Benefit Does a ''A Substantial Part'' of its Business With an Employer Whose Employees Are Represented by the Official's Union or the Union It Is Actively Seeking To Represent

Section 202(a)(3) requires union officials to report any interests in and payments from, ''any business a *substantial part* of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent'' (emphasis added). The old rule does not define ''substantial part.'' The Department proposed to define this term as 5% or more of the business's annual receipts. The Department requested comments on various aspects of this proposal, including whether a percentage threshold should be imposed, whether the percentage threshold should be higher or lower than 5%, whether a percentage of receipts is the appropriate consideration, and whether union officials with holdings in, or income from, a business would be able to determine the percentage of the business's income that comes from dealings with the employer. 70 FR 51186.

The Department did not receive many comments on this proposal. Most of the comments, as discussed below, either opposed the quantification of ''substantial'' or suggested that it be set at an amount higher than 5%. After review of the comments, the Department has determined that 10% or more of a business's annual receipts will be considered ''a substantial part'' of its business.

Two commenters recommended that the Department not define ''substantial part'' in quantitative terms. A labor educator stated that his study participants characterized the 5% threshold as too low; he also stated that the participants were concerned about the potential difficulty of obtaining information about the percentage of business a vendor conducts with a particular employer. Another commenter expressed the same concern, noting that information about a vendor's receipts is generally not publicly available and employers would be reluctant to provide such confidential information. The same commenter expressed the view that a 5% threshold likely would be too low for a union officer to be aware of a vendor-employer relationship that required reporting. Two commenters suggested that that the Department should define ''substantial part'' as a ''sufficient magnitude of business that its loss would materially affect the financial well-being of the business enterprise in question.'' While this statement may be helpful as a capsule view of the purpose underlying this particular reporting obligation, the statement does not provide filers a ready gauge to determine when a report must be filed. Further, such an approach would make relevant facts that would be difficult for union officials to ascertain. For a precarious business with overwhelming debt to service, the loss of 2% of revenue could be devastating. A different business, in an environment in which demand outstrips its production capacity, the loss of clients constituting a much higher percentage of its business may not be as much of a concern. It is difficult to imagine how a union official could learn the facts necessary to determine whether the loss of a client would materially affect the business enterprise. Thus, in the Department's view, the questions posed by its proposal are (1) What volume of business, expressed as a percentage of the vendor's annual receipts, is necessary to achieve the proper balance between insubstantial dealings and those that pose a risk of a conflict of interest, and thus, trigger the reporting obligation; and (2) whether a filer will be able, without undue burden, to obtain information needed to make the threshold determination.

In the NPRM, the Department explained that ''substantial part,'' as used in section 202(a)(3) and the instructions, refers to the magnitude of the business transacted between any business in which a union official holds an interest or receives payment from (referred to herein as ''the vendor'') and the employer whose employees the filer's labor organization represents or is actively seeking to represent, as a percentage of all business transacted by the business. 70 FR 51186. The purpose of the ''substantial part'' language is to relieve union officials from having to report income or transactions that do not have potential conflict-of-interest implications. In the NPRM, the Department expressed its view that an official who has an interest in, or receives income from, a vendor that receives 5% or more of its income from the employer of the union members may well face a conflict. The Department explained that a business with 5% of its receipts from a single client would have the opportunity and inclination to make demands or offer inducements to retain that business. In negotiations with the union, the employer could use its relationship with the business as a bargaining tool, either threatening to end the relationship or promising to provide additional business opportunities.

The Department is not persuaded that there is any benefit in leaving the term ''substantial part'' undefined. The Department acknowledges that, in other contexts, statutes and regulations leave ''substantial'' undefined or use qualitative factors to give content to the term, *e.g.*, 18 U.S.C. 1093 (defining substantial as ''such numerical significance,'' the loss of which would destroy the ''group as a viable entity''). For reporting purposes, however, the utility of a less subjective approach is obvious. A definition that pegs ''substantial'' to the volume of business conducted by a vendor with a particular entity as a percentage of all business provides a ready, easy to understand gauge to determine a union official's reporting obligation.

One commenter asserted that the 5% threshold represents a significant departure from the Department's earlier interpretation of ''substantial part.'' In support of this assertion, the commenter cited to a provision in the LMRDA Interpretative Manual (*''LMRDA Manual''*), which provides as follows:

245.200 Substantiality of Dealing

Union Officers A and B of a local union are co-owners of a building corporation. The corporation, through intermediaries who are regular meat wholesalers, sold meat to employers who bargain with the local union. In 1962, some 80% of the corporation's business of approximately $100,000 was with such employers. Both A and B owe reports for the year 1962 * * *, since both the interest and the income are ''derived from any business a *substantial* part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent.''

LMRDA Manual § 245.200. (Emphasis in original). The commenter reads this provision to establish 80% as the threshold for reporting about a union official's interest in or payments from a vendor. He suggested that the Department should adopt the same quantitative threshold in the final rule. Noting his concerns about the difficulty a potential filer would face in obtaining information about the measure of a vendor's dealings with a target employer, he further proposed that no report need be filed unless the filer possesses actual knowledge that the vendor performs 80% or more its business for the target employer.

The Department rejects the suggestion that the above-quoted section of the *LMRDA Manual* can be fairly read to establish a reporting threshold. The Manual indicates only that an officer who receives a payment from a business that receives 80% of its receipts from the employer of the union members must file a report. It does not state that receipts of less than 80% from the employer would be unreportable. The 80% figure in the example reflects a rather obvious situation where a substantial business relationship exists thus requiring a report. The illustration provides no assistance in determining the minimum volume of business that would trigger the reporting obligation. Similarly, the Department finds no merit to the suggestion that a reporting obligation attaches only where a union official possesses actual knowledge that the vendor's volume of business with a relevant employer was greater than the reporting threshold. The folly of this approach is obvious where the reporting threshold is set at 80%; it would allow a union official to avoid a conspicuous reporting obligation and provide an incentive for a union official to remain willfully ignorant of the business relationship between a vendor in which he or she holds an interest or from which he or she receives a payment and an employer whose employees the official's union represents or is actively seeking to represent.

The Department does, however, accept the proposition that increasing the threshold decreases the burden on filers by reducing the number of reportable transactions. For that reason, the Department is persuaded that an upward adjustment is appropriate. As noted, the purposes served by section 202(a)(3) require a reporting threshold that balances the burden associated with reporting insubstantial matters and the benefit served by the disclosure of any potential conflicts between a union official's personal finances and the duties owed by him or her to the union and its members. To the extent there is some uncertainty as to where best to strike the balance, the Department believes that a lower threshold best ensures that disclosure will serve a prophylactic purpose. Based on the comments and a reassessment of the potential difficulties posed to filers in obtaining information from a vendor, the Department has decided to double the reporting threshold to 10%. The Department believes that setting the threshold level at 10% will achieve the balance required by the statute.

The Department recognizes that some union officials with a reportable interest or payment may encounter difficulty in obtaining information about the amount of business a vendor conducts with the employer whose employees are represented by the official's union. The Department, however, believes that the burden is overstated, especially where the union official holds an ownership or operating interest in the vendor. In those instances, there should be little trouble in obtaining the needed information. In instances where the union official is an employee of the vendor or receives an occasional payment, some problems are more likely to arise. In such instances, the union official should request such information in writing from the vendor. If the vendor refuses to provide the information, the official should contact the Department for assistance in obtaining the information. In the meanwhile, the union official should make a good faith estimate, based on the information reasonably available, whether the 10% threshold has been met. If such estimate exceeds the 10% threshold, then the union official should file the report and explain that the vendor failed to provide requested information. If the estimate yields a figure less than 10%, no report is required, but the union official should retain the written request for information he or she presented to the vendor and any work sheet used to arrive at the less than 10% figure. If an investigation is conducted, there is no risk of prosecution absent unusual circumstances calling into doubt the legitimacy of the good faith estimate.

K. Why Payments and Other Financial Benefits Received From Section 3(l) Trusts and Service Providers to Such Trusts Must be Reported

Numerous unions, law firms, and organizations representing financial service providers submitted comments urging the Department to modify or eliminate aspects of its proposed rule as it would affect a union official's obligation to report payments and other financial benefits received from section 3(l) trusts. In the NPRM, the Department stated that it had received compliance inquiries about whether payments from a union to a trust in which the union is interested constitute ''dealing[s]'' between the trust and the union under section 202(a)(4).

In the NPRM, the Department also invited comment on whether trusts set up by unions to provide benefits to their members, such as pension or welfare plans, constitute ''employers'' under section 202(a)(6) or ''business[es]'' under section 202(a)(3) and section 202(a)(4) so that payments from such organizations to union officials would be reportable. 70 FR 51182. Several commenters expressed the view that the Department was improperly extending the reporting obligation to payments received from service providers to trusts. In a similar vein, several commenters suggested that the Department was improperly requiring reports by labor union officials serving as employees or representatives of trusts on matters for which reporting already is required by ERISA. As part of their concerns, several commenters objected to the proposal on procedural grounds. In essence, they asserted that service providers and other potential Form LM–10 filers will be bound by the Department's final Form LM–30 rule, denying them the full opportunity for notice and comment.

A summary of the principal comments on these various points concerning a union official's obligation to report payments and other financial benefits received from section 3(l) trusts and the interplay between ERISA and the LMRDA and the Department's response to these comments follows. The Department first briefly addresses the contention that the Department's proposal is procedurally flawed because it prescribes rules that must be followed by employers under section 203 of the Act without providing that community the full opportunity for notice and comment. The Department next

discusses the concern that requiring union officials to report their interests in or payments by trusts as employers or vendors providing services to those trusts represents a departure from the Department's asserted longstanding policy excepting reports about payments by trusts and their vendors and the contention that the Department's position is contrary to ERISA or, at the least, impedes that Act's proper administration. The Department, in the final paragraphs of this section, discusses the issue whether trusts and other not-for-profit entities constitute businesses, followed by the separate, yet related question, whether trusts and other not-for-profit entities constitute ''employers.''

1. Alleged Procedural Shortcoming

Today's rule is specific to Form LM–30 filers. It does not amend or modify in any way the Department's current rules specific to the Form LM–10. Any interpretation or guidance issued on the Form LM–10 remains in effect unless later changed by the Department. Any interpretation, guidance or amendment to Form LM–10 will conform to legal requirements appropriate to the nature of any such changes, including notice and comment rulemaking where required. Thus, the Department finds that any concerns that the Department's proposal is procedurally flawed are misplaced.

2. Routine Exceptions

Many commenters urged the Department to not ''extend'' the reporting requirements to include payments to union officials by trusts or their service providers. Several asserted that the Department had never required union officials (or employers under Form LM–10) to report such payments. Numerous commenters objected generally to any reporting of gifts associated with the routine conduct of business, especially in connection with marketing by service providers to gain and maintain business with union-related trusts. Some objected generally, on the ground that Congress never intended that routine business expenses would be the subject of reporting. Some commenters offered a variation of this argument, asserting that Congress intended a general reporting exception for payments made in the regular course of business. A common theme in the comments is the claim that the affected community has understood that the LMRDA focuses solely on financial transactions involving unions and employers whose employees are represented by a union or a union has targeted for representation. In their view, the statute does not impose reporting obligations on financial institutions or service provider activities that have no connection to the union's labor-management relationship. A variant of the theme, unique to financial institutions, is that no reporting obligation exists for union officials who receive payments from financial institutions. Their position is based on the language of section 203, which excepts financial institutions from reporting ''payments or loans'' made to union officials. This issue is discussed below.

The suggestion that the Department is imposing a new reporting obligation on union officials for payments received by them from service providers to trusts is incorrect. A union official's obligation to report such payments has been plainly stated for over forty years in instructions to the Form LM–30. Indeed, the old Form LM–30 includes the explicit statement that ''every [union official] must file a detailed report describing certain financial transactions engaged in, and interests held by, the [official] or his/her spouse or minor child [including] * * * legal and equitable interests in, transactions with, and economic benefits from certain businesses * * * which deal[ ] with the union or a trust in which the [union] is interested.'' Instructions, Part III. The first Form LM–30 promulgated by the Department required filers to disclose ''An interest in or derived income or economic benefit with monetary value from a business * * * any part of which consists of buying from or selling or leasing directly or indirectly to, or otherwise dealing with your labor organization or with *a trust in which your labor organization is interested.''* *See* BNA, *Daily Labor Report,* No. 192: A–6, E–1 (Oct. 2, 1963). (Emphasis added). Similarly, the *LMRDA Manual* specifically identifies payments from insurance companies to union officials as matters reportable on Form LM–30. As there stated: ''A union officer, who is an employee of an insurance company from which the union welfare fund procures insurance, is required to report that money which he receives as an employee of the insurance company, inasmuch as he derives income from a business which sells to or otherwise deals with a labor organization of which he is an officer.'' *LMRDA Manual* § 246.600.

The commenters cite no authority for their broad claim that the Department's position is a departure from a longstanding policy, nor do they provide a well-reasoned argument for how the statute would permit the Department the discretion to except from reporting payments from employers and businesses that have such extensive and ongoing activities with unions and section 3(l) trusts. Given the continuity in the Department's interpretation, a more accurate characterization might be the longstanding inattention to reporting such payments received from trusts and their service providers. Many unions and their section 3(l) trusts manage benefit plans for their members, maintaining close business relationships with financial service providers such as insurance companies and investment firms. As discussed in greater detail herein, contemporary business and financial practices increase the prospect that union officials may receive payments from or hold financial interests in these businesses. Given these practices, the Department believes that disclosure is critical to promoting good union governance and fostering ethical behavior. Thus, the Department disagrees, on both legal and policy grounds, with the notion that payments from service providers or financial institutions should be excepted from reporting. Such payments carry with them a particular potential for conflict and as such warrant particular scrutiny by union members and the public.

The asserted historical grounds for excepting payments by service providers and financial institutions from reporting are unpersuasive. The legislative history establishes that Congress intended that union officials report any gifts or payments from employers seeking to profit from their relationship with a union or its officials. Congress understood that the bill that became the LMRDA ''is drawn broadly enough * * * to require disclosure of any personal gain which an officer or employee may be securing at the expense of the union members.'' *Senate. Report, at 15, reprinted in 1 Leg. History,* at 411. As stated by Professor Cox, ''the basic theory [underlying the Act's conflict of interest provisions] is [that all] payments made by employers to labor organizations or union officials are prima facie questionable. Some may be justified. The bill does not forbid the payments. [The bill] simply requires that they be covered by public reports so that the employees affected and the public may know what has occurred.'' *1959 Senate Hearings,* at 127. The legislative history illustrates how Congress believed the LMRDA would operate. The principal focus of the McClellan Committee was on the activities of the Teamsters Union and the conduct of three of its highest ranking officials: Dave Beck, Frank

Brewster, and Jimmy Hoffa. Each official engaged in unlawful activities that could not have been accomplished without the complicity of banks and insurance companies. Banks and insurance companies were used by these officials, often to the mutual benefit of the officials and the commercial entities, to carry out such activities and to otherwise provide unlawful gain to the officials. As explained by Senator Kennedy: ''Mr. Hoffa would be required to disclose all of his business dealings with insurance agents handling the union's welfare funds, his private arrangements with employers, his hidden partnerships in business ventures foisted upon his members, and all other possible conflicts of interest.'' 105 Cong. Rec. S817 (daily ed. Jan. 20, 1959), *reprinted in 2 Leg. History,* at 969.

The AFL–CIO Ethical Practices Codes, which served as the foundation for the LMRDA conflict of interest reporting provisions, contained a specific code for union ''health and welfare funds.'' *See* 105 Cong. Rec.*16379 (daily ed. Sept. 3, 1959) *reprinted in 2 Leg. History*, at 1406–07. It expressly stated: ''No union official who already receives full-time pay from his union shall receive fees or salaries of any kind from a fund established for the provision of a health, welfare, and retirement program. Where a salaried union official serves as employee representative or trustee * * * such service * * *should not [be considered] an extra function requiring further compensation from the welfare fund.'' *2 Leg. History*, at 1406. Of particular import, it states: ''No union official, employee, or other person acting as agent or representative of a union, who exercises responsibilities or influence in the administration of welfare programs or in the placement of insurance contracts, should have any compromising personal ties, direct or indirect, with outside agencies such as insurance carriers, brokers, or consultants doing business with the welfare plan. Such ties cannot be reconciled with the duty of a union official to be guided solely by the best interests of the membership in any transaction with such agencies. Any agency official found to have such ties to his own [substantial] personal advantage or to have accepted fees, inducements, benefits, or favors of any kind from any such outside agency, should be removed [from office].'' *Id.* Where Congress, in effect, established a disclosure regime in section 202 for matters addressed by the AFL–CIO Ethical Practices Codes, it would make no sense to exclude reports on activities specifically identified as improper in those codes. Against this backdrop, the argument that the legislative history supports the contention that the Department's view of reporting is both novel and unintended by Congress fails.

While most commenters appeared to recognize the obvious potential of circumvention and evasion of the Act's reporting requirements if union officials did not report any payments they received from trusts, some argued that the relationship between the official's union and the trust did not allow for that possibility. The commenters appear to argue that because the relationship between a section 3(l) trust and a participating union should be symbiotic, there is no conflict of interest presented by such payments and thus no circumvention or evasion is possible. This argument overlooks that the focus of section 202 is conflict between a union official's personal financial interests and the duties he or she owes to the union and its members, one that exists without regard to the often congruent interests of a trust and its participating unions. Moreover, this argument overlooks that the money a participating union pays into a trust, either directly from the union or indirectly by an employer on the union's behalf, is money that otherwise would be maintained in the union's own account and, as such, any proceeds paid to a union official would be disclosed in reports filed by the union. Without requiring a union official to report payments he or she receives from a trust, an official would be able to circumvent and evade the disclosure that would have occurred if the funds had remained in the union's coffers. By requiring a union official to report payments from the trust, the Department is simply ''following the money,'' ensuring that disclosure of such payments cannot be avoided. Further, since the union official's obligation to submit a Form LM–30 overlaps with the congruent responsibility of a union to disclose payments received by the official from a section 3(l) trust if certain conditions are met, the prospect that one party may report the payment increases the risk that a failure by the other party to report the payment will be detected. Thus, the reporting obligation helps check the evasion of reporting under the Act and, in some instances, may deter the primary conduct that would trigger the reporting obligation.

As noted above, some financial institutions have argued that section 203(a)(1) excepts ''payments or loans made by any national or State bank, credit union, insurance company, savings and loan association or other credit institution * * *.'' These commenters assert that all payments received by union officials from banks, including lunches and dinners to meet with clients, and marketing and promotional expenses incurred to keep or to secure business, among other expenses, are excepted from reporting.

The Department disagrees. Section 203(a)(1) cannot be read as a limitation on a union official's obligation to report interests in or payments from any particular segment of employers. In both sections 202 and 203, Congress set forth specific, distinct rules including distinct exceptions to those rules, particular, on the one hand, to union officials and, on the other hand, to employers. Neither the statute nor its legislative history evinces an intention to create a completely uniform system of reports for all filers, union officials and employers alike, and neither infers that an exception unique to a particular provision was intended as a general exception to other reporting requirements. As discussed herein the Department acknowledges that its interpretation requires union officials to report a loan or payment made by a financial institution, but that the financial institution is not required to file a report. Although generally the Act establishes a reciprocal reporting obligation on union officials and employers—both the payer and the payee report on a covered payment—in this instance, the language of the two sections calls for a different result. Although today's rule does not interpret section 203(a), the Department notes that Congress may have held the belief that banks would be constrained to report these payments under laws regulating financial institutions and wished to avoid redundant reporting. The Department takes no position in today's rule on the separate question as to whether the breadth of the exception provided financial institutions from reporting obligations under section 203 is as expansive as suggested by some commenters.

The *LMRDA Manual* specifically identifies payments from financial institutions to union officials as matters reportable on Form LM–30: ''If a credit union grants loans to a labor union, a report would be required from an officer of that labor union who is also an employee of the credit union.'' *LMRDA Manual* § 246.800. Further, a 1961 ''Guide for Employer Reporting'' issued by the Department provides the following examples of reportable payments (italics in original):

A. Loans made to union representatives *not* employed by you, *unless* made in the regular course of business as a bank or other credit institution.

B. Loans to employees, who are also union representatives, on terms more favorable than those available to other employees, *unless* made in the regular course of business as a bank or other credit institution.

C. Loans to labor organizations, *unless* made in the regular course of business as a bank or other credit institution.

Although today's rule does not affect any current reporting obligation of any Form LM–10 filers, the language quoted belies any suggestion that the Department is imposing a novel reporting obligation on Form LM–30 filers by requiring them to report the receipt of such payments.

The LMRDA is a reporting statute directed at unions, union officials, and employers and businesses whose interests intersect with each other's interests; as such, it is obviously not intended to broadly regulate the affairs of financial institutions. The fact that financial institutions are regulated by government agencies other than this Department and that these institutions may be required to disclose information under those laws does not mean that the disclosure purposes of the LMRDA conflict with those laws or that those laws supersede the LMRDA's reporting provisions. The purpose of LMRDA reporting is to give union members information about financial transactions between union officials and employers. Reporting under securities and other laws serves other purposes; while some of these purposes may complement the LMRDA's disclosure provisions, none supplant the purpose of the LMRDA to provide relevant, readily available information to union members, the public, and the Department about potential conflicts between the financial circumstances of a union official, his or her spouse, or minor child and the official's duty to the union and its members.

As noted, many commenters took the tack that even if the Department possessed the authority to require union officials to report payments received from trusts and vendors, it would be bad policy to do so. One commenter opined that the Form LM–30 reporting requirements will deter union trustees from attending educational or other conferences that may be required for the union trustee to properly discharge his or her duties under ERISA's standard of care and to be informed about the services available to the trusts from the financial services community. One commenter points out that ''anything that makes it more difficult or risky to obtain the knowledge and experience needed to be a fiduciary * * * is contrary to the interests of union members.'' Several commenters expressed concern that publishing information for only union officers gives union members the impression they can influence an employee benefits plan's operation as part of the governance of union affairs, which is contrary to ERISA's requirement that a fiduciary act independent of union affairs. Other commenters stated that it was unfair to single out union officials for disclosing payments from a trust since management officials associated with the trust receiving the same payments have no reporting obligation.

In the Department's experience, union members are savvy enough to ascertain whether a union official's payments from or interests in a business pose conflicts of interest and to realize that trustees may need to obtain education and training to properly fulfill their roles as trustees. Thus, the Department believes that the concerns over reporting such matters are overstated and that reporting will not impede trustees in attending educational and training seminars. The Department believes that union members already understand or will understand with minimal explanation that an official's role as a trustee is distinct from his position with the union and requires that the official act in the best interests of the trust and its beneficiaries; as such, the official cannot put his personal political concerns or his union office or employment ahead of his fiduciary obligation to the trust. At the same time, the disclosure of such payments to the union official allows the union's members to determine whether the payments may tempt the official to put his or her own financial interests above the official's duties to the union, duties distinct from those owed by the official to the trust. The Department disagrees that it is unfairly singling out union-appointed trustees for reporting payments while allowing their management counterparts to refrain from doing so. Section 202 extends to reports by union officials, but not to all individuals who have a role in section 3(l) trusts. Thus, the Department is not able to consider such an extension to management trustees, whether or not it might have merit. The Department also believes that union members will understand this principle and not view the act of reporting by union officials as evidence of culpable conduct or the absence of reports by management trustees as proof of conduct beyond reproach. At the same time, however, by requiring union officials to report such payments, union members may determine for themselves whether some payments are excessive or unnecessary or arise in circumstances where the payments invite scrutiny to determine whether the official's personal benefits from the arrangement have impeded or may impede the official's duty to the union.

One commenter argued that firms are concerned that if Form LM–30 filers must report payments and gifts from vendors to a section 3(l) trust, these filers will demand that the firms assume the burden to keep records of such payments. The Department acknowledges that this may create a customer relations challenge to some vendors, but, just as the decision to make a payment, or accept a payment, is voluntary, so too is any decision by a vendor to keep ''gift records'' for a union official. The vendor may freely choose to demur from assuming such a burden, just as it may choose to change its practice of making gifts to union officials. The Form LM–30 reporting and recordkeeping obligations remain squarely on the union official who holds an interest or receives a payment for which reporting is required.

One commenter suggests that the Department should change its proposal to include a general exception for reporting payments associated with an *unsuccessful* effort to obtain new or further business. Two commenters would exclude reporting where any payments were made to both union and management appointed trustees. One commenter, acknowledging that marketing benefits were provided by all service providers seeking new business, argues that the Department should provide guidance as to where to draw the line between routine matters and payments intended as bribes.

The commenter who would except from reporting any unsuccessful efforts to garner business by courting a union official acknowledged that union members have a legitimate interest in knowing whether the businesses that are buying from or selling to their union are also engaged in private transactions with union officers or employees. But in his view, where no transaction actually takes place between the business and the union, a union member would have no interest in the payment. In the commenter's view, up until an actual transaction occurs, the business should not be considered to be ''dealing with'' the labor organization. The logic behind this position is not apparent. Other comments disagree. A commenter explained that such payments to a union official should be reportable to

the extent that the business was ''dealing with'' the union or employer by attempting to convince the union or employer to enter into commercial relations with a competitor. This view also has support in the legislative history. In an analysis of section 202(a), Senator Goldwater states, ''Briefly, what must be reported are holdings of interest in or the receipt of economic benefits from employers who deal *or might deal* with such union official's union.'' 62 Cong. Rec. 19,759 (1959), *reprinted in* 1 DOL, *Legislative History of the Labor-Management Reporting and Disclosure Act of 1959* (emphasis added). Furthermore, to the extent the commenter may be suggesting that many payments would be picked up if a business relationship is later consummated, the commenter fails to recognize that unless payments from potential vendors are reported in the fiscal year in which they occur, a union officer could avoid disclosure by simply accepting payments in one fiscal year and awarding the union business to the vendor in a later year.

One commenter pointed out that the proposed rulemaking has no examples related to trust funds reimbursing union officers. Such examples have been added to the instructions.

3. Relationship With Other Statutes

Although the Department notes that it did not receive a comment stating that any of its Form LM–30 proposals conflicts with an obligation under ERISA, many commenters oppose reporting on some or all of the trust-related activities because the same matters are subject to ERISA and other Federal reporting requirements relating to security and business taxes. A typical comment was that ERISA already regulates transactions that would be reported on Form LM–30. This commenter also argued that the IRS already oversees business expenses under the tax laws; it similarly argues that the IRS also oversees payments by tax exempt organizations that are made for improper private benefit. 26 U.S.C. 501(c).

Two commenters submit that the LMRDA was never intended to regulate multiemployer plans. They asserted that the Welfare and Pension Plans Disclosure Act (''WPPDA''), P.L. 85–836 (1958), which predated the LMRDA, was enacted for this purpose. They assert that the WPPDA implemented reporting and disclosure requirements for pension plans similar to the LMRDA's requirements for unions. When WPPDA proved inadequate to regulate trusts, Congress passed ERISA, which exceeded and expanded WPPDA's requirements.

There is no merit to the implicit claim that ERISA was intended to supplant the LMRDA insofar as payments to union officials are concerned. Section 514 of ERISA states: ''Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States [with exceptions not here pertinent] or any rule or regulation issued under any such law.'' 29 U.S.C. 1144(d). The WPPDA contained a similar provision, undermining any attempt to use that statute to constrain the Department's authority under the LMRDA. *See* Pub. L. 85–836, § 10(b) (1958) (this act does not exempt any person from any duty under any present or future law affecting the administration of employee welfare or pension benefit plans). In the Department's view, the LMRDA and the ERISA serve complementary purposes, particularly insofar as their disclosure provisions overlap. There also is an evident similarity between the duty union officials owe to their union and the duty trust officials owe to their trust. Today's rule is not intended as an interpretation of ERISA and it should not be construed as such. It does not alter any statutory or regulatory obligations that now exist under that statute.

The Department has determined that Form LM–30 reporting and recordkeeping requirements do not interfere with or unnecessarily duplicate ERISA financial disclosure requirements. Thus, the Department is requiring union officials to report certain payments they receive from trusts, notwithstanding any ERISA reporting requirements that may apply to trusts. On many occasions, the Department has discovered during an audit or investigation that a union officer or employee was engaged in a reportable situation with a trust but had not filed the required Form LM–30 until the Department became involved. For example, the spouse of a union officer owned a company that provided cleaning and maintenance services to the union and its trust. In one year, the company received over $94,000 from the union and the trust. Although this information might or might not be reported on a Form 5500, depending on the surrounding circumstances, this information can be disseminated more readily to union members on the Form LM–30 than through the Form 5500 alone. The Form LM–30, since its inception more than 45 years ago, has been the source for union members to learn of potential conflicts of interest between union officers and employees and vendors to their union's trusts.

Contrary to an implicit premise underlying many of the comments that the ERISA and the LMRDA are co-extensive insofar as union-related trusts are concerned, ERISA applies to only a subset of the section 3(l) trusts. Some section 3(l) trusts are not covered at all by ERISA. ERISA covers only pension and ''employee welfare benefit plans.'' 29 U.S.C. 1002. While there is considerable overlap between section 3(l) trusts and ERISA ''employee welfare benefit plans,'' some funds in which unions participate fall outside ERISA coverage, including strike funds, recreation plans, hiring hall arrangements, and unfunded scholarship programs. 29 CFR 2510.3–1. Other section 3(l) trusts that are subject to ERISA are not required to file the Form 5500 or file only abbreviated schedules. *See* 29 CFR 2520.104–20 welfare (plans with fewer than 100 participants); 29 CFR 2520.104–26 (unfunded dues financed welfare plans); 29 CFR 2520.104–27 (unfunded dues financed pension plans). *See also* Reporting and Disclosure Guide for Employee Benefit Plans, U.S. Department of Labor (reprinted 2004), available at *http://www.dol.gov/ebsa/pdf/rdguide.pdf*.

The Department received several comments that raise concerns with asserted duplicative reporting that would exist if union officials had to report payments received from trusts or vendors and that the burden to keep track of such payments likely would fall upon the trusts and vendors. Most of the commenters expressing concerns about these matters asserted that party-in-interest transactions (which they argue encompass all potential conflict of interest disclosures that may arise under the LMRDA), are already covered by ERISA reporting and auditing requirements. Some commenters submit that because ERISA identified those transactions which Congress determined were conflicts of interest, ERISA should be the standard against which all transactions involving jointly administered plans are judged.

Among the suggestions on this point, the commenters requested the Department to except union officials from reporting a payment from a trust if the trust files a Form 5500. The commenters appear to argue that no payments associated with a union-related trust covered by ERISA need be reported by Form LM–30 or Form LM–10 filers if the trust files a Form 5500. Two commenters pointed out that, in a prior rulemaking, the Department recognized the merit of Form 5500 for

purposes of trust disclosure. These commenters apparently refer to the Form T–1 rule that was published in 2003 as part of the ''Form LM–2 rulemaking.'' *See* 68 FR 58374, 58524–25(Oct. 9, 2003). This same exception is contained in the Form T–1 final rule published in the **Federal Register**, at 71 FR 57716 (Sept. 29, 2006). Several commenters recommended as an alternative that the Department expand Schedule C on Form 5500 to list by company all payments, loans, or gratuities from service providers to trustees and add a schedule that lists all trustees who served during the year and their expenses, similar to the Form LM–2.

As noted by many commenters, the Department has previously recognized the merit of filing a timely and complete Form 5500 in lieu of a Form T–1. The Form 5500 as a ''surrogate Form T–1,'' however, only partially overlaps with the Form LM–30, and is therefore not a reliable substitute for the Form LM–30. The alternative suggested also presents problems. Expanding the Form 5500 would require all covered entities, not just those engaged in reportable transactions with labor union officers and employees to shoulder an LMRDA-driven higher reporting burden. The LMRDA addresses disclosure for labor organizations and labor organization officers and employees; it does not impose general disclosure requirements on the larger ERISA reporting universe. As such the Department's efforts here in clarifying the Form LM–30 better fulfill the full reporting mandate of the LMRDA without imposing additional burden on those entities and persons outside the scope of the LMRDA.

Practical concerns also could impede the use of the Form 5500 to capture some of the information subject to today's rule. Form 5500s are not required to be filed until seven months after the close of a plan's fiscal year, and extensions are freely available, and there is a substantial lag time between the submission of a Form 5500 and its availability for public review. Thus, there now exists no way for a union member to timely access such information, unless it is obtained via Form LM–30. By collecting such information pertinent to a section 3(l) trust, including payments by the trust to union officials, and making it available at a single site, however, union members are afforded the means to properly oversee their union's operations and monitor any potential conflicts between an official's personal monetary interests and the official's duty to the union. Moreover, even if these problems could be overcome, there would be no disclosure relating to those section 3(l) trusts that are not subject to ERISA.

As noted, a few commenters suggested that the purposes served by the reporting requirements for payments made in the routine course of business are already met by the IRS rules on business expenses. The Department disagrees. The IRS rules on ''business expenses'' are not designed to disclose potential conflicts of interest; section 202 is precisely designed for this purpose. *See* IRS Publication 535. Many of the expenditures that qualify as ''business expenses'' for IRS purposes would potentially create a conflict of interest for union officers and employees. For instance, entertainment expenses incurred in seeking new business may be deductible in part under IRS rules. Further, the IRS considers certain below market loans and transfers of property as ''business expenses.'' Such a loan or property transfer made to a union officer or employee is exactly the type of payment the LMRDA was designed to disclose. Moreover, the commenters offer no explanation how this approach would benefit union members who typically would never have access to such tax filings or the underlying expense documentation. Without such access, the prophylactic purposes served by disclosure cannot be achieved. As such, the Department rejects this approach.

4. Trusts as Employers and Businesses

As noted above, the NPRM sought comment on whether a section 3(l) trust may constitute an ''employer'' under section 202(a)(6) or a ''business'' under sections 202(a)(3) and 202(a)(4) so that payments from such organizations to union officials would be reportable. 70 FR 51182. After considering the comments received on this point, the Department has concluded that a section 3(l) trust or other not-for-profit organization with employees must be treated as an ''employer'' under the Act, but that they should not be treated as a ''business'' under the Act.

As noted above, commenters were divided on the question whether a trust or other not-for-profit entity, including a labor organization, should be treated as an ''employer'' for reporting purposes. One commenter argued that trusts should not be regarded as ''employers'' because Congress only intended reporting to ''reach the union officials who may receive payment from an employer not to organize the employees,'' *citing Senate Report*, at 16. According to the commenter, trust funds in which the union is interested do not fall into this category. Another commenter argued: ''although some large trust funds happen to have employees—many do not—the statute was intended to cover employers whose potential relationship with a union raises the risk of a conflict of interest in some sense relevant to the union's function as a collective bargaining representative.'' One commenter argued that ''while [section 203] is precise in its applicability only to an employer whose employees are either represented by or a target of a union, Congress chose to use the additional terms 'businesses' and 'trust' rather than ''employer'' in [section 202] dealing with the reporting obligation of a union official. Nothing in the statute reflects a Congressional intent to subsume these broader terms within the subset of employers subject to [section 203].''

Other commenters stated that a trust should not be considered an employer because any union officials involved with such funds do not negotiate with such funds or their representatives, but rather serve as trustees or shared employees in providing benefits or enforcing collective bargaining agreements. Another commenter agreed, noting that any improper payment from a trust to a union officer who is acting as a trustee would be considered a fiduciary breach of the trustee and not a breach of the officer's responsibilities to the union.

Several commenters argued that treating a trust as an employer adds further administrative burdens on trust funds, which are already subject to numerous reporting and regulatory requirements. One commenter pointed out that some Taft-Hartley trusts are self-administered, in which case the trust itself may be an employer, while other trusts employ third-party administrators to administer the trust, denying employer status to the trust. He implicitly suggests that given what he characterizes as an artificial distinction between third-party and self-administered trusts Congress could not have intended that payments by any trust would be covered. This commenter, like several others, further contended that trusts are not ''businesses'' for purposes of the Act.

The LMRDA expressly defines ''employer'' in broad terms. Included in that definition, at section 3(e) of the Act, are employers that are ''with respect to employees engaged in an industry affecting commerce, *an employer within the meaning of any law of the United States relating to the employment of any employees* or which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or

conditions of work * * *.'' 29 U.S.C. 402(e) (emphasis added). The statute contains no indication that Congress intended a narrower application of that term in any of the Act's provisions. Indeed, the breadth of the term is illustrated not only by the italicized language of section 3(e) but by the careful parsing of the remaining language in the provision to except governmental entities from the Act's application. See 29 U.S.C. 402(e) (the Act's sole exceptions for entities is for the ''United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.'') For these reasons, the Department is persuaded to give ''employer'' its full and natural construction, thus bringing within its reach any entity, including any section 3(l) trust and service providers to such trusts, that is an ''employer.''

Commenters were divided on the question whether trusts and other not-for-profit entities constitute businesses within the meaning of the LMRDA. One commenter noted that leaving trusts outside the reporting requirements would minimize transparency and undermine the intent of the reforms. This commenter alleged that union officials have long utilized ''off the books'' accounting procedures for these programs. Most commenters, however, asserted that trusts do not constitute ''businesses.'' One commenter argued that interpreting a trust in which a labor organization is interested as a ''business'' is incongruous with the Department's establishment of a reporting obligation by union officials who hold interests in or receive payments from ''businesses that deal with a trust in which the labor organization is interested.'' In this commenter's view, it would make no sense to consider the trust as a ''business'' at the same time as payments by either the labor organization or the trust to a union official must be reported by the official. In effect, the commenter argues that the union and the trust operate as one for reporting purposes and thus dealings by the trust with the union cannot be viewed as business dealings for reporting purposes.

Other commenters argued that since trusts do not operate with a profit motive, they cannot be considered ''businesses.'' Several commenters echoed the sentiment that an entity can be a ''business'' only if it is a commercial enterprise carried on for profit; they infer support for this argument from their understanding of the term as guided by the language in sections 202(a)(3) and 202(a)(4), which equates ''business'' with the terms ''buying,'' ''selling,'' ''leasing,'' and so forth. They argued that the phrase ''otherwise dealing with'' takes its meaning from these terms, citing to the Act's legislative history (*Senate Report,* at 90, *reprinted in 1 Leg. History,* at 486). If Congress had intended to cover entities that have non-business dealings with a labor organization, they argue, it would have drafted sections 202(a)(3) and 202(a)(4) to include ''any entity,'' not simply ''a business.''

The LMRDA does not define ''business,'' leaving the Department to apply the term's ordinary meaning unless the context in which it is used indicates that Congress intended a unique or special meaning. *See Brower* v. *Evans,* 257 F.3d 1058, 1065 (9th Cir. 2001). The *American Heritage Dictionary* (2000) defines ''business,'' in part, as ''Commercial, industrial, or professional dealings'' and ''Volume or amount of commercial trade'' and ''commercial dealings.'' Under *Black's Law Dictionary (8th ed. 2004),* a ''business'' is generally defined as ''a commercial enterprise carried on for profit.'' Black's illustrates the term's usage to distinguish between ''commercial enterprises'' and non-businesses, using academia as an example of the latter. Moreover, the IRS case law interpreting ''trade or business,'' has consistently held that a profit motive is a basic criterion of a ''business.'' *Nickeson* v. *Commissioner,* 962 F.2d 973 (10th Cir. 1992). Based on these interpretations, the Department believes it appropriate to treat trusts and other not-for-profit entities as distinct from entities treated as businesses for Form LM–30 purposes.

L. When Payments and Other Financial Benefits Received From a Union Other Than an Official's Own Union Must Be Reported

In the NPRM, the Department asked for comment on the question whether ''labor organizations'' constitute ''businesses'' under sections 202(a)(3) and 202(a)(4), or constitute ''employers'' under section 202(a)(6). The Department received only a few comments on this question. Today's rule clarifies that a ''labor organization'' that has employees is an ''employer'' for purposes of Form LM–30. As just discussed, there is no indication that Congress intended to except any entities other than government agencies from the application of the Act's provisions if they occupy the status of ''employer'' under any law of the United States. The Department reaches this conclusion for essentially the same reasons as discussed above in connection with the status of trusts and other not-for-profit entities.

One commenter asserts that Congress intended that businesses would consist only of entities that are likely organizing targets of a union. Another commenter states that the Department ''should continue its current practice of not requiring payments to a union official or employee from affiliated unions (including multi-trade councils such as building trades or metal trades councils) to be reported on the LM–30.''

Two commenters argued that ''labor organizations'' are not ''businesses'' because the latter term refers only to ''commercial enterprises that engage in commercial transactions with unions or unionized employers.'' However, they add: ''To the extent a labor organization has employees who are represented by another union, payments from the labor organization to officials of the union representing its employees would be reportable under [sections] 202(a)(1) & (5).'' Each of these sections provides that a union official should report payments from an employer whose employees the official's union represents or is actively seeking to represent. Another asserted that ''[t]he risk of a union official obtaining special favors from an affiliated labor organization or labor-management committee in return for his or her not discharging his [or her] obligations as a union leader is simply not present.''

The Department has decided that for reporting purposes a union may constitute an ''employer'' under section 202, if the union meets the statutory definition of the term. 29 U.S.C. 402(c). The Department's reasoning is basically the same as discussed above in connection with the ''employer'' question posed with regard to trusts and other not-for-profit entities. Additionally, the Department rejects the proposition that ''labor organization'' and ''employer'' are mutually exclusive terms for all purposes of the Act. This proposition is inconsistent with the settled view that a ''labor organization'' that is also an ''employer'' will be held to the same obligation as other employers unless Congress otherwise provides. As noted, the Act provides that the term ''employer'' is to be given the same application for all its purposes. If a ''labor organization'' cannot be an ''employer,'' then the various prohibitions relating to employer interference in union elections would be unavailable where employees of a union are themselves represented by an autonomous staff union. There is no evidence that Congress intended to deny LMRDA rights to these workers simply because their employer is a labor

organization. This Department's longstanding position to treat unions as employers vis-a-vis staff unions is congruent with the similar treatment accorded such relationships under the Labor Management Relations Act. *See National Education Ass'n,* 206 N.L.R.B. 893 (1973).

However, in the rule today, the Department clarifies when a payment from a labor organization would be reportable under section 202(a)(6). No reports will be required where the payment is received from a union that is affiliated with the union which the officer or employee serves as an officer or employee; *i.e.*, locals, intermediate bodies, and their parent national or international union. To use a fictitious example, an officer or employee of Local 1, National Union of Reporters (''NUR''), would not report a payment received from either the New England Council, NUR, Local 2, NUR, or the NUR, even if they were employers. Similarly, no payment from the local to an NUR national officer would be reported. Any such payment already will be reported on the payer union's Form LM–2, LM–3, or LM–4, albeit sometimes aggregated with other payments. Moreover, in instances where the union's payment(s) to a particular official exceed $5,000, alone or in the aggregate over a one-year period, the reporting union's payments will specifically identify the payee official on the Form LM–2. However, a union officer or employee unaffiliated with the union that makes the payment must report the payment if the payer-union is an employer. For example, an officer or employee of a regional council of multi-trade unions that receives a payment from NUR or one of its locals would have to report the payment if the NUR entity is an employer.

The Department has created a reporting rule for unions: A union official will have to report payments from a labor union other than his or her own if that union (1) Has employees represented by the official's union; (2) has employees in the same occupation as those represented by the official's union; (3) claims jurisdiction over work that is also claimed by the official's union; (4) is a party to or will be affected by any proceeding in which the official has voting authority or other ability to influence the outcome of the proceeding; or (5) has made a payment to the filer for the purpose of influencing the outcome of an internal union election. This rule, coupled with the general provisions relating to section 202(a)(6), will capture for reporting any payments that could reasonably be perceived as presenting a conflict with the official's duty to their own union and its members. Readers are cautioned that the obligation to report or not report payments in the situations described above does not affect the legality of such payments under the election provisions of the LMRDA or other laws, such as the Labor Management Relations Act, which may regulate such matters.

M. How the Proposed Definitions Have Been Clarified To Ease a Filer's Completion of the Form LM–30

As explained in the NPRM, the old regulations and instructions for the Form LM–30 failed to define or incompletely defined several terms whose meaning must be properly understood for a union official to correctly complete the Form LM–30. The Department therefore proposed several new or revised definitions. The terms defined included: *Actively seeking to represent, arrangement, benefit with monetary value, bona fide employee, bona fide investment, dealing, directly or indirectly, filer/reporting person/you, income, labor organization, labor organization employee, labor organization officer, legal or equitable interest, minor child, payer, publicly-traded securities, substantial part,* and *trust in which a labor organization is interested.* All of the proposed definitions with the exception of ''publicly-traded securities'' have been adopted, some in revised form, in today's rule. As discussed earlier in the preamble, the Department has determined that it is unnecessary to include a definition for ''publicly-traded securities'' or an equivalent term in the rule. Comments were received on only some of the definitions. To assist filers, however, all the definitions, as adopted by today's rule, are set out below in italics. Where comments have been received on a proposed definition, the comments are summarized and the Department's responses are discussed below. A number of the terms already have been discussed in this preamble.

1. Definitions Adopted by Today's Rule

Actively seeking to represent means that a labor organization has taken steps during the filer's fiscal year to become the bargaining representative of the employees of an employer, including but not limited to:

- *Sending an organizer to an employer's facility;*
- *Placing an individual in a position as an employee of an employer that is the subject of an organizing drive and paying that individual subsidies to assist in the union's organizing activities;*
- *Circulating a petition for representation among employees;*
- *Soliciting employees to sign membership cards;*
- *Handing out leaflets;*
- *Picketing; or*
- *Demanding recognition or bargaining rights or obtaining or requesting an employer to enter into a neutrality agreement (whereby the employer agrees not to take a position for or against union representation of its employees), or otherwise committing labor or financial resources to seek representation of employees working for the employer.*

Where a filer's union has taken any of the foregoing steps, the filer is required to report a payment or interest received, or transaction conducted, during that reporting period.

Note: *Leafleting or picketing, such as purely ''informational'' or ''area standards'' picketing, that is wholly without the object of organizing the employees of a targeted employer will not alone trigger a reporting obligation. For example, if a union pickets a sporting goods retailer solely for the purpose of alerting the public that the retailer is selling goods that are made by children working in oppressive conditions in violation of accepted international standards, the picketing would not meet the ''actively seeking to represent'' standard.*

As discussed, the definition was modified by the addition of the note to inform filers that leafleting or picketing wholly without the object of organizing the employees of a targeted employer will not trigger a reporting obligation and make plain that a report need only be filed where a union official receives a payment during the year in which the official's union takes a concrete step to actively represent the employees of an employer that transacts business with the union or other businesses for which reports are required because of their relationship to such employer.

Arrangement means any agreement or understanding, tacit or express, or any plan or undertaking, commercial or personal, by which the filer, spouse, or minor child will obtain a benefit, directly or indirectly, with an actual or potential monetary value.

Note: The term ''arrangement'' is very broad and covers both personal and business transactions, including an unwritten understanding. For example, if during the reporting period an employer's representative offered a union officer a job with the employer, the officer must report the offer unless he or she rejected it. A standing job offer must be reported because it carries the potential of monetary value to the filer. Another example of a situation requiring a report is when an employer provided insider information about a stock or other investment opportunity, unless the filer rejected the advice and took no steps to act on it.

No comments were received on the proposed definition. This definition is adopted as proposed. As discussed in the NPRM, the term encompasses both personal and business transactions, including an unwritten understanding. For example, if an employer's representative during the reporting period solicits a union officer to accept a job with the employer, the filer must report the solicitation, unless the filer rejects the offer. A standing job offer must be reported because it carries the potential of monetary value to the filer. Another example of a situation requiring a report would be one in which a covered employer provides insider information about a stock or other investment opportunity, unless the filer rejects the advice and takes no steps to act on it.

Benefit with monetary value means anything of value, tangible or intangible. It includes any interest in personal or real property, gift, insurance, retirement, pension, license, copyright, forbearance, bequest or other form of inheritance, office, options, agreement for employment or property, or property of any kind. You do not need to report pension, health, or other benefit payments from a trust to you, your spouse, or minor child that are provided pursuant to a written specific agreement covering such payments.

This definition has been revised by adding the new third sentence in the instructions to clarify that benefits received by a union official, his or her spouse, or minor child as a participant in a trust or benefit plan will generally not be reportable on Form LM–30. The same definition, with only a slight change in the wording of the third sentence, is adopted as section 404.1(a) of the Department's regulations (to be codified as 29 CFR 404.1(a)).

A commenter voiced support for the Department's proposed definition of this term and the related definitions proposed for ''*benefit with monetary value,*'' ''*income,*'' and '' *directly* or *indirectly*,'' arguing that the Department has broadly construed these terms to capture anything of value received by the filer, his or her spouse, or minor child, including any payment or benefit held or received by a third party for their benefit. This commenter noted that the proposed definition is properly drawn from disclosure rules applicable to Federal employees. Another commenter criticized the proposal because it appears to include pension benefits that an officer receives from a jointly administered trust as a result of prior service for an employer participating in the trust. The commenter argues that the statute does not require disclosure of such payments and that an officer's receipt of such payments does not present a conflict of interest. The commenter recommends the Department either amend the definition or modify the instructions to clarify that such payments do not have to be reported under any of the sections. The Department agrees that benefits received as an employee of an employer, such as pension benefits, are generally not reportable. This point is clarified by the new third sentence added to the definition.

Bona fide employee is an individual who performs work for, and subject to the control of, the employer.

Note: *A payment received as a bona fide employee includes wages and employment benefits received for work performed for, and subject to the control of, the employer making the payment, as well as compensation for work previously performed, such as earned or accrued wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan, leave for jury duty, and all payments required by law.*

Compensation received under a ''union-leave,'' or ''no-docking'' policy is not received as a bona fide employee of the employer making the payment. Under a union-leave policy, the employer continues the pay and benefits of an individual who works full time for a union. Under a no-docking policy, the employer permits individuals to devote portions of their day or workweek to union business, such as processing grievances, with no loss of pay. Such payments are received as an employee of the union and thus, such payment must be reported by the union officer or employee unless they (1) totaled 250 or fewer hours during the filer's fiscal year and (2) were paid pursuant to a bona fide collective bargaining agreement. If a filer must report payments for union-leave or no-docking arrangements, the filer must enter the actual amount of compensation received for each hour of union work. If union-leave/no-docking payments are received from multiple employers, each should be considered separately to determine if the 250-hour threshold has been met. For purposes of Form LM–30, stewards receiving union-leave/no-docking payments from an employer or lost time payments from a labor organization are considered employees of the labor organization.

Any individual working at the control and direction of a labor organization will be an employee of the organization. A union steward or union official while acting on behalf of the union is not acting as a bona fide employee of the employer whose employees are represented by the steward's union. Of particular import, however, today's rule, as discussed herein, modifies the proposed instruction to except from reporting on the Form LM–30 compensation received from an employer for whom the official works for the time he or she is engaged in certain union activities provided it is made pursuant to a collective bargaining agreement and the compensation reflects payment for union activities of 250 hours or less during the reporting year.

Bona fide investment means personal assets of an individual held to generate profit not acquired by improper means or as a gift from (1) an employer, (2) a business that deals with the filer's union or a trust in which the filer's union is interested, (3) a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent, or (4) a labor relations consultant to an employer.

No comments were received on this proposal. The primary purpose of this definition is to alert filers that stock or other securities received as a gift will not constitute a ''bona fide investment,'' under the provision that exempts from reporting bona fide investments in securities when the gift is received from specified employers, businesses, or labor relations consultants. The only changes from the NPRM are the numbering of the different sources of reportable payments and the elimination of the cross-reference to the term ''publicly-traded securities.''

Dealing means to engage in a transaction (bargain, sell, purchase, agree, contract) or to in any way traffic or trade, including solicitation for business.

Note: *The term ''traffic or trade'' includes not only financial transactions that have occurred but also the act of soliciting such business. Thus, for example, potential vendors or service providers attempting to win business with a union will be considered to be ''dealing'' with the union to the same extent as vendors who are already doing business with the union. Potential vendors must engage in the active and direct solicitation of business (other than by mass mail, telephone bank, or mass media). A business that passively advertises its services generally and would provide services consumed by, for example, a union would not meet this test. The potential vendor must be actively seeking the commercial relationship. Under certain circumstances, the payment itself will be evidence of the solicitation of business, such as a potential vendor who treats a union official to a golf outing and dinner to discuss the vendor's products.*

The definition of this term has been revised slightly from the proposal by adding the phrase ''including solicitation for business'' and adding the explanatory note to the instructions. The same definition, but without the note, is adopted as section 404.1(b) of

the Department's regulations (to be codified as 29 CFR 404.1(b))

Most of the comments on the proposed term have been discussed already in connection with the meaning to be given the terms ''employer'' and ''business.'' *See* discussion herein. The new phrase and note were added to make clear that payments to union officials must be reported even if they do not lead to a consummated business transaction. The Department notes, as discussed herein, that some commentators suggested that the term ''dealing'' should only encompass payments made to union officials in connection with marketing efforts that lead to a completed business transaction. For the reasons discussed herein the Department is not persuaded that there is anything in the language of section 202 or its legislative history to suggest that either ''routine marketing expenses'' or the subset of those that do not lead to a business agreement should be excepted from the reporting obligation.

The Department believes that the definition it adopts for ''dealing'' is consistent with the intended meaning given it by Congress. Neither its use in the statute nor the legislative history of the Act's ''dealing'' provisions suggest that the term should be given a unique meaning. As defined today, the term accords with the meaning given the term in the *American Heritage Dictionary* and *Black's Law Dictionary.* In the *American Heritage Dictionary* ''deal'' is defined, in part, as ''[t]o sell'' and ''[t]o do business; trade.'' In *Black's,* ''deal'' is defined as ''an act of buying and selling'' such as ''the purchase and exchange of something for profit.''

Directly or indirectly means by any course, avenue, or method. Directly encompasses holdings and transactions in which the filer, spouse, or minor child receives a payment or other benefit without the intervention or involvement of another party. Indirectly includes any payment or benefit which is intended for the filer, spouse, or minor child or on whose behalf a transaction or arrangement is undertaken, even though the interest is held by a third party, or was received through a third party, including instances in which the third party is acting on the behalf, or at the behest, of an employer or business and the interest would have to be reported if made directly to the filer, his or her spouse, or minor child . The following examples show the difference between ''direct'' and ''indirect'':

You are employed by XYZ Widgets and also serve as the president of the local union representing XYZ Widgets employees. In a recent conversation with the XYZ Widgets human resources manager, you mention that you are placing your 15 year-old daughter in a private school. XYZ Widgets sends you a check for $1,000 with a note saying ''Good luck with the new school!'' You have received a direct benefit.

You are employed by XYZ Widgets and also serve as the president of the local union representing XYZ Widgets employees. In a recent conversation with the XYZ Widgets human resources manager, you mention that you are placing your daughter in a private school. You receive a letter from your daughter's new school stating that she has received a $1,000 scholarship through a donation by XYZ Widgets. You have received an indirect benefit.

The definition of this term, as discussed above, has been revised from the proposal by including two examples. The examples have been added in response to a comment by a labor educator who suggested that the Department should include some examples to demonstrate the difference between ''direct'' and ''indirect.'' As noted in the NPRM, the purpose of the definition is to clarify that filers must disclose any benefits received by them (or their spouse or minor child) from a third party where the third party is acting on the behalf, or at the behest, of an employer or business where the benefit would have to be reported if made by the employer or business directly to the filer (or his or her spouse or minor child). Benefits received from an employee, agent, or representative of an employer or business, or other entity acting on behalf of the employer or business should be considered received from the employer or business. Payments to a third party to be held for the use or benefit of the filer are also reportable. The definition is deliberately drawn broadly, consistent with the legislative history, ''to require disclosure of any personal gain which an officer or employee may be securing at the expense of union members.'' As also noted in the NPRM, the legislative history draws from the AFL–CIO Ethical Practices Code: ''The ethical principles apply not only where the investments are made by union officials, but also where third parties are used as blinds or covers to conceal the financial interests of union officials.''

Filer/Reporting Person/You mean any officer or employee of a labor organization who is required to file Form LM–30.

Note: *These terms are used synonymously and interchangeably throughout the instructions, and, when referring to reportable interests, income, or transactions, these terms include interests, income, or transactions involving the union officer's or employee's spouse or minor child.*

No comments were received on the proposed definition. This definition is adopted as proposed.

Income means all income from whatever source derived, including, but not limited to, compensation for services, fees, commissions, wages, salaries, interest, rents, royalties, copyrights, licenses, dividends, annuities, honorarium, income and interest from insurance and endowment contracts, capital gains, discharge of indebtedness, share of partnership income, bequests or other forms of inheritance, and gifts, prizes or awards.

The Department adopts the definition of ''income,'' as proposed, both in the instructions and as section 404.1(e) of the Department's regulations (to be codified at 29 CFR 404.1(e)).

Labor organization, means the local, intermediate, or national or international labor organization that employed the filer, or in which the filer held office, during the reporting period, and, in the case of a national or international union officer or an intermediate union officer, any subordinate labor organization of the officer's labor organization. Item 6 of the Form LM–30 identifies the relationships between employers and ''your labor organization'' or ''your union'' that trigger a reporting requirement. Item 7 of the Form LM–30 identifies the direct and indirect relationships between a business (such as a goods vendor or a service provider) and ''your labor organization'' that trigger a reporting requirement. The terms ''your labor organization'' and ''your union'' mean:

a. *For officers and employees of a local labor organization.*

Your local labor organization.

b. *For officers of an international or national labor organization*

Your national or international labor organization and all of its affiliated intermediate bodies and all of its affiliated local labor organizations.

But note: A national or international union officer does not have to report payments from or interests in businesses that deal with employers represented by, or actively being organized by, any lower level of the officer's labor organization. Such officers are also not required to report payments and other financial benefits received by their spouses or minor children as bona fide employees of a business or employer involved with a lower level of the officer's labor organization.

c. *For employees of a national or international labor organization.*

Your national or international labor organization.

d. *For officers of intermediate bodies.*

Your intermediate body and all of its affiliated local labor organizations.

But note: An officer of an intermediate body does not have to report payments from

or interests in businesses that deal with employers represented by, or actively being organized by, any lower level of the officer's labor organization. Such officers are also not required to report payments and other financial benefits received by their spouses or minor children as bona fide employees of a business or employer involved with a lower level of the officer's labor organization.

e. *For employees of an intermediate body.* Your intermediate body.

As discussed at length herein, the definition of ''labor organization'' for purposes of completing Form LM–30 has been modified from that proposed, narrowing its scope consistent with the Department's existing ''top down'' approach and limiting the obligation of officers of local and intermediate unions. The first sentence of the quoted material is adopted as section 404.1(f) of the Department's regulations (to be codified at 29 CFR 404.1(f)).

Labor organization employee means any individual (other than an individual performing exclusively custodial or clerical services) employed by a labor organization within the meaning of any law of the United States relating to the employment of employees.

Note: *An individual who is paid by the employer to perform union work, either under a ''union-leave'' or ''no-docking'' policy, is an employee of the union for reporting purposes if the individual performs services for, and under the control of, the union. See definition of ''bona fide employee.''*

For purposes of Form LM–30, stewards receiving union-leave/no-docking payments from an employer or lost time payments from a labor organization are considered employees of the labor organization.

Numerous comments were received about the wisdom of requiring union officials to report payments they received under union-leave or no-docking policies. As discussed above, in today's rule, the Department adopts a limited reporting obligation for such payments. Concerns regarding the reporting burden of labor organization employees under the ''union-leave'' and ''no-docking requirements'' are addressed separately in this final rule. In addition to comments on that aspect of the proposed definition, the Department also received comments inquiring about the application of the definition to union stewards.

One commenter, a labor educator, stated that his study's participants found the definition for ''labor organization employee'' to be confusing. He explained that many participants viewed the proposed definition as a major shift from existing practice as a number of individuals, including stewards, bargaining committee members, and volunteer organizers, would now have reportable transactions when doing union work such as serving on a negotiating committee, serving as an arbitration witness, or organizing. The commenter identified as a specific problem the definition's failure to address how a filer should report the receipt of payments where he or she has multiple employers, each with a different practice or language with respect to lost wages and to the payment of benefits to part-time union officers, stewards, negotiating committee members, and so forth.

In general, where a union steward receives union-leave/no-docking payments from an employer or lost time payments from the union, the steward will be regarded as an employee of the labor organization as the individual has received compensation for performance of services for the union. The Department recognizes that some stewards and other representatives have multiple employers, each with a different practice or language with respect to lost wages and payment of benefits of part-time union officers, stewards, or negotiating committee members. Thus, each employer is considered separately for reporting purposes.

Finally, unlike the proposed definition, today's rule does not outline the factors that distinguish between the status of individuals working for a union as independent contractors and those working as employees of the union. As explained in the NPRM, independent contractors of the union are not required to file a Form LM–30. In the Department's view, the inclusion of these factors in the definition of ''labor organization employee'' added unnecessary length and possible confusion to the definition. If needed, the Department will provided guidance, separate from the instructions, to assist individuals unsure of their status as employees or independent contractors. The same definition, but without the note, modifies section 404.1(g) of the Department's regulations (to be codified at 29 CFR 404.1(g))

Labor organization officer means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body. An officer is (1) a person identified as an officer by the constitution and bylaws of the labor organization; (2) any person authorized to perform the functions of president, vice president, secretary, or treasurer; (3) any person who in fact has executive or policy-making authority or responsibility; and (4) a member of a group identified as an executive board or a body which is vested with functions normally performed by an executive board.

Note: *Under this definition, an officer includes a trustee appointed by the national or international union to administer a local union in trusteeship. If you are a trustee elected or appointed by the local union to audit and/or hold the assets of the union, you may or may not be a union officer, depending on your union's constitution and other factors. If you serve in your union in any capacity and you are unsure if your position is an officer position, you are likely an officer of a labor organization if any one of the following applies:*

- *Your union's constitution or bylaws refers to your position as an officer of the union;*
- *Your union's constitution or bylaws states that your position has the authority to make executive decisions for the union or that you are authorized to perform the functions of president, vice-president, secretary, treasurer, or other constitutionally designated officer;*
- *Your union's annual Form LM–2 or Form LM–3 lists your position as an officer of the union;*
- *In your position, you serve on your union's executive board or similar governing body.*

This definition adopted in today's rule has been revised from that proposed by adding the above note in the instructions. The same definition, but without the note, is adopted as a modification of the existing definition at section 404.1(b) of the Department's regulations (to be codified as redesignated at 29 CFR 404.1(h)). As explained in the NPRM, the definition, as proposed, tracks the definition of ''officer'' at section 3(n) of the LMRDA, 29 U.S.C. 402(n), and adds a new second sentence to the old regulation's definition, 29 CFR 404.1(b). The *LMRDA Manual* applies the definition to trustees appointed to oversee a labor organization. *See LMRDA Manual,* 241.200.

One commenter agreed with the Department's view that the group of union officials subject to section 202's reporting requirements only partially overlaps with the larger group of individuals subject to the Act's Title V fiduciary duties. See 29 U.S.C. 501(a) (''officers, agents, shop stewards, and other representatives''). The commenter noted that nevertheless the overlap was substantial. A labor educator stated that participants in his study group found the definition unclear, adding that the explanatory notes to the definition were unhelpful. He mentioned that some participants were unsure whether ''trustee'' applied to the positions in some local unions which hold auditing

and other responsibilities over the local's assets or to an individual appointed by the national or international union to administer a local's affairs, or both. The commenter explained that local union trustees do not see themselves as union officers and are not de facto or de jure members of the executive board. The commenter also explained that participants were unsure whether stewards would be considered union officers. The Department has concluded that the proposed definition, along with the addition of the note, clarifies that the term ''trustee,'' as used in this definition, does not apply to those with auditing responsibility in the union. This definition also provides a test for determining whether any individual is a union officer.

Legal or equitable interest means any property or benefit, tangible or intangible, that has an actual or potential monetary value for the filer, spouse, or minor child without regard to whether the filer, spouse, or minor child holds possession or title to the interest. See definition of income and benefit with monetary value. For example:

- *You are an officer of a union. You and your spouse jointly own an accounting business that provides tax services to a number of clients, including your union. You hold a legal interest in the company providing services to your union.*
- *You are an officer of a union. You form a tax preparation business with two partners and put your share of the business in your wife's name. The business prepares tax returns and LM reports for your union. You hold an equitable interest in the business that deals with your union.*

This definition has been modified from that proposed by adding the examples set forth in the above bullets. This change was suggested by the labor educator whose study participants had difficulty understanding the meaning of the term.

Minor child, means a son, daughter, stepson, or stepdaughter less than 21 years of age.

This definition is adopted as proposed as part of the instructions and as section 404.1(i) of the Department's regulations (to be codified at 29 CFR 404.1(i)). As the Department noted in the NPRM, the old instructions, like the LMRDA, are silent about the age at which a child reaches his or her majority. As explained in the NPRM, state law definitions for the legal concept of childhood and age of majority differ from state to state but also may differ widely from legal context to legal context within the same state. In the Department's view, there is a need for a uniform, nationwide meaning of ''minor child'' under the LMRDA and without such a uniform definition the objective of the LMRDA will be frustrated. Both filers and union members who view filed reports require a known and easily applied single standard regarding when reports are required, and what a disclosure or its absence represents.

The Department only received a few comments about the proposed definition of ''minor child.'' One commenter noted that the Department should exclude from its definition a ''child who has married and moved away from the parental home.'' Another suggested that 18 should be the cut off age unless the child is still claimed as a dependent for Federal income tax purposes. The Department agrees that the commenters offer valid alternatives to the Department's proposal. Nevertheless, the Department believes that the proposed definition solely tied to a child's age offers the advantage of simplicity and ease of application, particularly because a child's status may remain in a state of flux during his or her late teens and early twenties. In 1959 when the LMRDA was enacted, it was well established that at common law the age at which a person reached his or her majority in the states was twenty-one years. See, *e.g.*, 5 Samuel Williston and Richard A. Lord, *A Treatise on the Law of Contracts* § 9:3 n.15 (4th ed. 1993 & Supp. 1999). As explained in the NPRM, the Department believes that in 1959 when Congress used the term ''minor child'' in section 202(a), it intended a uniform Federal standard to apply and referred to the general common law meaning at that time, *i.e.*, twenty-one years. The Department also believes that twenty-one is more suitable than an earlier age to distinguish between a child's relative dependence upon, and independence from, the finances of a parent. For these reasons, the Department adopts the definition of ''minor'' as proposed.

Substantial part means 10% or more. Where a business's receipts from an employer whose employees the filer's labor organization represents or is actively seeking to represent constitute 10% or more of its annual receipts, a substantial part of the business consists of dealing with this employer.

As discussed herein, this term has been changed by increasing the reporting threshold from 5% to 10% in order to ease the burden on a filer to determine the percentage of a vendor's business that consists of dealing with an employer whose employees the official's union represents or is actively seeking to represent.

Trust in which a labor organization is interested 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. The term ''section 3(l) trust'' is used in the instructions as a shorthand reference to such trusts.

No comments were received on the Department's proposed definition of this term. This definition is provided by section 3(l) of the LMRDA. 29 U.S.C. 402(l). The only change is the inclusion of the second sentence to make plain that the term ''section 3(l) trust '' is a shorthand reference to ''trust in which a labor organization is interested.'' The same definition is adopted as section 404.1(j) of the Department's regulations (to be codified at 29 CFR 404.1(j)).

2. Other Issues Related to Definitions

A commenter suggested the inclusion of a definition for ''transaction,'' another term used in the Form LM–30 instructions. The Department believes that the term has a plain meaning that applies across various contexts and therefore its inclusion in the instructions is unnecessary.

The Department had proposed to use the term ''*payer*'' to describe the employer, business, or labor relations consultant that is the source of a reported payment on the Form LM–30. As explained in the NPRM, the Department recognized that the term was imperfect, because in common parlance a business in which a filer holds an interest would not ordinarily be considered a ''payer'' of the filer. Upon further consideration, the Department has determined that the use of the term, defined specifically for Form LM–30 reporting, is unnecessary and potentially confusing. For these reasons, the Department has withdrawn the proposed definition. For similar reasons, as discussed above, the Department has withdrawn the proposed definition of ''publicly-traded securities.''

N. Details Relating To Proposed and Revised Form and Instructions

As explained in the NPRM, the broad purpose of Form LM–30 is to disclose payments and other financial interests of a union official that may pose a conflict between those personal interests and his or her duty to the

union and its members. 70 FR 51166. In the NPRM, the Department identified the difficulty in developing a self-explanatory form to accomplish this result. While the old Form LM–30 has a deceptively simple design, it fails to fully capture information that Congress wanted disclosed. Filers often failed to complete the form and, when they did file, they seldom provided the detail called for in the instructions.

1. Comparison of the ''Old'' and Proposed Forms

Items 1–4 of the old Form LM–30 remained on the proposed form with only minor changes. Item 3 was modified to require an e-mail address of the filer. Item 4 of the proposed form combined Items 4 and 5 of the old form and it also required filers to report whether they held their position in the union at the end of the reporting period. Item 5 on the proposed form was the signature box, which was otherwise the same as the old form.

The proposed Form LM–30 included a Payer Detail Page to provide an itemized list of all payments, by payer. The proposed form included three schedules, and it organized the reportable matters by tables instead of the narrative boxes on the old form. The old form also displays reportable information in a three section format: Part A, Part B, and Part C. The filer must report payments from employers in Part A, Items 6, 7a, and 7b; from businesses in Part B, Items 8–12; and from other employers and labor relations consultants in Part C, Items 13–14.

The proposed form contained various continuation pages for information supplementing required entries on other pages or otherwise as overflow space. Some of these pages existed in a different format in the old form and some were new pages.

The NPRM noted that the diversity of financial transactions made reportable by section 202 of the Act requires detailed instructions. The NPRM invited comments as to the layout of the instructions, their clarity, and suggestions about how to better explain the reporting obligations. The NPRM also noted that the first heading of the proposed instructions, ''Why File,'' was largely unchanged from the old form: it addressed the basic reporting obligations.

2. Comments on Proposed Form

In an attempt to better inform potential filers about the purposes served by the Form LM–30, the proposed form included an expanded discussion of the LMRDA, placing the official's reporting obligation in the context of the other rights and obligations established by the Act. The proposed form also clarified that no form need be filed unless the filer, his or her spouse, or minor child held a covered interest, received a covered payment, or engaged in a covered transaction or arrangement during the reporting period.

The NPRM also requested comments about the layout and clarity of the form, including: ''Would the form benefit from adding additional text and, if so, what additions are recommended? Does the form have an intuitive feel to it? Does the form request information in logical progression? How can the form be improved?'' The next paragraph discusses the general comments received on the proposed form and the Department's response. The following paragraphs summarize comments received on particular aspects of the proposed form and the Department's response to those comments. Comments and responses are grouped by the numbered items and schedules of the proposed form.

General Comments: Several commenters applauded the inclusion of definitions and examples; some commenters, however, expressed concern about some of the definitions and argued that some of the examples were incorrect. As discussed, the Department has clarified some of the definitions, modified some of the examples, and added others where requested. These changes are discussed in other sections of this document.

One commenter stated that the proposed form is more confusing to filers and the public than the old form, adding burden but no compensating benefit. The commenter recommended that the Department should ''leave well enough alone'' and that instead of revising the form it should provide guidance that would ''clarify[ ] and simplify[ ] the reporting requirement itself.'' The Department disagrees with this recommendation. As noted in the NPRM, flaws in the form itself and the instructions to the form provided impetus for the proposed rule. Further, as discussed throughout this document, many of the modifications to the form correspond to changes/clarifications in the reporting requirements themselves. Although under the revised form a filer no longer needs to record the statutory subsection under which a payment or other financial interest is received, the Department has nevertheless conformed the form to the reporting requirements of section 202 and the limited exceptions to such requirements. Finally, much of the asserted confusion will clear when filers familiarize themselves with the revised form and instructions and avail themselves of the compliance assistance readily available from this Department.

A labor educator stated that several of his study participants found the language in the instructions to be too ''legalistic.'' He suggested that the Department should wait to see what problems arose in connection with the historic upsurge in Form LM–30 filings, particularly in light of his observation that the biggest problem may actually be ''false positives'' and not ''false negatives'' (i.e., individuals who have nothing to report are nonetheless filing reports). The commenter's point about the old form is valid. However, the revised form and instructions will resolve this problem.

Item 2—Period Covered: One individual suggested that the instructions should make clear that the filer's fiscal year should be the fiscal year used by his union in filing its Form LM–2, and another expressed confusion about whether reports should be based on the official's fiscal year or his union's fiscal year. The Department cannot dictate to a filer his or her fiscal year. The language of the statute states: ''[the filer] shall file with the Secretary a signed report listing and describing for *his* preceding fiscal year * * *.'' 29 U.S.C. 432(a). The instructions as proposed appear to leave some ambiguity as to what fiscal year should be utilized by the filer. As such, the Department has added language to Part IX of the revised instructions indicating that the fiscal year is that of the filer, which may differ from the fiscal year utilized by the filer's union for filing its annual financial report, Form LM–2, LM–3, or LM–4.

Item 3(I)—Contact Information of Reporting Person: E-mail Address: One commenter expressed support for the added contact information required by Item 3. Other commenters voiced opposition to the addition of the filer's e-mail address. The concern over e-mail addresses was that they are private and that their disclosure may lead to harassing e-mail, spam, unwanted solicitation, and viruses. Further, the commenters argued that the reporting of a filer's office telephone number eliminates the need for the e-mail address.

Although several commenters voiced concerns over the required inclusion of a filer's e-mail address, none explained how this would violate the Privacy Act. No violation of such Act is apparent; there does not appear to be any greater privacy interest in a personal e-mail address than in a personal mailing address or phone number and such

information has long been required by Form LM–30 filers without any challenge on privacy grounds. The old Form LM–30 requires the address of the filer and the telephone number where the filer conducts official business, although a private, unlisted telephone number is not required to be reported.

At the same time, the Department is sensitive to a filer's concerns that by disclosing his or her e-mail address, the official may become the target of unsolicited e-mails or otherwise impeded in the use and enjoyment of his or her e-mail account. For this reason, the Department has decided that the filer has the option to disclose or not disclose his or her e-mail address.

Summary: The Department received one comment supporting the addition of a summary schedule to Form LM–30. Other commenters opposed this schedule, asserting that the summary adds unnecessary burden, without adding any ''significant value,'' and creates confusion due to the lack of a readily apparent relationship between the payer and employer/union on the summary. One commenter noted that summarizing all payments in this manner leads to the conclusion that the total value is a ''payment'' when not all of the interests, such as share holdings, can be characterized as such.

This summary enables viewers to quickly ascertain the payments and interests held in employers and businesses that may constitute a potential conflict of interest. This function is the essence of Form LM–30, and thus the summary is a significant improvement over the old form. The comments express concern over the confusion that would ensue from aggregating different types of interests and payments, and the Department has addressed this concern with the creation of the categories of ''income or other payments'' and ''assets'' on the summary section of the form.

Part B—Schedule 1: Employer or Business Identifying Information: One commenter voiced general support for the new schedules and applauded the new contact information. Other commenters expressed opposition to the changes, in particular the business ID number and incorporation information. One commenter argued that the new payer identifying information was ''unduly burdensome,'' requiring filers to conduct extensive research to compile such information, and with little value to the members and other viewers. Another stated that only the payer telephone number was justified, along with the payer name and address and the transactional information. Further, a union commented that it will be extremely difficult for a filer to locate payer information such as the state of incorporation/registration and state business ID number.

This schedule will no longer combine data from all ''payers'' regardless of its classification as an employer, labor relations consultant, or business. The latter terms appear in the Act, unlike ''payer,'' and the Department has restructured Part II of the instructions to detail the reporting requirements with these distinctions in mind.

The Department has also eliminated Items K and L (State of Incorporation/Registration and State Business ID number) of Schedule 1, as proposed. The commenters' assertions that the inclusion of the business ID number and incorporation information will add significant burden to the reporting requirements appear valid. A filer must report all transactions in an accurate and clear manner, as well as provide basic contact and reference information; the filer should not also be required to perform research on the employer or business for information beyond what is needed to meet the statutory requirements. Further, viewers of these forms may be able to acquire such information on their own initiative if it is of interest to them; they will have the employer's or business' name and contact information to assist them in obtaining any desired additional information.

Part B—Schedule 2: A labor educator presented some specific suggestions for this Schedule. He suggested that the form spell out the coding ''O/E/S/C'' under Item B, Schedule 2, *i.e.*, ''officer,'' ''employee,'' ''spouse,'' and ''[minor] child.'' Two other commenters expressed a similar concern. The Department has modified the form to meet these concerns.

This commenter also suggested that the Department could use the Itemization Sheets and Schedules 15–19 in the Form LM–2, with a standardized itemization sheet for all reportable transactions that roll-up into a single-summary sheet. The itemization sheets for Schedules 15–19 of the Form LM–2 are not appropriate or necessary for purposes of the Form LM–30. A filer using the electronic Form LM–30 will be able to create as many copies of Schedules 2 and 4 and of the additional information schedule as needed to complete the form.

Instructions—Categories A1–A6: The most critical comments concerned the subsection-by-subsection layout of the proposed form. One commenter described it in hyperbolic terms, as ''requiring an encyclopedic knowledge of the Act.'' Others simply suggested it was more difficult than necessary. The Department believed that the subsection-by-subsection approach had the value of showing the filer, by reference to the statutory language, exactly what he or she must report. While the Department continues to believe that this approach has value and may have been preferable for use by some filers, the Department is persuaded that this approach may lead to the perception that the Form LM–30 is unnecessarily difficult to complete.

Two commenters asserted that the proposed form, unlike the old form, ''fail[s] to collect interests and transactions into coherent categories. The proposed format, dependent on a complicated coding system, adds unnecessary complexity for filers.'' Another commenter, a labor educator, generally opposed the use of the ''codes'' A1–A6, because in his view it is possible to have more than one code for a payment. He also stated that he had found that potential filers had difficulty synchronizing the sections of the form with the instructions. For example, he stated that filers had to continually ''flip back and forth'' from the instructions to the form. He believes that this diminishes the effectiveness of the instructions.

The Department has carefully considered the concerns expressed about the subsection-by-subsection approach of the proposed form. In place of this approach, the Department has decided instead to organize the form in a way that requests each filer to identify by employer and business the reportable interest, payment, loan, or transaction, and to identify whether it was held by or involved the filer, his or her spouse, or minor child. This approach, similar to the approach used in the old form, adopts the targeted approach used by Congress to identify the types of relationships from which a conflict between a filer's personal interests and his or her duty to the union arises. Moreover, the classification of each payer as an employer, labor consultant, or business provides necessary context for a member or other viewer to properly analyze the potential conflict. Except for this change, the revised definitions and examples, the addition of some new examples, and the enlarged exception for reporting insubstantial payments, there have been no significant changes to the proposed form or instructions.

The Department has also reduced the necessity to ''flip back and forth'' from the instructions to the form by putting more instructions and examples on the form itself (following the example of SF–278 required of Federal employees),

and by providing cross references, by page number of the instructions, for the definition of any terms needed to complete a particular section of the form. Also, to help alleviate this problem, the revised form utilizes Items 6 and 7 to add clarity for both the filer and the reviewer of the form by listing the conditions under which arrangements, transactions, income or other payments, interests, and loans must be reported. These items help the filer, in particular, by focusing him or her on the pertinent provision in the instructions.

Instructions Part II—Who must file and what must be reported: One commenter suggested that the ''Do I have to file the LM–30'' section of the instructions should be revised to allow an individual to more easily identify himself or herself as a Form LM–30 filer. The Department has addressed this concern by removing the A1–A6 categories, restructuring Part II of the instructions around the reporting requirements, exceptions, and examples of payments from employers and businesses; by revising some of the definitions, and by adding page citations to the cross-references. Another commenter acknowledged that the proposed form assisted potential filers by highlighting that no union official needs to file unless there has been reportable activity. The revised form contains the same statement.

A commenter noted that the definition of ''substantial'' should include the word ''employer'' and not ''labor organization'' at the end of the second sentence of the definition. The Department has corrected this error by indicating that the end of the second sentence of that definition should read ''employer'' and not ''labor organization,'' as ''substantial part'' is found in the language of 202(a)(3) (a business that deals with the employer) and not in 202(a)(4) (a business that deals with a labor organization).

Instructions—Examples and Definitions: A commenter opposed some of the examples, suggesting that they are unreal ''lawyer'' hypotheticals, better used to establish the bounds of the Department's authority than to provide practical assistance to filers. Another commenter stated that fewer, better examples should be developed. He provided information to support his view that the definitions were confusing. He also suggested that the form should be redesigned to eliminate the need for filers to refer to different places in the instructions in order to complete the form, and that the instructions should include a section that brings together all the transaction criteria in each of the six subsection categories. Another commenter characterized the revised instructions as an improvement over the old ones, describing the examples as ''particularly useful.''

Many of the specific comments directed at examples have already been addressed in other sections of the preamble. The Department believes that these examples address typical reporting scenarios that will guide filers in their effort to comply with the reporting requirements. Nevertheless, the Department has carefully reviewed all the examples, and in several cases has added or modified language in an effort to clarify or simplify the guidance presented in them. Other examples, although reflecting a correct statement of a filer's obligations (with the exception of example 1, at 70 FR 51217, which omitted a key fact), have been eliminated as redundant.

Commenters expressed concern about the absence of examples involving transactions between, on the one hand, union officials and on the other section 3(l) trusts or service providers to such trusts. The Department has added Example 3 under ''(2) Payments of Money or Other Thing of Value from Certain Other Employers or a Labor Relations Consultant to Such an Employer'' in Part II of the instructions, which relates to payments to a union official from a trust in which that official's union is interested. Further, Part II of the instructions, ''Reportable Payments and Interests from Businesses,'' contains Examples 15 and 17, which each deals with payments to a union official from service providers to trusts.

Instructions—General Stylistic Comments: An individual offered several specific recommendations in regard to the instructions. He proposed that the Department utilize a single column rather than the double columns in the proposed form; the ''Note on Definitions'' should be indented below each definition; and the examples should be placed within graphic text boxes. He also suggested that the Department should either include a discussion of the Act's legislative history in the instructions or separately publish such information to assist filers in understanding what is to be reported on the form.

The Department has made several minor changes that add some clarity to the instructions. As to changing the two-column format, the Department disagrees. All the old Form LM instructions utilize two columns, and no other commenter expressed concern over this format. The Department believes that it is easier for readers to process information in a two-column format than by alternative presentation.

The examples already stand out as they are numbered in bold type, so boxes around them are not needed. The Department has also consolidated many of the examples, based on its departure from the A1–A6 format in the proposed form. The Department has indented the ''Note on the Definitions'' sections to aid the filer; created a new part of the instructions for definitions (Part III); numbered the definitions; and cited them with page number references in Part II of the instructions.

The Department disagrees with the suggestion that the instructions should include a discussion of the Act's legislative history. The instructions are intended to be straightforward and directed solely at the completion of the form. A discussion of legislative history, the language of the statute, and legal and policy questions would add additional, unnecessary length to the instructions. A filer desiring additional background information of this nature can easily obtain it by reviewing this preamble, the preamble to the proposed rule as published in the **Federal Register**, or through the Department's own Web site and other governmental and publicly-accessible electronic information portals.

The Department acknowledges that the revised form, like the proposed form, may ''feel less intuitive'' than the old form; however, it believes that the revised form will better meet the goals of the LMRDA than the old form. Moreover, to address the concerns of the commenters, the Department has made several changes to the form to facilitate its completion and use by union members and the general public.

3. Completion of the Revised Form

The first seven items on the revised Form LM–30, as published in today's rule, provide basic information about the filer and his or her labor union; the number of employers and labor relations consultants and the number of businesses with which the filer engaged in reportable activity; and the total reported income and the total reported assets of the filer involving those employers, labor relations consultants, and/or businesses. Item 8 is for the signature, date, and telephone number of the filer. Items 1–8 have been designated as Part A of Form LM–30 for ease of reference.

Both the proposed and revised forms provide a plain notice to filers that they should carefully review the instructions to the form before completing it. The revised form contains the notice on the

first page: ''You are not required to file this report unless you * * * have received a payment, engaged in any transactions or arrangements, or held an interest of the types described in * * * the instructions.'' The revised instructions include, on the second page, a discussion of the reporting exception for insubstantial payments and gifts to enable potential filers to more quickly determine whether they have a reporting obligation. To simplify the form's completion, the instructions identify particular terms that must be understood for completing particular items. Page references are provided for these terms, which are now defined near the end of the instructions. By relocating the terms, a filer is able to more quickly start completing the form and focus only on those terms that affect the filer's circumstances.

The remainder of the form consists of Schedules 1 through 4 and is designated as Part B. The filer must complete a separate Part B in accordance with the instructions for each of the employers, labor relations consultants, or businesses with which the filer engaged in reportable activity.

Item 1—File Number: No changes were proposed for this item, which is included in the old and revised forms.

Item 2—Period Covered: No changes were proposed for this item, which is included in the old and revised forms.

Item 3—Contact Information of Reporting Person: The addition of the filer's e-mail address was proposed. However, the Department has decided to allow filers the option to disclose or not disclose his or her e-mail address.

Item 4—Labor Organization Identifying Information: Both the proposed form and today's form combine two items of the old form. Items 4F, 4G, and 4H on the revised form ask for information about the filer's position in the union, whether it is an officer or employee position, and whether the filer held this position at the end of the reporting period. As noted in the NPRM, it is important as an enforcement matter to know whether the filer can still be reached at the union, and whether the filer may need to file Form LM–30 the following year.

Item 5—Summary: The revised form adopted the concept of a summary schedule of reported payments and interests contained in the proposed form, but the proposed summary has been simplified in response to comments. The revised summary (now Item 5) shows total reported income or other payments and total reported assets. The summary no longer requires the filer to list each individual payer (employers, businesses, and labor relations consultants) and give a total value of all dealings with that payer as had been proposed. As discussed herein in greater detail, the aggregation of all types of dealings such as payments, share holdings, loans, and so forth was determined to be confusing. Instead, the filer now totals the amounts in Schedule 2, Item F, Column (1) (value of income or other payments) of all the Part Bs and enters the total in Item 5A. The filer likewise totals the amounts in Schedule 2, Item F, Column (2) (value of asset) of all the Part Bs and enters the total in Item 5B.

Items 6 and 7—Employer Relationships and Business Relationships: To simplify reporting, Item 6 on the revised form identifies the relationships between, on the one hand, a filer's union and, on the other hand, an employer or a labor relations consultant to an employer that will trigger a reporting requirement. Its counterpart, Item 7, identifies the types of relationships, direct and indirect, between a business and the filer's union that will trigger a reporting requirement. These relationships are culled from the provisions of sections 202(a)(1) through 202(a)(5), supplemented by particular relationships that trigger a report under section 202(a)(6). Filers no longer have to extract these relationships from the statutory language. If the filer has received a payment from or held an interest in such an employer or business, the language on the form directs the filer to review Part II of the instructions to determine whether or not any of the exemptions apply to the filer's situation. Items 6(a) and 7(a) each contain a box for the filer to indicate whether or not he or she had any of the listed relationships. If the filer answers ''Yes'' to Item 6(a) or 7(a), Items 6(b) and 7(b) ask for the number of employers (and consultants) or the number of businesses with which the filer had a listed relationship. Items 6 and 7 clarify for both the filer and the reviewer of the form the entities from which payments and interests must be reported.

Item 8—Signature: The signature box has been renumbered as Item 8, but it has not otherwise changed from the old or proposed forms.

Part B: The ''Payer Detail Page'' from the proposed form is now called Part B and has four schedules. Schedules 1 and 2 will be completed for both employers and businesses. Schedule 3 will be completed for employers only and Schedule 4 will be completed for businesses only, so only three schedules will be completed on each Part B, just as in the NPRM. Instructions and examples have been added to the schedules on the form to enable the filer to more easily complete the form. A separate Part B must be completed for each employer, business, or labor relations consultant from which the filer received a reportable payment or in which he or she had a reportable interest.

Part B—Schedule 1: Employer or Business Identifying Information: All filers must complete this schedule. The schedule's title has been changed from the proposed form's ''Payer Identifying Information.'' The proposed form combined three items on the old form (Items 6, 8, and 13) that helped identify the source of a payment or the specific interest held by the filer, his or her spouse, or minor child. The proposed form also required the filer to provide contact information for each ''payer,'' including the telephone number, Web site address, state of incorporation or registration, and state business identification number. As noted in the NPRM, the additional contact information would make it easier for a person reviewing the report to identify the payer. The filer also would have to indicate whether he or she was associated with the payer at the end of the reporting period, information that would be helpful to the Department in determining whether the filer may be required to file a report the following year, thereby allowing the Department to conduct effective compliance assistance. The revised form no longer requests the filer to provide for each payer the state of incorporation/registration or state business identification number. The Department has determined that filers may not have this information at hand and that asking them to obtain such information would impose an unnecessary burden. The Department has retained new items such as the entity's telephone number (Item I) and Web site address (Item J). The schedule also requires the information that would be found in the old form. The Department has also preserved the proposed form's requirement for the filers to indicate whether the union official (or spouse or minor child) had a continuing relationship with the employer, business, or labor relations consultant at the end of the reporting period.

Part B—Schedule 2: Interests in, Payments From, Loans to or From, and Transactions or Arrangements with Employer or Business and Payments from a Labor Relations Consultant: All filers must complete this schedule. This schedule replaces and renames Schedule 2 on the ''Payer Detail Page'' of the proposed form. The term ''payer,'' as noted in the NPRM, was an awkward phrase; it is no longer needed in the

revised form. The proposed form required filers to identify reportable interests, payments, loans, transactions, and arrangements by the specific provisions of section 202 of the LMRDA.

As in the proposed form, the revised Schedule 2 requires the reporting of the date of each reportable payment and interest and whether it was received or held by the filer, his or her spouse, or his or her minor child; this information was not always reported on the old form. Language on this schedule clarifies the information that must be reported, the format in which the information must be reported, and references the instructions for further review of filing criteria. The layout of the schedule itself remains largely unchanged from the proposal, which in turn is derived from Items 7, 12, and 14 of the old form. The most significant change in the revised form's Schedule 2 is the deletion of Item C of the proposed form, which required the filer to indicate the subsection of section 202 of the LMRDA (A1–A6) that required the disclosure of each reported payment or interest. As explained in greater detail elsewhere in this preamble, this requirement was deleted in response to comments. Item C ''Description of Interest, Payment, Loan, Transaction, or Arrangement'' on the revised form is identical to Item D on the proposed form. Item D, ''Value'' on the revised form (Item E on the proposed form), has been divided to include separate columns for ''Value of Income or Other Payments'' and ''Value of Asset.'' The instructions for this item in Part IX clarify what must be reported in each column of Item D. The filer must add the data in the income column and in the asset column, and record these totals in Item F.

Part B—Schedule 3: Employer's Relationship with Your Labor Organization: This schedule must be completed only by filers who are completing Part B for payments from, or interests in, an employer (or a labor relations consultant to an employer). It replaces Schedule 3 from the proposed form, ''Payer's Dealings with Union(s), Trust(s), or Employer(s)'' with respect to employers. This schedule, unlike the old or proposed forms, provides a checklist of relationships between the filer's union and employers and businesses that will trigger a reportable interest. The relationships are culled from the language of sections 202(a)(1) through (a)(5) and from the Department's interpretation of section 202(a)(6).

In Item A the filer will check the appropriate box(s) describing the relationship between the employer and the filer's labor organization. This will clarify the exact nature of the relationship for both the filer and the reviewer of the form. Item B of the schedule asks for a detailed description of the dealings between the two entities. Item B(1) requests a dollar value of the transactions between the entities. If the employer's relationship with the filer's labor organization is based on the labor organization's representation of the employer's employees or actively seeking to represent the employees or if the relationship cannot otherwise be readily assigned a monetary value, the filer should enter ''N/A.'' The need for this schedule derives from the changes in the Department's interpretation and implementation of section 202(a)(6) as discussed elsewhere in this preamble.

Together with Schedule 4 that compiles similar information for reportable interests that arise from business relationships with a filer's union, this schedule, like the proposed Schedule 2, combines and simplifies information that is now collected in multiple items of the old form. Both the proposed form and the revision in today's rule asks filers to provide for each reportable matter the source of the payment or the specific interest, its recipient or holder (filer, spouse, or minor child), a description of the reportable matter, and its value. The schedule, as revised, also includes examples of reportable items, which should assist filers in determining the manner and detail in which reportable items should be identified and described.

Part B—Schedule 4: Business's Dealings with Union(s), Trust(s), or Employer(s): This schedule must be completed only by filers who are completing Part B for payments from, or interests in, a business that deals with the filer's labor organization, a trust in which the filer's labor organization is interested, or an employer whose employees the filer's labor organization represents or is actively seeking to represent. This schedule replaces the proposed Schedule 3, ''Payer's Dealings with Unions(s), Trusts(s), or Employer(s),'' with respect to businesses. The new Schedule 4 largely resembles its predecessor Schedule 3 in the proposed form, which combined and simplified information reported in Items 9, 10, and 11 of the old form. Item B now reads ''Union/Trust/Employer,'' rather than ''U/T/E.'' Filers are no longer required to compute and enter a total on the form for the value reported.

As noted above, this schedule, combined with Schedule 3 that compiles similar information for reportable interests and payments from employers, asks filers to identify for each reportable matter the source of the payment or the specific interest, its recipient or holder (filer, spouse, or minor child), a description of the reportable matter, and its value. Although the proposed form asked the filer to designate for each reportable matter the subsection under which the report was triggered, the revised form does not ask for such information. The schedule, as revised, also includes examples of reportable items, which should assist filers in determining the manner and detail in which reportable items should be identified and described.

Labor Organizations in Which the Reporting Person is an Officer or Employee—Continuation Page: This page is a continuation of, and is identical to, Item 4 on the revised Form LM–30. It is for use by a filer who is an officer or employee of more than one labor organization.

Additional Information Schedule: This schedule is identical in both the proposed and revised forms. It allows filers to provide additional information or explanations about other items in the form. This is similar to additional information items found on other OLMS forms, but the old Form LM–30 does not contain such an item.

Summary Schedule Continuation Page: The Department has eliminated this continuation page that was part of the proposed form, as the revisions to Item 5, the Summary, have removed the necessity for it.

Schedule 2 Continuation Page: The Department has retained a continuation page for the new Schedule 2.

Schedule 4 Continuation Page: The Department has added a continuation page for the new Schedule 4.

Instructions Part I, Why File: This part of the instructions is largely unchanged from the old and proposed forms.

Instructions Part II, Who Must File and What Must Be Reported and Part III, Definitions: Part II of the instructions has been amended in several significant ways from the proposed form. The Department has abandoned the layout of the instructions in the ''A1–A6'' format, and it has adopted an arrangement in which the instructions guide the filer according to the reporting requirements for payments from and interests in employers (and labor relations consultants) and businesses. Further, the Department has removed the definitions from Part II of the instructions, numbered them, and placed them in a new Part III. The reporting requirements in Part II cite the number and page of each of the definitions in Part III. Finally, the

Department has modified some of the definitions as earlier discussed in the preamble.

Instructions Part IV, When to File: This part has been renumbered from the old form, but no substantive changes have been made.

Instructions Part V, Where to File: This part has been renumbered from the old form, but no substantive changes have been made.

Instructions Part VI, Public Disclosure: This part has been renumbered from the old form and updated information, including the Internet Public Disclosure Room, has been added.

Instructions Part VII, Officer or Employee Responsibilities and Penalties: This part has been renumbered from the old form, but it is identical to the proposed form.

Instructions Part VIII, Recordkeeping: This part has been renumbered from the old form and a reference has been added to retaining electronic documents. A similarly worded statement is adopted as section 404.7 of the Department's regulations (to be codified at 29 CFR 404.7)). This represents a clarification of existing recordkeeping requirements, and is not intended as any change in the law governing the maintenance and retention of records.

Instructions Part IX, Completing Form LM–30: The Department has modified this part of the instructions, the former Part VIII of the proposed instructions, to correspond to the changes made to the revised Form LM–30.

III. Regulatory Procedures

A. Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866. Because compliance with the rule can be achieved at a reasonable cost to covered union officers and employees, the rule is not likely to meet the 3(f)(1) definition of having an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under Section 6(a)(3) of the Order. However, the Department determined because of its importance to the public that this final rule is a significant regulatory action under the Executive Order and therefore, it was reviewed by the Office of Management and Budget.

The burden imposed by the revision of the Form LM–30 is addressed in the Paperwork Reduction Act section, below.

The Department believes that increased transparency for union officers and employees will provide substantial benefits to union members and the union itself, as well as to outside academic researchers, members of the public, and other stakeholders. Transparency promotes the unions' own interests as democratic institutions. By these improvements, union members will obtain a more accurate picture of the personal financial interests of their union's officers and employees, as those interests may bear upon their actions on behalf of the union and its members. With this information, union members will be better able to understand any financial incentives or disincentives faced by their union's officers and employees and to make more informed choices about the leadership of their union and its management of its affairs. Through these actions, the Department effectuates the reporting obligation established by section 202 of the LMRDA and advances the Act's declared purpose ''that labor organizations, employers, and their officials adhere to the highest standards of responsibility and ethical conduct in administering the affairs of their organizations.'' Section 2(a) of the LMRDA, 29 U.S.C. 401.

B. Small Business Regulatory Enforcement Fairness Act

For similar reasons as those discussed in section A, the Department has concluded that this final rule is not a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million (adjusted for inflation) in any one year.

D. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with Executive Order 13132 regarding federalism and has determined that the rule does not have ''federalism implications.'' The economic effects of the rule are not substantial and the rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, 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, including ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' Today's rule revises the reporting obligations of union officers and employees, who, as individuals, do not constitute small business entities. Accordingly, the final rule will not have a significant economic impact on a substantial number of small business entities. Therefore, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), a regulatory flexibility analysis is not required.

F. Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 (''PRA''). *See* 5 CFR 1320.9. As discussed in the preamble to this final rule and the analysis that follows below, the rule implements an information collection that meets the requirements of the PRA in that: (1) The information collection has practical utility to labor organizations, their members, other members of the public, and the Department; (2) the rule does not require the collection of information that is duplicative of other reasonably accessible information to the extent practicable; (3) the provisions reduce to the extent practicable and appropriate the burden on union officials who must provide the information; (4) the form, instructions, and explanatory information in the eamble are written in plain language that will be understandable by reporting officials; (5) the disclosure requirements are implemented in ways consistent and

compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of union officials who must comply with them; (6) the preamble and the instructions to the Form LM–30 inform union officials of the reasons that the information will be collected, the way in which it will be used, the Department's estimate of the average burden of compliance, which is mandatory for officials with reportable interests, the fact that all information collected will be made public, and the fact that officials need not respond unless the form displays a currently valid OMB control number; (7) the Department has explained its plans for the efficient and effective management and use of the information to be collected, to enhance its utility to the Department and the public; (8) the Department has explained why the method of collecting information is ''appropriate to the purpose for which the information is to be collected''; and (9) the changes implemented by this rule make extensive, appropriate use of information technology ''to reduce burden and improve data quality, agency efficiency and responsiveness to the public.'' *See* 5 CFR 1320.9; 44 U.S.C. 3506(c).

As discussed throughout the preamble, today's rule provides various benefits to unions, union members, this Department, and the public. The information has obvious utility for these groups, among other reasons, by ensuring more complete compliance by labor union officials with the LMRDA's reporting obligations. The rule provides for the collection of information in a way that is compatible with electronic reporting and the dissemination of this information to the interested community of users. In so doing, it better achieves the public disclosure purposes served by the Act's reporting provisions than the existing rule.

Although the effectiveness of today's rule depends, in large part, on a set of instructions for the Form LM–30 that is longer than the instructions for the old form, the additional length is largely the result of the inclusion of numerous definitions and examples, designed to assist filers in understanding their reporting obligations. The absence of this information in the instructions to the old form was a significant impediment to compliance by filers and the utility of reported data. The inclusion of this information in today's rule benefits filers and the public; any additional time required to read the instructions is a small burden in comparison to the knowledge provided filers and the predicted gains in the numbers and completeness of the forms submitted to the Department.

The final rule more closely resembles the format of the old form than the form proposed by the Department. Unlike the proposed form, the form embodied in today's rule may be completed without need for the filer to identify the statutory provision that triggers a reportable interest. This change eliminates a concern by many commenters that the proposed form imposed unnecessary burdens on filers. Various other changes have been made to the form that was proposed and its accompanying instructions. The Department has achieved its goal of designing a rule that meets the disclosure purposes intended by Congress—the complete and meaningful reporting of information about actual or potential conflicts of interest between a union official's personal financial interests and the official's duty to his or her union and its members. Moreover, this goal has been achieved without imposing any unnecessary burden on union officials. While the Department believes that the form and instructions provide ready answers to typical questions that may rise in completing the form, the Department has a robust compliance assistance program in place to assist filers in timely and correctly fulfilling their reporting obligations.

Most of the information collected by the form is unavailable in any other public document; to the extent there may be some overlap with reports required by fiduciaries under other laws, the duplication, albeit minimal, is unavoidable. The rule's recordkeeping requirements are identical to the old rule with the exception of the requirement that filers preserve any electronic information used to complete the form. This requirement is consistent with contemporary recordkeeping standards and elicited no unfavorable comment.

The Department's NPRM in this rulemaking contained initial Regulatory Flexibility Act and PRA analyses, which were submitted to and reviewed by OMB. Based upon careful consideration of the comments and the changes made to the Department's proposal in this final rule, the Department has made significant adjustments to its burden estimates. The costs to the Department for administering the reporting requirements of the LMRDA also were adjusted.

Pursuant to the PRA, the information collection requirements contained in this final rule have been submitted to OMB for approval. Within 30 days of the date of publication of this final rule, you may direct comments by fax (202–395–6974) to: Desk Officer for the Department of Labor/ESA, Office of Management and Budget.

Summary: This final rule modifies the public financial disclosure reports that section 202 of the LMRDA requires to be filed by labor union officers and employees for any fiscal year in which they have certain holdings, receive certain payments or income, or engage in certain financial transactions or arrangements. The revised paperwork requirements are necessary to reduce the errors and deficiencies in the reports, raise the number of union officials that comply with the reporting requirements, and increase the transparency of the financial practices of such officials. More accurate reports and increased transparency will allow union members to view the information needed by them to monitor their union's affairs and to make informed choices about the leadership of their union and its direction. Such improvements promote the unions' own interests as democratic institutions and the interests of the public and the government. Financial disclosure deters fraud and self-dealing, and facilitates the discovery of such misconduct when it does occur. Increased compliance will be achieved by clarifying the form and instructions, offering numerous examples to guide filers, deleting or limiting exceptions that allowed some financial matters that posed conflicts of interest to go unreported, and organizing the information in a more useful format. For a more detailed discussion of the purposes served, and benefits achieved, by the changes to the Form LM–30, its instructions, and related Department regulations, see the discussion above at Section I.C.1.

The revised Form LM–30 and instructions that will implement the new reporting requirements are published as an appendix to today's final rule. The electronic versions of the revised Form LM–30 and instructions are now available on the OLMS Web site at *http://www.olms.dol.gov*.

Background: The Form LM–30 is used by officials of labor unions to comply with the Act's requirement that such a union official annually disclose specified payments or other financial benefits received by the official, his or her spouse, or minor children from employers and businesses where such payments or other financial benefits pose actual or potential conflicts between an official's personal financial interests and the interests of the official's union and its members. Subject to specified exceptions, the interests, incomes, transactions, and arrangements subject to reporting

comprise: (1) Payments or benefits from, or interests in, an employer whose employees the filer's union represents or is actively seeking to represent; (2) transactions involving interests in, or loans to or from, an employer whose employees the filer's union represents or is actively seeking to represent; (3) interests in, income from, or transactions with a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent; (4) interests in, income from, or transactions with a business that deals with the filer's union or a trust in which the filer's union is interested; (5) transactions or arrangements with an employer whose employees the filer's union represents or is actively seeking to represent; and (6) payments from an employer or labor relations consultant. *See* section 202(a)(1)–(6).

Overview of Changes to Form LM–30 and Summary of the Need for the Rule: The revised Form LM–30 and instructions define terms used in the form, provide examples to assist the filer in identifying reportable financial events, and remove or limit certain exceptions that allowed financial matters of interest to union members to go unreported under the current reporting scheme. A detailed discussion of the proposed and revised forms and instructions is set forth at Section II.N. herein.

Estimated Universe of Filers: The Department initially estimated that it would receive 2,046 Form LM–30 reports per year as a result of the final rule. This figure was based on the then current estimated filing rate of 0.03% of all union officers and employees plus an expected increase in the Form LM–30 filing rate to 1% as a result of the proposal. *See* 70 FR 51199. For the final rule, a revised estimate, based on the public comment and the number of Form LM–30s filed with the Department during fiscal year 2006 has been used. During fiscal year 2006, the Department received 4,348 Form LM–30 reports, 882 of which did not contain information on any transaction or interest, i.e., blank reports, resulting in a total of 3,466 valid Form LM–30 reports filed during fiscal year 2006.[1] As explained in the following paragraphs, the Department considered key aspects of the final rule and assessed the impact of the revised reporting provisions by estimating the relative frequency that such provisions would result in filings. In making these estimates, the Department relied upon information it has previously used in determining paperwork estimates: the number of unions filing annual financial reports (21,792) and the number of officials (204,634) serving these unions.[2] *See* 70 FR 51171. Applying this methodology as discussed below, the Department estimates that under today's rule, it will receive 3,450 additional Form LM–30 reports. Thus, the Department estimates that a total of 6,916 revised Form LM–30 reports will be filed annually.

In the NPRM, the Department estimated that the clarification of the Form LM–30, the defined terms, the addition of examples that illustrate reportable and nonreportable transactions, and the removal of administrative filing exemptions would increase the number of individuals who file the Form LM–30. *See* 70 FR 51199. Using the best data available, the Department estimated that there are 204,634 union officers and employees. Further, based on the Department's receipt of approximately 61 reports annually (the annual average for fiscal years 2001–2005), the Department estimated a current filing rate of 0.03% ($61/204{,}634 \times 100 = 0.03\%$). Due to the proposed reforms, as well as increased compliance assistance and enforcement initiatives, the Department estimated that the filing rate would increase to approximately 1%, or 2,046 reports filed annually. The NPRM estimate was based on the opinion of some stakeholders that relatively few union officers and employees would be engaged in covered transactions. *Id.* The Department acknowledged the considerable uncertainty in this estimate and requested comment on the number of reports that should be filed under the old requirements and that may be filed as a result of the new requirements. *Id.* The comments received on the proposed rule have proven only marginally helpful in predicting how today's rule will affect the future number of Forms LM–30 filed annually.

Review of Public Comments on the Estimated Universe of Filers and Resulting Changes:

One commenter questioned the Department's estimate of the proposed universe of filers, arguing that the Department does not have relevant historic data on which to base its estimates, but is rather basing its expectations on the limited study discussed in the NPRM. Both for the proposed rule and today's rule, the Department has forecast the number of expected filers as accurately as possible based on available data. The Department has revised its initial estimates of the number of expected filers by using data on the number of reports filed with OLMS during fiscal year 2006. During that time, the Department received 4,348 Form LM–30 reports, 882 of which were blank. As demonstrated below, the Department has adjusted its estimated universe of filers based on this figure and input received from commenters.

A number of commenters argued that the proposed universe of filers and the corresponding reporting and recordkeeping burdens, as discussed in the NPRM, were too low given that the proposed de minimis exception, *i.e.*, the threshold below which a payment would not be reportable, was limited to payments of $25 or less. Commenters suggested that a de minimis level set at that amount would lead to a much higher incidence of filings than anticipated by the Department. One commenter pointed out that a $250 de minimis level, especially with a two-tiered approach, would result in a reduced compliance burden. In response to comments received on this point, the Department has replaced the proposed $25 de minimis test with a two-tiered approach. Under this approach, a filer must report aggregated payments or other financial benefits received from a single source that exceed $250. Payments of $20 or less are excluded from this computation. Further, union officials will not have to report hospitality benefits received while attending certain widely attended gatherings. As noted herein at Section II.C of the preamble, after the comment period for this rule closed, the Department issued guidance alerting filers, in effect, that they need report only payments that exceeded $250. This guidance was posted on the OLMS Web site on November 7, 2005 and disseminated through the OLMS e-mail listserv. Consequently, the Department has had a full year to gauge the impact of a $250 filing threshold. Not surprisingly, as a result of the implementation of the $250 de minimis

[1] Through increased compliance assistance efforts explaining that a report need only be filed to report certain transactions and that filing blank forms is unnecessary, the Department intends to eliminate or minimize the filing of blank reports.

[2] Both figures have been obtained from the Department's Electronic Labor Organization Reporting System database (''eLORS''), which stores and automatically culls certain information, such as union officer and employee salaries, from annual reports submitted by labor organizations. The total number of labor organizations has been used in the Department's submission to OMB for continuing PRA approval of OLMS forms. This information is based on FY 2005 data. The number of union officials was based on a query of applicable data in the eLORS system. This same figure was used in the NPRM's PRA analysis. *See* 70 FR 51199.

approach, there have been fewer filers reporting payments between $25 and $250. Thus, contrary to the suggestion of some commenters, no upward adjustment to the recordkeeping and reporting burden need be made for reasons associated with the de minimis level, as proposed. Moreover, the $250 threshold and the exclusion of payments of $20 or less from this threshold will lead to fewer filings than expected by commenters.

In the NPRM, the Department proposed that union officials must report all payments received from any employer or vendor with a relationship with any level of his or her union or with any trust in which any level of his or her union is interested. This would require, for example, that a local union president report payments received from a vendor that does business with the official's parent or intermediate union. The rule proposed to achieve this result by defining the term ''labor organization'' broadly. Several commenters submitted that the ramifications of implementing the proposed definition of ''labor organization'' could lead to requiring filers to account for transactions vastly exceeding the estimated burden in the NPRM. One of these commenters presented a hypothetical scenario that would result in a union official having to account for possible transactions with over 10,000 employers or businesses for not only himself or herself, but for a spouse and minor children as well.

This comment appeared to be premised on the belief that all businesses and employers associated with any entity within a union's hierarchy will need to be tracked by the officer or employee. This is not the case. The union official does not need to research and maintain records with all involved businesses or employers, but only those with which he or she is in a reportable relationship or from which he or she has received a reportable payment. The maximum burden on an officer or employee, in this regard, is to check the identity of these employers and businesses. Further, some commenters submitted that compliance burdens would be substantially lessened by modifying the proposed definition of ''labor organization'' to eliminate the language ''and any parent or subordinate labor organization of the filer's labor organization.'' In response to comments received on this issue, the final rule has reduced the reporting obligations from that proposed. The rule requires that a local union official track and report payments from only businesses that deal with their local union, trusts of their local union, and employers represented by, or actively being organized by, their local union. This tracks the reporting obligations under the old rule, and does not increase the reporting burden based on a broader definition of ''labor organization.'' See discussion at Section II.F of the preamble.

Officers of international unions and intermediate unions (but not employees) will also have to report any payments they receive from (1) An employer whose employees any subordinate labor union represents or is actively seeking to represent; (2) a business that buys from, sells to, or otherwise deals with any subordinate labor union; and (3) a business that buys from, sells to, or otherwise deals with a trust in which any subordinate labor union is interested, such as a pension or welfare plan or training fund. Employees of national, international, and intermediate labor unions do not have to track and report payments resulting from actions involving subordinate levels of the union.

As for the reporting impact of this provision, the Department estimates a slight increase in the number of reports. The largest portion of this increase is most likely to come from officers of intermediate labor unions. For these officers, the rule is new. Since 1962 international officers have been required to report on Form LM–30 income from businesses dealing with subordinate unions of that international. Therefore, increased filing under this provision by officers of international unions will be attributable to increased compliance assistance and enforcement efforts, and not to the final rule.

Many of the same commenters asserted that the NPRM did not address compliance costs and time for businesses to enact internal controls, which could entail substantial costs. Employers, including service providers, have been under the same reporting requirements since 1963 and no changes are being made to these requirements. Employer reporting requirements are governed by section 203 of the LMRDA. This rulemaking adjusts union officer and employee reporting under section 202 of the LMRDA. Therefore, not only is there no need to raise PRA estimates for employer recordkeeping, such estimates are not within the scope of this rulemaking.

One commenter submits that compliance burdens will be substantially lessened by determining that trusts are not ''businesses'' or ''employers.'' As explained in the preamble, trusts with employees are considered to be employers. The Department's views on whether the LMRDA requires disclosure of payments from trusts to union officials have evolved over time. In correspondence issued in 1967, a high ranking Department official responded to an inquiry concerning whether reporting is required of officers of labor unions who receive payments from union and employer established pension and welfare plans. The letter concluded that no report was required. On June 27, 2005, OLMS placed on its Web site a document titled ''Trusts and Form LM–30 and Form LM–10.'' In this guidance, OLMS indicated that payments from trusts to union officers and employees are reportable on Form LM–30 if the trust is an employer or business. As part of this rulemaking, the Department sought comments on whether a trust is, or can constitute, an ''employer'' or a ''business,'' making such payments reportable on the Form LM–30. These comments, and the determination that a trust or similar entity with employees is an employer for purposes of the Act, are addressed in depth in the preamble at section II.K.

No commenters provided estimates for the number of trusts that constitute ''employers'' and make reportable payments. Although the comments provided some anecdotal information particular to some unions, no information was provided that would allow the Department to estimate the total number of trusts that would be employers and none that would allow an estimate of the numbers of union officials now receiving payments from such entities. For example, one international union stated that there are ''380 Local or Council * * * Pension, Annuity, Health and Welfare, and training trusts in the U.S.'' Another commenter identified four trusts it co-sponsored. Another international union indicated that ''although some large trust funds happen to have employees, many do not.'' Finally, yet another international union explained that it and its affiliated district councils and local unions participate in ''numerous benefit funds.'' There is no basis to believe that other unions have trusts in the same proportion as theses unions. Moreover, no information was received that would enable an estimate as to what fraction of these trusts have employees or the number of union officials to whom reportable payments are made.

Payments received by an officer or employee of a labor union from the employer of the union's members for work performed by the union officer or union employee for the union will now be reportable unless they are made pursuant to a collective bargaining

agreement and total 250 hours or less per year. For the proposition that such provisions are common, a federation of labor organizations submitted a study, Major Collective Bargaining Agreements: Employer Pay and Leave for Union Business, U.S. Dept. of Labor, Bureau of Labor Statistics (October 1980) (''*BLS Study*''). Notwithstanding the significant period of time that has passed since the study's publication, it represents the most recent compilation of data on the union-leave/no-docking question. Furthermore, more recent papers on this issue focus on public sector unions, which, as previously noted, are generally not subject to the LMRDA, and thus such information is not readily transferable to the particular circumstances addressed by today's rule. The *BLS Study* (at pages indicated in parentheses) provides the following information:

- Of 1,765 agreements reviewed, 803, or 45 percent, granted pay for grievance time (6)
- Of 430 sample agreements examined in detail, 206 established pay for at least some grievance work (6)
- Of 206 sample clauses, 188 limited pay to either specific union representatives or to a fixed number of representatives (7)
- A substantial number of the 206 sample pay clauses limited the amount of paid time available for grievance activity by type of activity or eligible personnel (7) or by the amount of time one could spend on union work (7–9)
- Of the 1,765 agreements in the study, arbitration provisions appeared in 95 percent, but pay to union representatives for time spent appeared in only 3% (11)
- Of 1,765 agreements, 139 established time off with pay for union negotiators (7.8%) (12)
- Of 618 safety and health committee provisions reviewed, 281 referred to paid time for the activity (45%) (13)
- Of 1,765 agreements, 93 referred to training related to union business; half of these provide company pay (93/2 = 46.5) (46.5/1,765 = 2.6%) (17)

While it is clear from the *BLS Study* that the collective bargaining agreements under review contained a high number of union-leave/no-docking provisions, neither the study nor the comments provide a basis for estimating how many of these agreements will result in the filing of a Form LM–30.

The study demonstrates that 45% of these collective bargaining agreements grant union leave in at least one category (as outlined, 45% of provisions provided union leave for grievances and health and safety). However, a substantial but unspecified number of the clauses reviewed in 1980 by BLS limited the amount of paid time available (*Id.*, at 7–9). The *BLS Study*, however, does not discuss provisions representative of such limitations or otherwise indicate typical limits on the amount of time allowed for these purposes. As there was no information in the study or from commenters pertaining to the average amount of time that an individual would be engaged in union-leave or no-docking activity, the Department has no benchmark to gauge the number of filers that will submit reports under today's rule, *i.e.*, those who receive employer compensation for more than 250 hours of union activity under a collective bargaining agreement or who receive compensation, in any amount, for such activity, where it is not authorized by such agreement. It is the Department's belief that with this reporting threshold only a small fraction of union officials receiving such payments will have to file reports. Such officials likely will be serving in local or intermediate union positions; again, however, the Department lacks data to predict a percentage of such officials that receive such compensation or the smaller number that will receive compensation in excess of 250 hours.

Similarly, as discussed in the preamble, union members who receive payments from an employer for work performed on behalf of the union will now be considered union employees for Form LM–30 reporting purposes. A federation of labor organizations submitted that 100,000 union stewards out of 5.5 million members belonging to affiliated unions currently receive union-leave or no-docking payments. This comment appears to have overstated the number of affected stewards as it included unions representing state and local government employees that are not subject to the LMRDA. Another federation of labor organizations, while not directly commenting on the potential universe of filers, stated that this provision could result in ''tens of thousands'' of reports. Further, while both federations submit that there are many stewards who receive payments for union activity, the Department is unable to deduce from these comments how many stewards would already be subject to Form LM–30 reporting requirements because they currently meet the definition of union officer or employee. Therefore, the Department is unable to use information provided in these comments to derive an estimate of the number of individuals who will now be union employees because they receive union-leave or no-docking payments, much less how many of these payments are made outside of a collective bargaining agreement or total more than 250 hours per year.

As discussed in the preamble, certain exceptions are no longer applicable to all provisions of the revised Form LM–30; specifically, the ''bona fide employee'' exception for reports due under section 202(a)(2) and the ''employee discount-regular course of business'' exception for reports due under sections 202(a)(1) and (2). Based on the low number of comments received on the removal of these exceptions, which are addressed above, and the absence of any comments estimating the number of reports this change would result in, the Department does not foresee a substantial increase resulting from the removal of these exceptions. As explained in the preamble, sales and purchases of ownership interest in the employer, in particular, are unlikely to constitute payments received as a bona fide employee and thus the exception in the current form for reports filed under section 202(a)(1) is all but superfluous in the context of ownership interests. *See* Section II. D.2. Bona fide employees typically do not routinely engage in transactions involving holdings or loans that could be characterized as a payment or benefit received as a bona fide employee of the employer, and, as a result, the filing burden will not be onerous. The lack of comments objecting to this change seems to support these points.

Similarly, only three comments were received on the proposed removal of the ''employee discount-regular course of business'' exception, for reports due under sections 202(a)(1) and (2), one of which was supportive of the removal. As discussed earlier in the preamble, section 202(a)(5) of the LMRDA requires union officers and employees to report any ''business transaction or arrangement'' with an employer whose employees the union represents or is actively seeking to represent. This section exempts from reporting two categories of transactions and arrangements: (1) Payments and benefits received as a bona fide employee of an employer whose employees are represented by the official's union or the union actively seeks to represent; and (2) ''purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer.'' The current instructions apply this ''employee discount—regular course of business'' exception to the requirement that union officers and employees report (1) Holdings, (2) transactions in holdings, (3) loans, and (4) income or

any other benefit with monetary value (including reimbursed expenses). In so doing, the instructions exempt from reporting certain matters that otherwise would be reported under section 202(a)(1) or 202(a)(2). These sections do not contain this ''regular course of business'' exception, but the prior instructions made it applicable. Again, given the lack of comments regarding these changes, the Department anticipates only a slight increase in the number of reports received as a result of this revision.

In summary, as discussed previously, in the NPRM the Department estimated a then current filing rate of .03% based on the receipt of 61 Form LM–30 reports (the average for fiscal years 2001 to 2004) per 204,634 union officers and employees. Due to the proposed reforms as well as increased compliance assistance and enforcement initiatives, the Department estimated that the filing rate would increase to approximately 1%, or 2,046 reports filed annually. Subsequent to the NPRM, the Department engaged in increased compliance assistance and enforcement, and the number of valid reports received in fiscal year 2006 reached 3,466. This results in an estimated current filing rate of 1.69% (3,466 / 204,634 × 100 = 1.69%).

Taking the concerns of commenters into account in regard to the implementation of substantive reporting requirements which were not previously applicable, specifically union-leave/no-docking, expanded obligations for intermediate officers, removal of the two administrative exceptions, reporting by union stewards paid by employers for union work, and considering trusts, labor organizations, and other groups as employers in certain circumstances, the Department estimates that the Form LM–30 filing rate will increase to as much as 3.38%, or 6,916 reports filed annually, double the current filing rate. It is worth noting that the implementation of the $20 tiered *de minimis* threshold, under which no transaction, including aggregated transactions (subject only to the exception for a tacit or express agreement for the transfer of money, as discussed in section II.C of the preamble), militates against an even higher estimated number of overall filers.

Review of Public Comments Regarding the Hour and Cost Burden Estimates for the Revised Form and Resulting Changes:

In the NPRM, the Department proposed five minutes as the estimated amount of time for filers to report the employer's or business's name, address, name of contact at the employer or business, telephone number, Web site address, State of incorporation or registration, State business ID number, and whether the filer had an association with the business, employer, or labor relations consultant at the end of the reporting period. A number of commenters submitted that it would be especially burdensome, and possibly needless, to obtain the State of incorporation and State employer identification number. As such, these commenters suggested that the time allotted to gather the required information on an employer or business was insufficient. One commenter submitted that providing a telephone number and Web site address would not add any substantial reporting burden. Based on comments received on this issue, the Department has removed the requirement that filers report an employer's or business's State of incorporation and State employer identification number. With these items removed, there is no need to provide for corresponding additional recordkeeping and reporting time.

One commenter submitted that 90 minutes for completion of the Form LM–30 is not an accurate estimate. Another submitted that allowing 45 minutes for reading the instructions is insufficient time as the filer must refer back to earlier provisions in the instructions and the instructions have increased from 9 pages to 17. While this commenter argued that the proposed burden hour estimates were too low for the proposed requirements, no alternative burden hour estimates were submitted for any area of the rulemaking. The Department has changed the Form LM–30 from the NPRM proposal to add more instructions to the form itself. Because the form itself will be clearer, the amount of time a filer must spend studying the separate instructions will be reduced. Prior to this final rule, Form LM–30 was estimated to take filers roughly 30 minutes while the proposed revised form was estimated to require 90 minutes for completion, which is a 300% increase in the allotted time.

One commenter submitted that expanding the form to provide for six categories instead of three would add compliance burdens that are not accounted for in the NPRM. The Department has not implemented this proposed change; the six categories have been eliminated from the form itself. Rather, the Form LM–30 will utilize one schedule, Schedule 2, to detail ''interests in, payments from, loans to or from, and transactions or arrangements with an employer or business and payments from a labor relations consultant.'' No new information is required as a result of the format change; instead of reporting information in one of three categories, filers will report the same information in one schedule, but with greater clarity as to the nature of the transaction. Therefore, there is no corresponding additional burden.

It is also worth noting the implementation of the $20 tiered *de minimis* threshold, under which records need not be maintained for holdings or transactions, including aggregated transactions, of $20 and under. While this provision did not appear in the NPRM, commenters, as discussed above, nearly universally suggested that a tiered *de minimis* threshold would reduce the recordkeeping burden, or alternatively, prevent the need for increased recordkeeping estimates. The Department agrees with the latter opinion.

The following table describes the information sought by the revised form and instructions and the amount of time estimated for completion of each item of information. The time estimates include the additional time burdens associated with the Department's curtailment of administrative exceptions, and the implementation of the revised definitions.[3]

[3] These figures assume that a filer will choose to use an electronic form, which provides greater efficiency than completion by hand. The Department estimates that a filer who chooses to file by hand will need about ten additional minutes to complete the form.

Burden description	Time
Maintaining and gathering records	20 minutes.
Reading the instructions to determine whether filer must complete the form	15 minutes.[4]
Additional reading of the instructions to determine how to complete the form	40 minutes.[5]
Reporting filer's file number in Item 1	30 seconds.
Reporting filer's fiscal year in Item 2	30 seconds.
Reporting filer's name, address, and contact information in Item 3 (A–I)	2 minutes.
Reporting name, file number, and address of filer's union or unions as well as filer's current position in the union in Item 4 (A–H)	2 minutes.
Adding the total value of all assets and the value of all income or other payments in all Schedules 2 (as described below) and reporting the two totals in Item 5, Summary.	2 minutes.
Indicating whether there was a reportable involvement with an employer or labor relations consultant during the fiscal year, and if so, recording the number of employer(s) and consultant(s), in Item 6.	2 minutes.
Indicating whether there was a reportable involvement with a business during the fiscal year, and if so, recording the number of businesses in Item 7.	2 minutes.
Reporting name and address of the employer or business which the filer received a payment from or held an interest in, providing the contact name, telephone number, Web site address, and whether filer has an association with the business, employer, or labor relations consultant at the end of the reporting period in Schedule 1.	5 minutes.
Reporting the nature and value of interests in, payments from, loans to or from, and transactions with an employer or business and payments from a labor relations consultant (includes date, whether the party to the transaction is a union officer or employee or spouse or minor child thereof, and a description and value of the interest or payment) in Schedule 2.	5 minutes.
Completing *either* Schedule 3 if an employer or labor relations consultant is reported in Schedule 1, providing details of the employer's relationship with the filer's labor union; *or* Schedule 4 if a business is reported in Schedule 1, providing details regarding the entity the business dealt with (union, trust, or employer) and a description of those dealings.	8 minutes.
Filer's signature, date and telephone number in Item 8	1 minute.
Checking responses	5 minutes.
Total Burden Hour Estimate Per Filer	120 minutes.

The recordkeeping estimate of 20 minutes reflects that the majority of financial books and records required to complete the report are those that filers would maintain in the normal course of conducting business, personal, and union affairs, and thus should only take five minutes to maintain and gather. The other 15 minutes have been estimated to be necessary to maintain and gather the books and records that would not ordinarily be maintained, including those concerning the dealings between a business and the filer's union, a trust in which the filer's union is interested, or an employer whose employees the union represents or is actively seeking to represent. The estimated times are for the average filer: the Department assumes that an individual who partially owns or receives income from a company will know that company's Web address. Where a filer does not have a web address immediately accessible, the Department estimates that a filer will need to obtain this information either by telephone or Internet search; however if a union officer receives a gift like sporting event tickets, the gift is likely an effort to obtain business, therefore, the giver will likely make his or her business known to the recipient through a business card, e-mail, etc.

The resulting annualized reporting and recordkeeping burden for all Form LM–30 filings is 829,920 minutes (6,916 × 120) or 13,832 hours (829,920/60).

While annual salary information for labor union officers and employees is available on annual financial reports filed with the Department (Forms LM–2, LM–3, and LM–4), hourly rates are not reported. Further, officers and employees receiving less than $10,000 do not appear on every form; therefore, only the roughest estimates could be made using these forms to determine the average hourly rate for covered officers and employees. Instead, the Department used the $22.34 mean hourly earnings of those engaged in white collar occupations as defined and published in the National Compensation Survey: Occupational Wages in the United States (July 2004, Bureau of Labor Statistics, U.S. Department of Labor, August 2005). Using this figure, the Department estimates that the annual reporting and recordkeeping cost burden for all filers will be $309,007 (10,374 × $22.34), or $44.68 per filer (309,007/6,916).

In addition, the Department estimates that all union officers and employees will spend 15 minutes reading the revised form and instructions to determine whether they are required to file a report and 25 minutes reviewing any applicable receipts and determining that aggregated payments from an employer or business did not exceed the $250 *de minimis* threshold. By deducting the 6,916 estimated filers whose preliminary review of the form has already been counted from the estimated 204,634 union officers and employees, 197,718 officers and employees remain who will review the form and their records but determine that they are not required to file a report. The annual reporting and recordkeeping hour burden for these officers and employees will be 5,931,540 minutes (30 × 197,718) or 98,859 hours (5,931,540/60). Using the $22.34 hourly wage, the Department estimates that the annual reporting and recordkeeping cost burden for non-filing union officers and employees will be $2,208,510 (98,859 × $22.34), or $11.17 per non-filing union officer or employee ($2,208,510/197,718).

The resulting total annual reporting and recordkeeping hour burden for both filers and those who review the form and determine that a report need not be filed will be 112,691 hours (13,832 (hours for filers) + 98,859 (hours for non-filers)). The total annual reporting and recordkeeping cost burden will be $2,517,517 (112.69 × $22.34).

Federal Costs Associated with the Rule:

The estimated annualized Federal cost of the Form LM–30 is $1,025,837. This represents estimated operational expenses such as equipment, overhead,

[4] This estimate is for all filers, including first time filers and subsequent filers. While the Department considered reducing this estimate by about one-third for filers submitting reports in subsequent years following a first-time filing, the nature of Form LM–30 reporting militated against such a decision. Where the Department has previously made reductions for subsequent year filings, it generally applied to organizational reporting and not individual reporting. LMRDA organizational reporting, such as the Form LM–2 or Form LM–3, is a required annual event whereas an individual may not necessarily engage in Form LM–30 reportable transactions on an annual basis. Where an organization files required annual reports, a certain amount of ''institutional memory'' is present which may not be applicable to a filer who is only required to file a report when certain criteria are met.

[5] *See* preceding note 4.

and printing as well as salaries and benefits for the OLMS staff in the National Office and field offices who are involved with reporting and disclosure activities. These estimates include time devoted to: (a) Receipt and processing of reports; (b) disclosing reports to the public; (c) obtaining delinquent reports; (d) obtaining amended reports if reports are determined to be deficient; (e) auditing reports; and (f) providing compliance assistance training on recordkeeping and reporting requirements.

G. Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the final rule on children. The Department has determined that the final rule will have no effect on children.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The Department has reviewed this final rule in accordance with Executive Order 13175, and has determined that it does not have ''tribal implications.'' The rule does not ''have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

I. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

J. Executive Order 12988 (Civil Justice Reform)

This regulation has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The regulation has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

K. Environmental Impact Assessment

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (''NEPA'') of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and, thus, the Department has not conducted an environmental assessment or an environmental impact statement.

L. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 29 CFR Part 404

Labor union officer and employees, Recordkeeping and reporting.

IV. Text of Final Rule

■ In consideration of the foregoing, the Office of Labor-Management Standards, Employment Standards Administration, Department of Labor hereby amends part 404 of title 29 of the Code of Federal Regulations as set forth below.

PART 404—LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS

■ 1. The authority citation for part 404 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 4–2001, 66 FR 29656 (May 31, 2001).

§ 404.1 [Amended]

■ 2. Section 404.1 is amended by:
■ a. Redesignating existing paragraph (b) as new paragraph (h) and adding the phrase ''An officer is:'' at the end thereof;
■ b. Adding new paragraphs (h)(1) through (h)(4) to read as set forth below;
■ c. Adding a new paragraph (b) to read as set forth below;
■ d. Redesignating existing paragraph (c) as new paragraph (g) and adding the phrase ''within the meaning of any law of the United States relating to the employment of employees'' to the end of newly designated paragraph (g);
■ e. Redesignating existing paragraph (d) as new paragraph (c);
■ f. Redesignating existing paragraph (a) as new paragraph (d);
■ g. Adding a new paragraph (a) to read as set forth below;
■ h. Adding new paragraphs (e), (f), (i) and (j) to read as set forth below.

The additions and revision read as follows:

§ 404.1 Definitions.

(a) Benefit with monetary value means anything of value, tangible or intangible, including any interest in personal or real property, gift, insurance, retirement, pension, license, copyright, forbearance, bequest or other form of inheritance, office, options, agreement for employment or property, or property of any kind. For reporting purposes, the following are excepted: pension, health, or other benefit payments from a trust that are provided pursuant to a written specific agreement covering such payments.

(b) Dealing means to engage in a transaction (bargain, sell, purchase, agree, contract) or to in any way traffic or trade, including solicitation of business.

* * * * *

(e) Income means all income from whatever source derived, including, but not limited to, compensation for services, fees, commissions, wages, salaries, interest, rents, royalties, copyrights, licenses, dividends, annuities, honorarium, income and interest from insurance and endowment contracts, capital gains, discharge of indebtedness, share of partnership income, bequests or other forms of inheritance, and gifts, prizes or awards.

(f) Labor organization means the local, intermediate, or national or international labor organization that employed the filer of the Form LM–30, or in which the filer held office, during the reporting period, and, in the case of a national or international union officer or an intermediate union officer, any subordinate labor organization of the officer's labor organization.

* * * * *

(h) * * *

(1) A person identified as an officer by the constitution and bylaws of the labor organization;

(2) Any person authorized to perform the functions of president, vice president, secretary, or treasurer;

(3) Any person who in fact has executive or policy-making authority or responsibility; and

(4) A member of a group identified as an executive board or a body which is vested with functions normally performed by an executive board.

(i) Minor child means a son, daughter, stepson, or stepdaughter under 21 years of age.

(j) Trust in which a labor organization is interested 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.

§ 404.4 [Removed and reserved]

■ 3. Section 404.4 is removed and reserved.

§ 404.7 [Amended]

■ 4. Section 404.7 is revised to read as follows:

§ 404.7 Maintenance and retention of records.

Every person required to file any report under this part shall maintain records on the matters required to be reported which will provide in sufficient detail the necessary basic information and data from which the documents filed with the Office of Labor-Management Standards may be verified, explained or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, financial and investment statements, contracts, correspondence, and applicable resolutions, in their original electronic and paper formats, and any electronic programs by which they are maintained, available for examination for a period of not less than five years after the filing of the documents based on the information which they contain.

Signed at Washington, DC, this 22nd day of June, 2007.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Signed at Washington, DC, this 22nd day of June, 2007.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

Note: The following appendix will not appear in the Code of Federal Regulations:

Appendix—Form LM–30 and Instructions

BILLING CODE 4510–CP–P

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
Washington, DC 20210

FORM LM-30 LABOR ORGANIZATION OFFICER AND EMPLOYEE ANNUAL REPORT

Form Approved
Office of Management
and Budget
No. 1215-0188
Expires xx-xx-xxxx

This report is mandatory under P.L. 86-257, as amended. Failure to comply may result in criminal prosecution, fines, or civil penalties as provided by 29 U.S.C. 439 or 440.

For Official Use Only

E

PLEASE READ THE INSTRUCTIONS CAREFULLY, ESPECIALLY PART IX (PAGES 14 - 18), BEFORE PREPARING THIS REPORT. YOU ARE NOT REQUIRED TO FILE THIS REPORT UNLESS YOU, YOUR SPOUSE, OR MINOR CHILD HAVE RECEIVED A PAYMENT, ENGAGED IN ANY TRANSACTIONS OR ARRANGEMENTS OR HELD AN INTEREST OF THE TYPES DESCRIBED IN PART II OF THE INSTRUCTIONS (PAGES 1 - 9).

PART A

1. LM-30 FILE NUMBER: **U** - _____

2. PERIOD COVERED:

	Month/Day/Year (mm/dd/yyyy)		Month/Day/Year (mm/dd/yyyy)
FROM	/ /	THROUGH	/ /

3. CONTACT INFORMATION OF REPORTING PERSON:

A. FIRST NAME	B. MIDDLE NAME	C. LAST NAME
D. MAILING ADDRESS (LINE 1)		
E. MAILING ADDRESS (LINE 2)		
F. CITY	G. STATE	H. ZIP CODE
I. EMAIL ADDRESS (optional)		

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME		
B. MAILING ADDRESS (LINE 1)		
C. MAILING ADDRESS (LINE 2)		
D. CITY	STATE	ZIP CODE
E. FILE NUMBER		
F. OFFICER ☐ EMPLOYEE ☐		
G. YOUR OFFICER POSITION OR JOB TITLE		
H. DID YOU HOLD THIS POSITION OR JOB TITLE AT THE END OF THE REPORTING PERIOD? YES ☐ NO ☐		

5. SUMMARY (FROM ATTACHED PART B)

A. TOTAL REPORTED INCOME OR OTHER PAYMENTS (total from Schedule 2, Item F, Column (1) of each Part B)	$
B. TOTAL REPORTED ASSETS (total from Schedule 2, Item F, Column (2) of each Part B)	$

THE UNDERSIGNED DECLARES, UNDER PENALTY OF PERJURY AND OTHER APPLICABLE PENALTIES OF LAW, THAT ALL OF THE INFORMATION SUBMITTED IN THIS REPORT (INCLUDING THE INFORMATION CONTAINED IN ANY ACCOMPANYING DOCUMENTS) HAS BEEN EXAMINED BY THE SIGNATORY AND IS, TO THE BEST OF THE UNDERSIGNED'S KNOWLEDGE AND BELIEF, TRUE, CORRECT AND COMPLETE.

8. SIGNED _____ ON / / _____ _____
Date (mm/dd/yyyy) Telephone Number

LM-30 File Number **U** - _____

EMPLOYER or BUSINESS RELATIONSHIPS

6. EMPLOYER RELATIONSHIPS

Generally, you must complete Schedules 1, 2, and 3 of Part B, as fully explained in the instructions, if you, your spouse, or minor child had an arrangement or engaged in a transaction with, or held an interest in, or received income or other payment from (including any reimbursed expenses), or made loans to or received loans from, an employer or a labor relations consultant to an employer that meets any of the following conditions:

- An employer whose employees your labor organization represents or is actively seeking to represent; or
- An employer in competition with an employer whose employees your labor organization represents or is actively seeking to represent; or
- An employer that is a trust in which your labor organization is interested as defined in section 3(l) of the LMRDA; or
- An employer that is a non-profit organization that receives or is actively and directly soliciting (other than by mass mail, telephone bank, or mass media) money, donations or contributions from your labor organization; or
- An employer that is a labor organization that (1) has employees your union represents or is actively seeking to represent, (2) has employees in the same occupation as those represented by your union; (3) claims jurisdiction over work that is also claimed by your union; (4) is a party to or will be affected by any proceeding in which you have voting authority or other ability to influence the outcome of the proceeding; or (5) has made a payment to you for the purpose of influencing the outcome of an internal union election; or
- An employer that has made a payment to you for any of the following purposes: (1) not to organize employees; (2) to influence employees in any way with respect to their rights to organize; (3) to take any action with respect to the status of employees or others as members of a labor organization; (4) to take any action with respect to bargaining or dealing with employers whose employees your organization represents or is actively seeking to represent; or (5) to influence the outcome of an internal union election; or
- An employer whose interests are in actual or potential conflict with the interests of your labor organization or your duties to your labor organization.

Before proceeding, review Part II of the instructions (pages 1-9) to determine if any reporting exceptions apply to your situation. If the above conditions exist and none of the exceptions apply, then you must complete a separate Part B for each employer or labor relations consultant to an employer.

a. DO YOU HAVE ANY OF THESE RELATIONSHIPS WITH EMPLOYERS OR LABOR RELATIONS CONSULTANTS? YES ☐ NO ☐

b. If yes, record the number of employers and consultants: _____

7. BUSINESS RELATIONSHIPS

Generally, you must complete Schedules 1, 2, and 4 of Part B, as fully explained in the instructions, if you, your spouse, or minor child had an arrangement or engaged in a transaction with, or held an interest in, or received income or other payment from (including any reimbursed expenses), or made loans to or received loans from, a business, such as a goods vendor or service provider, that meets any of the following conditions:

- A substantial part of its business consists of buying or selling or otherwise dealing with an employer whose employees your labor organization represents or is actively seeking to represent; or
- Any part of its business consists of buying or selling or otherwise dealing with your labor organization; or
- Any part of its business consists of buying or selling or otherwise dealing with a trust in which your labor organization is interested.

Before proceeding, review Part II of the instructions (pages 1-9) to determine if any reporting exceptions apply to your situation. If the above conditions exist and none of the exceptions apply, then you must complete a separate Part B for each business.

a. DO YOU HAVE ANY OF THESE RELATIONSHIPS WITH A BUSINESS? YES ☐ NO ☐

b. If yes, record the number of businesses: _____

If you answer "No" to both Item 6a and Item 7a, you are not required to file Form LM-30.

LM-30 File Number: **U** - _____ No: _____ of _____

PART B

SCHEDULE 1 - EMPLOYER OR BUSINESS IDENTIFYING INFORMATION (all filers must complete)

Provide the following information regarding the employer, labor relations consultant to an employer, or business that met the conditions identified in Item 6 or Item 7.
(If more than one employer, labor relations consultant to an employer, or business met the conditions identified in Item 6 or Item 7, you must complete a separate Part B for each one.)

A. LEGAL NAME OF EMPLOYER, BUSINESS OR LABOR RELATIONS CONSULTANT			☐ Employer ☐ Business ☐ Labor Relations Consultant	I. TELEPHONE NUMBER
B. CONTACT FIRST NAME	C. CONTACT MIDDLE NAME	D. CONTACT LAST NAME		J. WEB SITE ADDRESS
E. MAILING ADDRESS (LINE 1)	MAILING ADDRESS (LINE 2)			K. DID YOU, YOUR SPOUSE, OR MINOR CHILD HAVE A RELATIONSHIP WITH THE EMPLOYER, BUSINESS OR LABOR RELATIONS CONSULTANT AT THE END OF THE REPORTING PERIOD? YES ☐ NO ☐
F. CITY	G. STATE	H. ZIP CODE		

SCHEDULE 2 - FILER'S INTERESTS IN, PAYMENTS FROM, LOANS TO OR FROM, AND TRANSACTIONS OR ARRANGEMENTS WITH EMPLOYER OR BUSINESS AND PAYMENTS FROM A LABOR RELATIONS CONSULTANT (all filers must complete)

Provide the information required below about interests in, payments from, loans to or from, and transactions or arrangements with the employer or labor relations consultant to an employer or the business identified in Schedule 1. Review Part II of the instructions (pages 1-9) to determine the reportability of a particular payment or interest and the applicability of any reporting exceptions. Include the date of the reportable matter (typically the date of receipt or date of arrangement or transaction), the recipient (you, your spouse, or minor child), a description of the matter, and its value.

A. DATE	B. OFFICER, EMPLOYEE, SPOUSE, MINOR CHILD	C. DESCRIPTION OF INTEREST, PAYMENT, LOAN, TRANSACTION, OR ARRANGEMENT	D. (1) VALUE OF INCOME OR OTHER PAYMENTS	D. (2) VALUE OF ASSET
Employer Example 02/03/2007	Employee	I received 298 hours of union leave payments from my employer for time spent handling grievances	$4,200	
Business Example 12/31/2007	Spouse	My husband owns 100% of Cleaning Services, Inc. which clean my local's offices		$100,000
Business Example 10/15/2007	Officer	Golfing weekend received from XYZ Inc. which is seeking to become a service provider for my union's pension plan	$500	
		E. TOTAL FROM SCHEDULE 2 CONTINUATION PAGES (IF ANY)		
		F. TOTAL OF COLUMNS D(1) AND D(2)		

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PART B

SCHEDULE 3 - EMPLOYER'S RELATIONSHIP WITH YOUR LABOR ORGANIZATION (Complete for employers only, that is, if you answered "yes" to Item 6a on page 2.)

Under Part A, check the box (and letter, where appropriate) that correctly describes the nature of the employer's relationship with your labor organization. Under Part B, provide details describing the relationship. If you received a reportable payment from a labor relations consultant to an employer, answer these questions with respect to the employer.

A. EMPLOYER'S RELATIONSHIP

1. ☐ The employer employs employees that your labor organization represents or is actively seeking to represent.
2. ☐ The employer is in competition with an employer whose employees your union represents or is actively seeking to represent.
3. ☐ The employer is a trust in which your labor organization is interested as defined in section 3(l) of the LMRDA.
4. ☐ The employer is a non-profit organization that receives or is actively and directly soliciting (other than by direct mail, telephone bank, or mass media) money, donations or contributions from your labor organization.
5. ☐ The employer is a labor union that:
   - a. ___ has employees your union represents or is actively seeking to represent;
   - b. ___ has employees in the same occupation as those represented by your union;
   - c. ___ claims jurisdiction over work that is also claimed by your union;
   - d. ___ is a party to or will be affected by any proceeding in which you have voting authority or other ability to influence the outcome of the proceeding; or
   - e. ___ has made a payment to you for the purpose of influencing the outcome of an internal union election.
6. ☐ The employer has made payments to you for any of the following purposes:
   - a. ___ not to organize employees;
   - b. ___ to influence employees in any way with respect to their right to organize;
   - c. ___ to take any action with respect to the status of employees or others as members of a labor organization;
   - d. ___ to take any action with respect to bargaining or dealing with employers whose employees your organization represents or is actively seeking to represent; or
   - e. ___ to influence the outcome of an internal union election.
7. ☐ The employer's interests are in actual or potential conflict with the interests of your labor organization or your duties to your labor organization.

B. PROVIDE DETAILS OF THE EMPLOYER'S RELATIONSHIP WITH YOUR LABOR ORGANIZATION AND SET FORTH THE DOLLAR VALUE OF ANY PAYMENTS OR OTHER TRANSACTIONS BETWEEN THE EMPLOYER AND THE LABOR ORGANIZATION. IF THERE ARE NO PAYMENTS OR TRANSACTIONS WITH A MONETARY VALUE, OR IF YOU DO NOT KNOW AND CANNOT ESTIMATE THE VALUE, ENTER N/A AND EXPLAIN IN THE ADDITIONAL INFORMATION SCHEDULE.

(For example, if you checked Box 7, the description might read "Local Union ABC paid annual premiums to HealthCare PrePaid, Inc., a not-for-profit health insurance company in return for insurance coverage for members of Local Union ABC.")

B(1). Value (if applicable)

$ 125,000

Form LM-30 (Revised 2007)

LM-30 File Number: **U -** _____ No: _____ of _____

PART B

SCHEDULE 4 - BUSINESS'S DEALINGS WITH UNION(S), TRUST(S), OR EMPLOYER(S) (Complete for businesses only, that is, if you answered "yes" to Item 7a on page 2.)

Enter the legal name of the entity with which the business deals in Column (A); Indicate whether the entity is a union, trust, or employer in Column (B); Enter its file number, if known, in Column (C); Describe in detail the nature of the dealings between the entity and the business in Column (D); Enter the value of such dealings between the entity and the business in Column (E). If the exact value is not known and cannot be estimated, enter "N/A" and explain the situation in the Additional Information Schedule.

A. NAME OF UNION, TRUST OR EMPLOYER	B. UNION/TRUST/ EMPLOYER	C. FILE NUMBER	D. DESCRIPTION OF DEALINGS	E. VALUE
Example - Local XYZ	Union	345-678	Cleaning Servicers, Inc. contracted with Local XYZ to clean its office space once per month	$960

LM-30 File Number: **U** - _____

ITEM 4 CONTINUATION PAGE

LABOR ORGANIZATIONS IN WHICH THE REPORTING PERSON IS AN OFFICER OR EMPLOYEE

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME		
B. MAILING ADDRESS (LINE 1)		
C. MAILING ADDRESS (LINE 2)		
D. CITY	STATE	ZIP CODE
E. FILE NUMBER		
F. OFFICER ☐ EMPLOYEE ☐		
G. YOUR OFFICER POSITION OR JOB TITLE		
H. DID YOU HOLD THIS POSITION OR JOB TITLE AT THE END OF THE REPORTING PERIOD? YES ☐ NO ☐		

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME		
B. MAILING ADDRESS (LINE 1)		
C. MAILING ADDRESS (LINE 2)		
D. CITY	STATE	ZIP CODE
E. FILE NUMBER		
F. OFFICER ☐ EMPLOYEE ☐		
G. YOUR OFFICER POSITION OR JOB TITLE		
H. DID YOU HOLD THIS POSITION OR JOB TITLE AT THE END OF THE REPORTING PERIOD? YES ☐ NO ☐		

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME		
B. MAILING ADDRESS (LINE 1)		
C. MAILING ADDRESS (LINE 2)		
D. CITY	STATE	ZIP CODE
E. FILE NUMBER		
F. OFFICER ☐ EMPLOYEE ☐		
G. YOUR OFFICER POSITION OR JOB TITLE		
H. DID YOU HOLD THIS POSITION OR JOB TITLE AT THE END OF THE REPORTING PERIOD? YES ☐ NO ☐		

4. LABOR ORGANIZATION IDENTIFYING INFORMATION:

A. NAME		
B. MAILING ADDRESS (LINE 1)		
C. MAILING ADDRESS (LINE 2)		
D. CITY	STATE	ZIP CODE
E. FILE NUMBER		
F. OFFICER ☐ EMPLOYEE ☐		
G. YOUR OFFICER POSITION OR JOB TITLE		
H. DID YOU HOLD THIS POSITION OR JOB TITLE AT THE END OF THE REPORTING PERIOD? YES ☐ NO ☐		

LM-30 File Number: **U -** _____

PART B

No: _____ of _____

SCHEDULE 2 CONTINUATION PAGE

SCHEDULE 2 - FILER'S INTERESTS IN, PAYMENTS FROM, LOANS TO OR FROM, AND TRANSACTIONS WITH EMPLOYER OR BUSINESS AND PAYMENTS FROM A LABOR RELATIONS CONSULTANT (all filers must complete)

Provide the information required below about interests in, payments from, loans to or from, and transactions or arrangements with the employer or labor relations consultant to an employer or the business identified in Schedule 1. Review Part II of the instructions (pages 1-9) to determine the reportability of a particular payment or interest and the applicability of any reporting exceptions. Include the date of the reportable matter (typically the date of receipt or date of arrangement or transaction), the recipient (you, your spouse, or minor child), a description of the matter, and its value.

A. DATE	B. OFFICER, EMPLOYEE, SPOUSE, MINOR CHILD	C. DESCRIPTION OF INTEREST, PAYMENT, LOAN, TRANSACTION, OR ARRANGEMENT	D. (1) VALUE OF INCOME OR OTHER PAYMENTS	D. (2) VALUE OF ASSET
		E. TOTAL OF COLUMNS D(1) and D(2) FOR THIS PAGE		

LM-30 File Number: **U -** _____ **PART B** No: _____ of _____

SCHEDULE 4 CONTINUATION PAGE

SCHEDULE 4 - BUSINESS'S DEALINGS WITH UNION(S), TRUST(S), OR EMPLOYER(S) - CONTINUATION PAGE (Complete for businesses only, that is, if you answered "yes" to Item 7a.)

Enter the legal name of the entity with which the business deals in Column (A); Indicate whether the entity is a union, trust, or employer in Column (B); Enter its file number, if known, in Column (C); Describe in detail the nature of the dealings between the entity and the business in Column (D); Enter the value of such dealings between the entity and the business in Column (E). If the exact value is not known and cannot be estimated, enter "N/A" and explain the situation in the Additional Information Schedule.

A. NAME OF UNION, TRUST OR EMPLOYER	B. UNION/TRUST/ EMPLOYER	C. FILE NUMBER	D. DESCRIPTION OF DEALINGS	E. VALUE
Example - Local XYZ	Union	345-678	Cleaning Servicers, Inc. contracted with Local XYZ to clean its office space once per month	$960

Form LM-30 (Revised 2007)

LM-30 File Number U - _____

ADDITIONAL INFORMATION SCHEDULE

A. SCHEDULE/ITEM	B. ADDITIONAL INFORMATION

Form LM-30 (Revised 2006)

Public reporting burden for this collection of information is estimated to average 120 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA). The information will be used to facilitate public disclosure of reportable transactions as defined and required by the LMRDA. Failure to furnish the requested information or providing fraudulent information will result in civil and/or criminal enforcement action pursuant to the LMRDA and other applicable statutes. As this is public information, there are no assurances of confidentiality. If you have any comments regarding this estimate or any other aspect of this information collection, including suggestions for reducing this burden, please send them to the U.S. Department of Labor, Employment Standards Administration, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

FORM LM-30
LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORT

GENERAL INSTRUCTIONS

I. WHY FILE

The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA or Act), requires public disclosure of certain financial transactions and financial interests of labor organization officers and employees and their spouses and minor children. *See* 29 C.F.R. 404.1-404.9 (reports by officers and employees of labor organizations). The purpose of disclosure, among other things, is to publicly identify an actual or potential conflict between the personal financial interests of a union officer or employee (sometimes referred to as a *filer* in these instructions) and his or her obligations to the union and its members. *Labor organization, labor organization officer, labor organization employee,* and other important terms are defined in Part III of these instructions (pages 9-13).

The LMRDA establishes basic rights of union members, including equal voting rights, freedom of speech and assembly, and other essential safeguards for union democracy, among other protections; establishes financial reporting and disclosure requirements for unions, union officers and employees, employers, and labor relations consultants; regulates union trusteeships; details procedural requirements for the conduct of union officer elections; and establishes a fiduciary duty on union officers, employees, and other representatives.

Pursuant to Section 202 of the LMRDA, and subject to certain exceptions, every labor organization officer or employee (other than an employee performing exclusively clerical or custodial services), who has, directly or indirectly, held any legal or equitable interest in, received any payments from, or engaged in any transactions or arrangements (including loans) with certain employers or businesses or labor relations consultants during the officer or employee's fiscal year must file a detailed report with the Secretary of Labor (Secretary). *See* Part II of these instructions for a detailed discussion of the types of financial matters that must be reported. You are not required to file a report unless you or your spouse or minor child held a reportable interest, received a reportable payment, or engaged in a reportable transaction or arrangement during the reporting period. As discussed in Part II, you are not required to report insubstantial payments or gifts, as there defined.

The Department's Office of Labor-Management Standards (OLMS) has developed a comprehensive program to assist with LMRDA compliance, including the completion of the Form LM-30. Much of the information is available on the OLMS Web site: www.olms.dol.gov. For additional contact information, see the final page of these instructions.

The reporting requirements of the LMRDA and of the regulations and forms issued under the Act relate only to the public disclosure of specified transactions and interests. The reporting requirements do not address whether such transactions and interests are lawful or unlawful. The fact that a particular transaction or interest is or is not required to be reported is not indicative of whether it is or is not subject to any legal restriction; this must be determined by provisions of law other than those prescribing the reports. Failure to file a required report may subject an individual to civil or criminal penalties, or both. *See* Part VII of these instructions at page 13.

II. WHO MUST FILE AND WHAT MUST BE REPORTED

As described in more detail below, you must file Form LM-30 if at any time during your past fiscal year:

(1) You were an officer or employee of a labor organization (other than an employee performing exclusively clerical or custodial services) as defined by the LMRDA, and
(2) You or your spouse or your minor child, directly or indirectly, held any legal or equitable interest, received any payments, or engaged in any transactions or arrangements (including loans) of the types described in these instructions.

See pages 19 to 21 of these instructions for the text of Section 202 and other relevant provisions of the LMRDA and the Labor Management Relations Act (LMRA).

Minor child. Interests held by, payments received by, and transactions and arrangements involving a *minor child* must be reported until the child turns 21. If the child reaches the age of 21 during the fiscal year, disclosable matters must be reported for that portion of the fiscal year before the child's 21st birthday. If you are divorced during your fiscal year, disclosable interests and transactions for your spouse must be reported for that portion of the fiscal year prior to your divorce.

Insubstantial payments and gifts. You do not have to report any payments or gifts totaling $250 or less from any one source and payments or gifts valued at $20 or less do not need to be included in determining whether the $250 threshold has been met. For example, if you receive from an employer two gifts worth $20 each and two restaurant meals worth $150 each, you need only keep records of the restaurant meals, and report your receipt of this $300 value. However, a filer may not use the exception to hide the receipt of a series of payments or gifts purposely set at $20 or less to avoid reaching the $250 reporting threshold. For example, a filer would have to report his or her receipt of individual tickets worth $20 or less to all of a professional baseball team's home games that are provided before each game rather than given as a complete package at the start of the season.

Widely-attended gatherings. You also do not have to report the benefits, such as food and entertainment, you received while in attendance at one or two widely-attended receptions, meetings or gatherings in a single fiscal year for which an employer or business has spent $125 or less per attendee per gathering. You do not have to include the value of those gatherings in determining whether the $250 threshold has been met for the employer or business providing the meeting or gathering. However, if you attend three or more such widely-attended gatherings provided by an employer or business, you must count the value of all such events.

A gathering is widely attended if a large number of persons are in attendance and the attendees include union officers and employees and a substantial number of individuals with no relationship to a union or a section 3(l) trust of the union (*see* definition of *trust in which a labor organization is interested* at D16 on page 13). For a gathering to qualify as widely attended, those individuals with a relationship to a union must be treated the same as others when the employer or business advertises or distributes invitations for the event and must be treated alike at the event.

Getting Started

If you are an officer or employee of a labor organization (other than an employee performing exclusively clerical or custodial services) as defined by the LMRDA, review the following descriptions of the types of interests, payments, transactions, and arrangements that you must report on Form LM-30. Each description is followed by a list of specific exceptions to that reporting requirement and examples illustrating the requirement.
(Please note that the exceptions and examples below apply only to the specific type of transaction where they are listed.)

Reportable Interests in, Payments from, and Transactions and Arrangements with Employers

(1) An Employer Whose Employees Your Labor Organization Represents or is Actively Seeking to Represent

You must complete Form LM-30 if you or your spouse or your minor child, directly or indirectly:

- held a stock, bond, security, or other interest, legal or equitable, in such an employer; or
- derived any income or any other benefit with monetary value (including reimbursed expenses) from such an employer; or
- received a loan from, or made a loan to, such an employer; or
- engaged in any other business transaction or arrangement with such an employer that was not a purchase or sale of goods or services in the regular course of business at prices generally available to any employee of the employer.

See definitions of *labor organization* at D10 on page 11; *actively seeking to represent* at D1 on page 9; *directly or indirectly* at D7 on page 11; *legal or equitable interest* at D13 on page 13; *income* at D9 on page 11; *benefit with monetary value* at D3 on page 10; *arrangement* at D2 on page 10.

Exceptions to the Above Reporting Requirements Relating to an Employer Whose Employees Your Labor Organization Represents or is Actively Seeking to Represent

You are not required to report:

- Payments or gifts totaling $250 or less from any one source (payments or gifts valued at $20 or less do not need to be included in determining whether the $250 threshold has been met, but a series of payments or gifts designed to circumvent the $20 threshold must be reported).

  In calculating whether the $250 threshold has been met for a particular employer or business, you do not have to include payments or gifts, such as food and entertainment, received while in attendance at one or two widely-attended receptions, meetings or gatherings in a single fiscal year for which an employer or business has spent $125 or less per attendee per gathering.

- Holdings of, transactions in, or income from, bona fide investments in (1) securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934 (including the American Stock Exchange, Boston Stock Exchange, Chicago Board Options Exchange, Chicago Stock Exchange, International Securities Exchange, NASDAQ, National Stock Exchange ,New York Stock Exchange, Pacific Exchange, and Philadelphia Stock Exchange); (2) shares in an investment company registered under the Investment Company Act of 1940, or (3) securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935,

- Holdings of, transactions in, or income from, bona fide investments in securities other than those described in the preceding bullet that are of insubstantial value or amount and occur under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial.

- Payments and benefits received as a bona fide employee of the employer. This exception does not apply to loans or to transactions involving interests in the employer. For example, if the employer has a program in which bona fide employees may sell their stock in the company, this exception would not apply. *See* definition of *bona fide employee* at D4 on page 10.

Examples

Example 1
You are a union officer and truck driver who is paid for ten days, or 80 hours, of work by the employer, every two weeks even though you drive a truck nine days, or 72 hours, and spend the tenth day of the pay period (8 hours) handling union member grievances or other union-related work. If this arrangement is *not* set forth in a collective bargaining agreement, you must report all of the income and benefits received from the employer for union work. If the arrangement is set forth in a bona fide collective bargaining agreement, you do not have to report because such payments are only reportable if you receive more than 250 hours of union-leave/no-docking payments per year. *See* definition of *bona fide employee* at D4 on page 10 and *labor organization employee* at D11 on page 12.

Example 2
You are an officer of a union that represents Widget Company employees. To help prepare for your retirement, you purchase 5,000 shares of Widget Company stock that is traded on NASDAQ, a registered national stock exchange. You need not report the shares under the exception for bona fide investments in such securities.

Example 3
You are an officer of a union that represents Cident Company employees. Your wife owns 5,000 shares of Cident Company stock that Cident's CEO gave her on Mother's Day two years ago. This stock is traded on the NYSE, a registered national stock exchange. You must report the holding of the shares. Because it was received as a gift, the exception for bona fide investments in such securities does not apply.

Example 4
You are a full-time officer of a union that represents employees of several different

employers. One of the employers pays your expenses on a trip with management officials to a plant in another part of the country to view new equipment that the employer is considering purchasing. You must report the travel expenses.

Example 5
You are an employee of a union that represents actors. You own a production company whose employees are represented by your union. You must report your interests in the production company.

Example 6
You are an employee of a union and your spouse works as a producer for a dinner theater that employs actors represented by your union. Your spouse works 40 to 50 hours a week producing shows and is paid a yearly salary. You do not have to report this salary because the payments are received by your spouse as a bona fide employee of the theater company. *See* definition of *bona fide employee* at D4 on page 10.

Example 7
You are a union officer and you receive payments under an ERISA-qualified pension plan. The payments relate to your past employment with an employer whose employees your union represents. These payments are received as a bona fide employee of the employer, thus you do not have to report these payments. *See* definition of *bona fide employee* at D4 on page 10.

Example 8
You are a union officer and after the beginning of the fiscal year, your employer gives you stock options permitting you to purchase stock at a preferred rate in a new business enterprise your employer is launching. Three weeks before the end of your fiscal year, you exercise the options to purchase the stock and then immediately sell it to realize a gain of $25,000. These transactions must be reported.

Example 9
You are a union employee and your minor child receives 100 shares of stock as a high school graduation gift from an employer whose employees your union represents. She immediately sells it to assist with college expenses. Both transactions, the gift and the sale, must be reported.

Example 10
You are a union officer, and you hold an ownership interest in the business of an employer whose employees your union represents and for whom you work. You own this interest pursuant to an investment plan in which all employees participate under the same terms. This is a payment or benefit received as a bona fide employee and the interest is not reportable. In this fiscal year, you sell this interest to the employer. The sales transaction is reportable.

Example 11
You are a union officer and your spouse receives a loan from an employer whose employees your union represents. The loan must be reported.

Example 12
You are a union employee. Your spouse is a partner of a package delivery company. The company receives a loan from Easy Credit Limited that was arranged with the assistance of an employer whose employees your union is actively seeking to represent. The loan and the arrangement for assistance must be reported.

Example 13
You are an officer of an international union affiliated with a local union that represents employees at an automobile plant. The employer permits you to participate in an executive purchase plan under which management executives are permitted to purchase vehicles produced by the employer at a discount and at a low interest rate. The transaction must be reported.

Example 14
You are an employee of a union that represents employees at Acme Warehouse. At your request, Acme allows your neighbor to store his company's inventory at a rate below the customary storage rate. Your neighbor, in turn, shows his gratitude by allowing you to use his luxury box at a sporting event. You must report this arrangement. *See* definition of *arrangement* at D2 on page 10.

Example 15
You are an officer of an international union and are a member of the board of directors of an employer whose employees your union represents. You receive directors' fees and reimbursed expenses. You must report these payments.

Example 16
You are a union steward and worked 300 hours on union business during the year and received your

regular income and benefits from your employer in accordance with the no-docking provision in the collective bargaining agreement. You must report all the income and benefits you received from the employer for the work performed on the union's behalf.

(2) Payments of Money or Other Thing of Value from Certain Other Employers or a Labor Relations Consultant to Such an Employer

You must file Form LM-30 if you or your spouse or your minor child received, directly or indirectly, any payment of money or other thing of value (including reimbursed expenses) from an employer or a labor relations consultant to an employer that:

- is in competition with an employer whose employees your labor organization represents or is actively seeking to represent; or
- is a *trust in which your labor organization is interested*, as defined in section 3(l) of the LMRDA (*see* definition at D16 on page 13); or
- is a not-for-profit organization that receives or is actively and directly soliciting (other than by mass mail, telephone bank, or mass media) money, donations, or contributions from your labor organization; or
- is a labor union that (1) has employees your union represents or is actively seeking to represent, (2) has employees in the same occupation as those represented by your union; (3) claims jurisdiction over work that is also claimed by your union; (4) is a party to or will be affected by any proceeding in which you have voting authority or other ability to influence the outcome of the proceeding; or (5) has made a payment to you for the purpose of influencing the outcome of an internal union election; or
- has interests in actual or potential conflict with the interests of your labor organization or your duties to your labor organization.

Exceptions to the Reporting Requirements Relating to Certain Other Employers or a Labor Relations Consultant to Such an Employer

You are not required to report:

- Bona fide loans, interest or dividends from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, if such loans, interest or dividends are based upon the financial institution's own criteria and made on terms unrelated to your status in a labor organization. This exception does not apply to national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions that constitute a "trust in which your labor organization is interested."

- Pension, health, or other benefit payments to you, your spouse, or minor child from a trust that are provided pursuant to a written specific agreement covering such payments.

- Any payments from your labor organization or from a labor organization affiliated with your labor organization.

- Payments of the kinds referred to in Labor Management Relations Act (LMRA) Section 302(c), as summarized below and set forth in full on pages 20-21, and payments your spouse or minor children receive as compensation for, or by reason of, their service to their employer:

  (1) any money or other thing of value payable by an employer to
  a) an employee acting openly for the employer in matters of labor relations or personnel administration, or
  b) any officer or employee of a labor organization who also is an employee or former employee of such employer, as compensation for or by reason of, his service as an employee of such employer;
  (2) money or other thing of value payable in satisfaction of a judgment, arbitral award, settlement or release of any claim in the absence of fraud or duress;
  (3) with respect to the sale or purchase of an item at the prevailing market price in the regular course of business;
  (4) with respect to deductions in payment of labor union dues from wages by written assignment;
  (5) with respect to money or other thing of value paid to a trust fund established by the representative of an employer's employees for the sole benefit of these employees, their families and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide the foregoing, or

unemployment benefits or life insurance, disability and sickness insurance, or accident insurance;
(6) with respect to money or other thing of value paid by any employer to a trust fund established by the representative of the employer's employees for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs;
(7) with respect to money or other thing of value paid by any employer to an individual or pooled trust fund for providing scholarships for the benefit of employees, families, and dependents, child care centers, or financial assistance for employee housing;
(8) with respect to money or other thing of value paid by any employer to a trust for defraying the costs of legal services; or
(9) with respect to money or other thing of value paid by any employer to a labor-management committee.

- Payments or gifts totaling $250 or less from any one source (payments or gifts valued at $20 or less do not need to be included in determining whether the $250 threshold has been met, but a series of payments or gifts designed to circumvent the $20 threshold must be reported).

  In calculating whether the $250 threshold has been met for a particular employer or business, you do not have to include payments or gifts, such as food and entertainment, received while in attendance at one or two widely-attended receptions, meetings or gatherings in a single fiscal year for which an employer or business has spent $125 or less per attendee per gathering.

Examples

Example 1
You are a union officer representing employees of TriWireFire, Inc., an employer in the telecommunications industry. An employer, WhyWire, Inc., which markets services in competition with TriWireFire, gives you a gift of a ski trip worth more than $250. You must report the trip and its value.

Example 2
You are a union officer and you receive payments pursuant to the terms of an ERISA qualified pension plan. You do not have to report these payments.

Example 3
You are a local union president and a trustee of a trust in which your labor organization is interested. You must reports payments from the trust, including reimbursed expenses, for your service as a trustee, except in the unusual situation where you as a trustee are also considered an employee of the trust.

Example 4

You are an employee of a union. Each year your union holds an annual workers' summer school at a private university whose space and services are rented by the union. You go to the summer school as an instructor and bring your wife and two minor children. At no extra charge to you, the university provides accommodations for you, your wife, and minor children, rather than the single room typically provided instructors. The use of the additional space and its fair market value must be reported.

Example 5
You are an officer of Local Union ABC. You receive a gift of high-end consumer electronics from a sales representative of HealthCare PrePaid, Inc., a not-for-profit health insurance company. Local Union ABC pays $125,000 annually in premiums to this health insurance company in return for its extending insurance coverage to the union members. You must report the value of the consumer electronics.

(3) *Payments from any Employer or a Labor Relations Consultant to any Employer for the Following Purposes:*

- Not to organize employees;
- To influence employees in any way with respect to their right to organize;
- To take any action with respect to the status of employees or others as members of a labor organization;
- To take any action with respect to bargaining or dealing with employers whose employees your labor organization represents or is actively seeking to represent; or
- To influence the outcome of an internal union election.

There are no exceptions to reporting these types of payments.

Examples

Example 1
You are an officer of a national union. Your spouse is hired as a senior executive of an employer on the understanding that your union will not seek to organize that employer. Your spouse receives a salary, medical, disability, and life insurance, use of a company car, and a paid membership to a private club. You must report the salary and the monetary value of the other benefits your spouse receives from the employer.

Example 2
You are a local union president. An employer outside of the jurisdiction of your local hires your 20-year old daughter for a summer job on the understanding that you will seek to have your members go on strike against an employer who is one of its competitors. You must report the payments your daughter receives from this employer.

Reportable Payments and Interests from Businesses

You must complete Form LM-30 if you, your spouse, or your minor child, directly or indirectly, held an interest in, or received any income or other benefit with monetary value (including reimbursed expenses) from a business (for example, a vendor or a service provider) that meets any of the following conditions:

- a substantial part of its business consists of buying or selling or otherwise dealing with an employer whose employees your labor organization represents or is actively seeking to represent (*substantial part* is defined as 10% or more at D15 on page 13); or
- any part of its business consists of buying or selling or otherwise dealing with your labor organization; or
- any part of its business consists of buying or selling or otherwise dealing with a trust in which your labor organization is interested.

Special Note: A "business" here is a vendor of goods or provider of services. A payment from a business may be reportable whether or not the business employs employees or otherwise meets the definition of "employer."

Exceptions to Reportable Payments and Interests from Businesses

You are not required to report:

- Holdings of, transactions in, or income from, bona fide investments in (1) securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934 (including the American Stock Exchange, Boston Stock Exchange, Chicago Board Options Exchange, Chicago Stock Exchange, International Securities Exchange, NASDAQ, National Stock Exchange ,New York Stock Exchange, Pacific Exchange, and Philadelphia Stock Exchange); (2) shares in an investment company registered under the Investment Company Act of 1940, or (3) securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935,

- Holdings of, transactions in, or income from, bona fide investments in securities other than those described in the preceding bullet that are of insubstantial value or amount and occur under terms unrelated to your status in a labor organization. Holdings or transactions involving $1,000 or less and receipt of income of $100 or less in any one security shall be considered insubstantial.

- Payments or gifts totaling $250 or less from any one source (payments or gifts valued at $20 or less do not need to be included in determining whether the $250 threshold has been met, but a series of payments or gifts designed to circumvent the $20 threshold must be reported.)

  In calculating whether the $250 threshold has been met for a particular employer or business, you do not have to include the benefits, such as food and entertainment, received while in attendance at one or two widely-attended receptions, meetings or gatherings in a single fiscal year for which the employer or business spent $125 or less per attendee per gathering.

See the definitions of *dealing* below at D6 on page 11, *labor organization* at D10 on page 11, and *substantial part* at D15 on page 13.

Examples

Example 1
You are a union officer. You own a small machine parts business from which you receive $50,000 in annual income. The employer of the employees your union represents purchased a large quantity of machine parts from your business. The employer's purchases represented 10% of the total receipts of your machine parts business that year. You must report your interest in the machine parts business, the $50,000 in income you received from the business.

Example 2
You are an officer of an international union. Your wife owns an accounting firm that pays her an annual salary. Last year, 20% of the receipts of her firm were from an employer whose employees are represented by a local union that is subordinate to your international union. You must report your wife's interest in the accounting firm, her salary from the firm, and the dealings between her business and the employer.

Example 3
You are a union officer and part owner of a copier supply company. Your union represents employees of employers A, B, and C. Last year 3% of the company's receipts were from employer A, 2% were from employer B, and 4% were from employer C. You do not have to report because less than 10% of the company's receipts were from employers whose employees your union represents.

Example 4
You are a union officer and a trustee to a plan established to provide benefits for the union members. An investment firm seeking to provide financial services to the plan hosts you on a week-long golfing trip in the Outer Banks of North Carolina. You must report the value of the trip, as well as the nature of the relationship sought by the investment firm with the plan.

Example 5
You are an officer of an international union and you receive sporting event season tickets, and multiple restaurant meals, from an attorney who appears on, or wishes to appear on, a list of "designated legal counsel." The union uses this list to recommend lawyers to the union members for representation in workers' compensation or other matters. You must report the value of the gifts and the nature of the relationship between the lawyer and the union.

Example 6
You are an employee of a union that has a collective bargaining agreement with trade show contractors. You were a seasonal employee of a company that received 15% of its receipts last year from leasing fork lifts to these contractors. You must report your income received from the company and the dealings between the company and the contractors.

Example 7
You are an officer of a district council. Your spouse owns and operates a small catering business, which provides her an annual salary and reimburses her for business-related expenses. Your council purchases catering services from your spouse's business during the fiscal year. You must report your spouse's ownership interest in the catering business, the salary and reimbursed expenses that she received from the business, and its dealings with the union.

Example 8
You are a business manager of a local union. You work on a contract basis for a plumbing supply company that sold tools and other supplies to the union and its training funds. You must report the payments you received from the plumbing supply company, and the company's dealings with the union and the training funds.

Example 9
You are an officer of a national union. You and your spouse own a printing company that prints the union newsletters for a local union of the same national union. You must report your and your spouse's ownership interest in the printing company and the company's dealings with the local.

Example 10
You are an officer of a joint board and run a snow plowing business that provides you with an annual income of $20,000. A subordinate local contracted with the business to plow the parking lot of its meeting hall. You must report your

interest in the snow plowing business, the $20,000 in income and the business's dealings with the local.

Example 11
You are an employee of a national union. Your wife works for a travel agency that handles all the travel arrangements for the national union. Your wife receives income from the travel agency. You must report your wife's income from the travel agency and the dealings between the travel agency and the union.

Example 12
You are the president of a local union and your 19-year old son works for a business that produces customized t-shirts, caps, and jackets. Your local union buys logo items from this business. You must report your son's income received from this business and the dealings between the business and the union.

Example 13
You are a business representative of a local union that represents shipyard workers. You and two other business representatives own a company that does medical testing of local members, which is paid for by a health benefit plan that is a trust in which your local is interested. The company also provides medical insurance coverage for you and your spouse. You must report your interest in the medical testing company, the medical coverage for you and your spouse, and the dealings between the testing company and the health benefit plan.

Example 14
You are the president of a local union and own a building, which has numerous tenants, including your local. Your ownership interest and income received from the operation of the building and the dealings between you and the union must be reported.

Example 15
You are a national union president and a trustee of a jointly administered health care trust that insures union members through a health insurance company. Premiums for insurance coverage of union members are paid by the trust to the health insurance company. You are a member of the board of directors of the health insurance company, which pays you annual directors' fees and reimburses expenses for your attendance at board meetings. (To comply with other legal requirements, you recuse yourself from all decisions by the trust concerning the health insurance company.) As the health insurance company is doing business with a trust in which your union is interested, you must report your annual directors' fees and reimbursed expenses. The dealings between the health insurance company and the trust must also be reported.

Example 16
You are an officer of a national union and your spouse works as an associate for a law firm that represents a local union that is affiliated with your national union. You are not required to report payments and other financial benefits received by your spouse as a bona fide employee of a business or employer involved with a lower level of your labor organization. However, if the firm represents the national union, you must report your spouse's income and the firm's dealings with the national union.

Example 17
You are a union officer and director of a registered investment company that offers investment opportunities to unions or trusts in which unions are interested. Your union has invested several thousand dollars in fixed income or equity funds managed by the company. You receive no gratuities, compensation, or reimbursement for your duties as a director, but you are insured against personal liability for your actions as a director under a policy paid for by the investment company. You must report the payment, and the dealings between the investment company and the union.

III. DEFINITIONS

For purposes of completing Form LM-30, the following definitions apply:

D1. *Actively seeking to represent* means that a labor organization has taken steps during the filer's fiscal year to become the bargaining representative of the employees of an employer, including but not limited to:

- Sending organizers to an employer's facility;
- Placing an individual in a position as an employee of an employer that is the subject of an organizing drive and paying that

individual subsidies to assist in the union's organizing activities;

- Circulating a petition for representation among employees;
- Soliciting employees to sign membership cards;
- Handing out leaflets;
- Picketing; or
- Demanding recognition or bargaining rights or obtaining or requesting an employer to enter into a neutrality agreement (whereby the employer agrees not to take a position for or against union representation of its employees), or otherwise committing labor or financial resources to seek representation of employees working for the employer.

Where a filer's union has taken any of the foregoing steps, the filer is required to report a payment or interest received, or transaction conducted, during that reporting period.

Note: Leafleting or picketing, such as purely "informational" or "area standards" picketing, that is wholly without the object of organizing the employees of a targeted employer will not alone trigger a reporting obligation. For example, if a union pickets a sporting goods retailer solely for the purpose of alerting the public that the retailer is selling goods that are made by children working in oppressive conditions in violation of accepted international standards, the picketing would not meet the "actively seeking to represent" standard.

D2. *Arrangement* means any agreement or understanding, tacit or express, or any plan or undertaking, commercial or personal, by which the filer, spouse, or minor child will obtain a benefit, directly or indirectly, with an actual or potential monetary value.

Note: The term "arrangement" is very broad and covers both personal and business transactions, including an unwritten understanding. For example, if during the reporting period an employer's representative offered a union officer a job with the employer, the officer must report the offer unless he or she rejected it. A standing job offer must be reported because it carries the potential of monetary value to the filer. Another example of a situation requiring a report is when an employer provided insider information about a stock or other investment opportunity, unless the filer rejected the advice and took no steps to act on it.

D3. *Benefit with monetary value* means anything of value, tangible or intangible. It includes any interest in personal or real property, gift, insurance, retirement, pension, license, copyright, forbearance, bequest or other form of inheritance, office, options, agreement for employment or property, or property of any kind. You do not need to report pension, health, or other benefit payments from a trust to you, your spouse, or minor child that are provided pursuant to a written specific agreement covering such payments.

D4. *Bona fide employee* is an individual who performs work for, and subject to the control of, the employer.

Note: A payment received as a bona fide employee includes wages and employment benefits received for work performed for, and subject to the control of, the employer making the payment, as well as compensation for work previously performed, such as earned or accrued wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan, leave for jury duty, and all payments required by law.

Compensation received under a "union-leave," or "no-docking" policy is not received as a bona fide employee of the employer making the payment. Under a union-leave policy, the employer continues the pay and benefits of an individual who works full time for a union. Under a no-docking policy, the employer permits individuals to devote portions of their day or workweek to union business, such as processing grievances, with no loss of pay. Such payments are received as an employee of the union and thus, such payment must be reported by the union officer or employee unless they (1) totaled 250 or fewer hours during the filer's fiscal year and (2) were paid pursuant to a bona fide collective bargaining agreement. If a filer must report payments for union-leave or no-docking arrangements, the filer must enter the actual amount of compensation received for each hour of union work. If union-leave/no-docking payments are received from multiple employers, each such payment is to be considered separately to determine if the 250-hour threshold has been met. For purposes of Form LM-30, stewards receiving union-leave/no-docking payments from an employer or lost time payments from a labor organization are considered employees of the labor organization.

D5. *Bona fide investment* means personal assets of an individual held to generate profit that were not acquired by improper means or as a gift from any of the following: (1) an employer, (2) a business that deals with the filer's union or a trust in which the filer's union is interested, (3) a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent, or (4) a labor relations consultant to an employer.

D6. *Dealing* means to engage in a transaction (bargain, sell, purchase, agree, contract) or to in any way traffic or trade, including solicitation for business.

> Note: The term "traffic or trade" includes not only financial transactions that have occurred but also the act of soliciting such business. Thus, for example, potential vendors or service providers attempting to win business with a union will be considered to be "dealing" with the union to the same extent as vendors who are already doing business with the union. Potential vendors must engage in the active and direct solicitation of business (other than by mass mail, telephone bank, or mass media). A business that passively advertises its services generally and would provide services consumed by, for example, a union would not meet this test. The potential vendor must be actively seeking the commercial relationship. Under certain circumstances, the payment itself will be evidence of the solicitation of business, such as a potential vendor who treats a union official to a golf outing and dinner to discuss the vendor's products.

D7. *Directly or indirectly* means by any course, avenue, or method. *Directly* encompasses holdings and transactions in which the filer, spouse, or minor child receives a payment or other benefit without the intervention or involvement of another party. *Indirectly* includes any payment or benefit which is intended for the filer, spouse, or minor child or on whose behalf a transaction or arrangement is undertaken, even though the interest is held by a third party, or was received through a third party.

> Note: Filers must disclose any benefits received by them (or their spouse or minor child) from a third party where the third party is acting on behalf, or at the behest, of an employer or business that would have to report the benefit if they provided it directly to the filer (or their spouse or minor child). The following examples show the difference between "direct" and "indirect":
>
> - You are employed by XYZ Widgets and also serve as the president of the local union representing XYZ Widgets employees. In a recent conversation with the XYZ Widgets human resources manager, you mention that you are placing your 15 year-old daughter in a private school. The XYZ Widget Company sends you a check for $1,000 with a note saying "Good luck with the new school!" You have received a direct benefit.
> - You are employed by XYZ Widgets and also serve as the president of the local union representing XYZ Widgets employees. In a recent conversation with the XYZ Widgets human resources manager, you mention that you are placing your daughter in a private school. You receive a letter from your daughter's new school stating that she has received a $1,000 scholarship through a donation by the XYZ Widget Company. You have received an indirect benefit.

D8. *Filer/Reporting Person/You* mean any officer or employee of a labor organization who is required to file Form LM-30.

> Note: These terms are used synonymously and interchangeably throughout the instructions and when referring to reportable interests, income, arrangements or transactions these terms include interests, income, arrangements or transactions involving the union officer's or employee's spouse or minor child.

D9. *Income* means all income from whatever source derived, including, but not limited to, compensation for services, fees, commissions, wages, salaries, interest, rents, royalties, copyrights, licenses, dividends, annuities, honorarium, income and interest from insurance and endowment contracts, capital gains, discharge of indebtedness, share of partnership income, bequests or other forms of inheritance, and gifts, prizes or awards. *See benefit with monetary value* at D3 above at page 10.

D10. *Labor organization* means the local, intermediate, or national or international labor organization that employed the filer, or in which the filer held office, during the reporting period, and, in the case of a national or international union officer or

an intermediate union officer, any subordinate labor organization of the officer's labor organization. Item 6 of Form LM-30 identifies the relationships between employers and "your labor organization" or "your union" that trigger a reporting requirement. Item 7 of the Form LM-30 identifies the direct and indirect relationships between a business (such as a goods vendor or a service provider) and "your labor organization" that trigger a reporting requirement. The terms "your labor organization" and "your union" mean:

a. For *officers and employees* of a local labor organization

Your local labor organization.

b. For *officers* of an international or national labor organization

Your national or international labor organization and all of its affiliated intermediate bodies and all of its affiliated local labor organizations

But note: A national or international union officer does not have to report payments from or interests in businesses that deal with employers represented by, or actively being organized by, any lower level of the officer's labor organization. Such officers are also not required to report payments and other financial benefits received by their spouses or minor children as bona fide employees of a business or employer involved with a lower level of the officer's labor organization.

c. For *employees* of a national or international labor organization

Your national or international labor organization.

d. For *officers* of intermediate bodies

Your intermediate body and all of its affiliated local labor organizations.

But note: An officer of an intermediate body does not have to report payments from or interests in businesses that deal with employers represented by, or actively being organized by, any lower level of the officer's labor organization. Such officers are also not required to report payments and other financial benefits received by their spouses or minor children as bona fide employees of a business or employer involved with a lower level of the officer's labor organization.

e. For *employees* of an intermediate body

Your intermediate body.

D11. *Labor organization employee* means any individual (other than an individual performing exclusively custodial or clerical services) employed by a labor organization within the meaning of any law of the United States relating to the employment of employees.

Note: An individual who is paid by the employer to perform union work, either under a "union-leave" or "no-docking" policy, is an employee of the union for reporting purposes if the individual performs services for, and under the control of, the union.

For purposes of Form LM-30, stewards receiving union-leave/no-docking payments from an employer or lost time payments from a labor organization are considered employees of the labor organization.

D12. *Labor organization officer* means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body. An officer is (1) a person identified as an officer by the constitution and bylaws of the labor organization; (2) any person authorized to perform the functions of president, vice president, secretary, or treasurer; (3) any person who in fact has executive or policy-making authority or responsibility; and (4) a member of a group identified as an executive board or a body which is vested with functions normally performed by an executive board.

Note: Under this definition, an officer includes a trustee appointed by the national or international union to administer a local union in trusteeship. If you are a trustee elected or appointed by the local union to audit and/or hold the assets of the union, you may or may not be a union officer, depending on your union's constitution and other factors. If you serve in your union in any capacity and you are unsure if your position is an officer position, you are likely an officer of a labor organization if any one of the following applies:

- Your union's constitution or bylaws refers to your position as an officer of

the union
- Your union's constitution or bylaws states that your position has the authority to make executive decisions for the union or that you are authorized to perform the functions of president, vice president, secretary, treasurer, or other constitutionally designated officer
- Your union's annual Form LM-2 or Form LM-3 lists your position as an officer of the union
- In your position, you serve on your union's executive board or similar governing body

D13. *Legal or equitable interest* means any property or benefit, tangible or intangible, which has an actual or potential monetary value for the filer, spouse, or minor child without regard to whether the filer, spouse, or minor child holds possession or title to the interest. *See* definition of *income* at D9 above on page 11 and *benefit with monetary value* at D3 on page 10.

For example:

- You are an officer of a union. You and your spouse jointly own an accounting business that provides tax services to a number of clients, including your union. You hold a legal interest in the company providing services to your union.
- You are an officer of a union. You form a tax preparation business with two partners and put your share of the business in your wife's name. The business prepares tax returns and LM reports for your union. You hold an equitable interest in a business that deals with your union.

D14. *Minor child* means a son, daughter, stepson, or stepdaughter less than 21 years of age.

D15. *Substantial part* means 10% or more. Where a business's receipts from an employer(s) whose employees the filer's labor organization represents or is actively seeking to represent constitute 10% or more of its annual receipts, a substantial part of the business consists of dealing with this employer(s).

D16. *Trust in which a labor organization is interested* 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. The term "section 3(l) trust" is used in the instructions as a shorthand reference to such trusts.

There are additional selected LMRDA definitions at the end of these instructions.

IV. WHEN TO FILE

You must file Form LM-30 within 90 days after the end of your fiscal year. If, however, you were an officer or employee for only a portion of your fiscal year, you may limit your report to that portion of the fiscal year.

V. WHERE TO FILE

You must mail the completed Form LM-30 to the following address:

U.S. Department of Labor
Employment Standards Administration
Office of Labor-Management Standards
200 Constitution Avenue, NW, Room N-5616
Washington, DC 20210

VI. PUBLIC DISCLOSURE

Pursuant to the LMRDA, the U.S. Department of Labor is required to make all submitted reports available for public inspection. Union officer and employee reports for the year 2000 and later may be viewed and downloaded from the Office of Labor-Management Standards (OLMS) Web site at http://www.union-reports.dol.gov. Copies of reports can also be ordered at the same Web site. Form LM-30 reports may also be examined at, and copies purchased from, the OLMS Public Disclosure Room at:

U.S. Department of Labor
Room N-1519
200 Constitution Avenue, NW
Washington, DC 20210

VII. OFFICER OR EMPLOYEE RESPONSIBILITIES AND PENALTIES

The labor organization officer or employee required to file Form LM-30 must sign the completed report and is personally responsible for its filing and accuracy. Under the LMRDA, this individual is subject to criminal penalties for willful failure to file a required report and/or for false reporting. False reporting includes making any false statement or misrepresentation of a material fact while knowing it to be false, or for knowingly failing to disclose a material fact in a required report or in the information required to be contained in it or in any information required to be submitted with it.

The reporting labor organization officer or employee is also subject to civil prosecution for violations of the filing requirements. Section 210 of the LMRDA (29 U.S.C. 440) provides that "whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action for such relief (including injunctions) as may be appropriate."

The officers and employees responsible for filing Form LM-30 are also subject to criminal penalties for false reporting and perjury under Sections 1001 of Title 18, 1746 of Title 28, and 1621 of Title 18 of the United States Code.

You, your spouse, and minor child and any individuals or entities associated with the reportable interests and transactions may be required to provide additional information to the Department concerning reported or reportable interests.

VIII. RECORDKEEPING

The labor organization officer or employee required to file Form LM-30 is responsible for maintaining records on the matters required to be reported that will provide in sufficient detail the necessary basic information and data from which the documents may be verified, explained or clarified, and checked for accuracy and completeness. These records shall include vouchers, worksheets, receipts, financial and investment statements, contracts, correspondence, and applicable resolutions, in their original electronic and paper formats, and any electronic programs by which they are maintained. Records must be kept available for examination for a period of not less than five years after the filing of the Form LM-30.

IX. COMPLETING FORM LM-30

Read the instructions carefully

OLMS encourages all filers to complete Form LM-30 electronically. Form LM-30 is available on the OLMS Web site at www.olms.dol.gov. You can complete the form electronically or print a copy and complete it manually. If you do not have access to the Internet, you can obtain a blank form from the nearest OLMS field office listed at the end of these instructions, from the OLMS National Office at 202-693-0124, or by calling the DOL toll-free help desk at 1-866-487-2365.

Information Entry. If you are not completing the report electronically, entries should be typed or clearly printed in black ink. Do not use a pencil or any other color ink.

Entering Dollars. In all items dealing with monetary values, report amounts in dollars only; do not enter cents. Round cents to the nearest dollar. Enter a single "0" in the space for reporting dollars if you have nothing to report.

Continuation Pages. If you are completing this report in paper format and there is not enough space to report all the required information and amounts, print and use the continuation pages available online or from the sources listed above. Enter the requested identifying information at the top of each continuation page.

Form LM-30 PART A

1. **LM-30 FILE NUMBER** — Enter the five-digit file number that OLMS assigned you if you have previously filed Form LM-30. If you have never filed Form LM-30, leave Item 1 blank. OLMS will notify you of your assigned file number, which should be used on all future reports.

2. **PERIOD COVERED--**Enter the beginning and ending dates of your fiscal year. Your fiscal year will normally be identical to the dates for which you file Federal income tax returns. Your report should never cover more than a 12-month period. For example, if your 12-month fiscal year begins on January 1 and ends on December 31, do not enter a date beyond the 12-month period, such as January 1 to January 1; this is an invalid date entry. Note that your fiscal year may differ from the fiscal year utilized by your union for filing its annual financial report, Form LM-2, LM-3, or LM-4.

3. **CONTACT INFORMATION OF REPORTING PERSON** — Enter the following contact information:
   A – C. Your full name (first, middle, last name).
   D – H. Your complete address where mail should be sent including any building and room number.
   I. Your email address. If you do not have an email address or choose not to provide it leave this space blank. Otherwise, enter your email address in the space provided.

4. **LABOR ORGANIZATION IDENTIFYING INFORMATION —**
   A — D. Enter the full name of your labor organization including local number, if any. Enter the complete business address of the labor organization where mail should be sent including any building and room number.
   E. Enter your labor organization's OLMS file number. If you cannot obtain the file number, go to http://www.unionreports.dol.gov or contact the

nearest OLMS field office listed at the end of these instructions.

F. Specify your status in the labor organization by checking the appropriate box indicating whether you are an officer or an employee.

G. State your official position or job title with the labor organization. Official titles include, but are not limited to, president, vice president, secretary, treasurer. Job titles include, but are not limited to, business agent, bookkeeper, office secretary, shop steward.

H. Check "Yes" if you were an officer or employee of the labor organization at the end of the reporting period. Check "No" if you were no longer an officer or employee.

5. **SUMMARY** —The summary must be completed after you have first completed each Part B that you are required to file as discussed below.

A. Enter the total combined value of all income or other payments reported in Schedule 2, Item F, Column (1) of each Part B.

B. Enter the total combined value of all assets reported in Schedule 2, Item F, Column (2) of each Part B.

6. **Employer Relationships** – Review the seven types of employers listed in Item 6 on the form and the discussion of the reporting requirements and specific exemptions in Part II of these instructions, pages 1 – 9. Check "yes" in Item 6a if you, your spouse, or minor child had an arrangement or engaged in a transaction with, or held an interest in, or received income or other payment from (including any reimbursed expenses), or made loans to or received loans from, an employer or a labor relations consultant to an employer that meets any of the conditions listed. Check "no" in Item 6a if there are none of the listed relationships to report. If you check "yes" enter the number of employers and consultants with which you have reportable dealings in Item 6b.

7. **Business Relationships** – Review the three types of business relationships listed in Item 7 on the form and the discussion of the reporting requirements and specific exemptions in Part II of these instructions, pages 1 – 9. Check "yes" in Item 7a if you, your spouse, or minor child had an arrangement or engaged in a transaction with, or held an interest in, or received income or other payment from (including any reimbursed expenses), or made loans to or received loans from, a business, such as a goods vendor or service provider, that meets any of the conditions listed. Check "no" in Item 7a if there are none of the listed relationships to report. If you check "yes" enter the number of businesses with which you have reportable dealings in Item 7b.

<u>If the answer to both Item 6a and Item 7a is "no," you are not required to file Form LM-30.</u>

8. **SIGNATURE** — Sign and date the Form LM-30 after you have completed the required number of Part Bs as explained below. Enter the telephone number you use to conduct official business. You do not have to report a private unlisted telephone number.

PART B

You must complete a Part B for each employer (and each labor relations consultant to an employer) and for each business from which you received a reportable payment, loan, or interest (such as stock), or in which you held a reportable interest, or with whom you engaged in a reportable transaction or arrangement, as described in Part II of these instructions. At the top left of each Part B enter your file number. Number each Part B consecutively in the top right corner and indicate the total number being filed. The form does not require the reporting of any personally identifiable information relating to you, your spouse, or your minor child, except as explicitly noted. Do *not* include information such as social security or loan numbers.

For your guidance, Schedules 2, 3, and 4 in Part B contain examples of the types of information that should be reported.

Before completing a Part B, carefully read Part II of these instructions, including the employer and business reporting descriptions, the exceptions, the related examples, and the definitions. (*See also, LMRDA Section 202 (a)(1)-(a)(6) [29 USC 432(a)(1)-(a)(6)],* which is printed at the end of these instructions*).*

Schedule 1
Employer or Business Identifying Information (All Filers Must Complete)

A. Legal Name of Employer, Business or Labor Relations Consultant. Enter the legal name of the employer, business, or labor relations consultant including any alias, trade name, or "Doing Business As" designation, if applicable. This is the entity from which you, your spouse, or your minor child received a reportable payment or loan, or in which you held a reportable interest, or with whom you engaged in a reportable transaction or arrangement.

Check the appropriate box for employer, business, or labor relations consultant.

B-D. Contact Name. Enter the full name (first, middle, last name) of the contact person at the employer, business, or labor relations consultant to whom mail should be sent.

E-H. Mailing Address. Enter the complete address where mail to the employer, business, or labor relations consultant should be sent including any building and room number.

I. Telephone Number. Enter the work telephone number of the contact person, including the area code.

J. Web Site Address. Enter the Web site address of the employer, business, or labor relations consultant. If the employer, business, or labor relations consultant does not have a Web site, enter "none."

K. Continuing Relationship with Employer, Business, or Labor Relations Consultant at End of Reporting Period. Indicate whether a continuing business or financial relationship existed between you (or your spouse or your minor child) and the employer, business, or labor relations consultant at the end of the reporting period. For example, if you reported salary from a business that sells services to your union, and you were still working for the business at the end of the reporting period, check "yes." If, for example, the employer was one with whom you have no continuing relationship, check "no."

Schedule 2

Filer's Interests In, Payments From, Loans to or From, and Transactions or Arrangements with Employer or Business and Payments from a Labor Relations Consultant (All Filers Must Complete)

A. Date. Enter the date each payment or loan was received, or each transaction was completed. If the reportable event is an arrangement, enter the date the arrangement was made. The date of interests or other holdings should be the date of receipt of the interest.

B. Officer, Employee, Spouse, or Minor Child. Indicate whether the payment, loan, transaction, arrangement or interest was paid to, engaged in, or held by, the officer, employee, spouse or minor child.

C. Description of Interest, Payment, Loan, Transaction or Arrangement. Give a detailed description of the interest, payment, loan, transaction, or arrangement.

Interest. For each interest held, identify the nature of the interest (*for example*, common stock, preferred stock, bonds, options, etc.) Give the total number of shares or other units held during the fiscal year. State the total cost of the acquired interest, and the manner by which you (or your spouse or your minor child) acquired the interest (*for example*, employee stock purchase plan, purchase on an over-the-counter market, gift, etc.) If the interest was disposed of during the fiscal year, describe the manner by which you (or your spouse or minor child) disposed of the interest (*for example*, sale on market, gift, exchange, etc.)

Payment or Income. Identify the nature of the payment, income, or benefit of monetary value (*for example*, continuing use of an automobile for personal purposes, gift of a computer, payments for services).

Loan. Identify the terms and conditions of the loan. Include the dollar value of the remaining obligation, if any, as of the end of the fiscal year (*for example*, unpaid balance of a loan, rentals due under the lease, amount due under a contract, etc.).

Transaction. Identify the nature of the transaction, the property involved (for example, stock, bonds, rental of property located at X address), the terms and conditions of the transaction (*for example*, discount purchase of goods, sale and lease back one year, etc), and names and addresses of intermediate parties involved in any indirect transactions.

Arrangement. Identify the nature of the arrangement and provide sufficient detail to identify the date, persons involved, and information as to conditions, if any, of the arrangement and the anticipated date on which the benefit will be obtained.

Other Thing of Value. Describe the item of value in Item C and indicate its value in Item D.

Describe in detail the nature of the purchases, sales, leases, or other dealings listed. Your report will be deficient if you provide unclear or nonspecific descriptions. If you need additional space to describe the business dealings, use the Additional Information Schedule.

D. Value. If the description in Item C is of income or other payments, enter its monetary value in Column (1). If the description in Item C is of an asset, enter its monetary value in Column (2). Income or other payments, as used here, includes, among other things, salary, bonuses, benefits with monetary value (including reimbursed expenses), gifts, loans, payments of money and other things of value, as well as business transactions and arrangements. *See benefits with monetary value* at D3 on page 10 and *income* at D9 on page 11. Assets include, among other things, stocks, bonds, securities, and other interests and holdings, legal or equitable. *See legal or equitable interest* at D13 on page 13.

Enter the exact value if known or easily obtainable; otherwise, enter a good faith estimate of the fair market value and explain the basis for the estimate on the Additional Information Schedule. The fair market value may be determined by:

- The purchase price
- Recent appraisal
- Assessed value for tax purposes, adjusted to reflect market value if the assessed value is computed at less than 100% of the market value
- The year-end book value of stock that is not publicly traded, the year-end exchange rate of corporate stock, or the face value of corporate bonds or comparable securities
- The net worth of a business partnership or business venture
- The equity value of an individually-owned business or any other recognized indication of value (such as the sale price on the stock exchange at the time of the report or, for transactions, the sale price on the stock exchange at the time of the sale).

If the exact value is not known and cannot be estimated, enter "N/A" and explain the situation on the Additional Information Schedule.

E. Total from Continuation Pages. Enter the total value of income or other payments and the total value of assets from the continuation pages, if any.

F. Total Valuation of Income or Other Payments and Assets. Enter the total value of income or other payments and the total value of assets derived from the employer or business.

Schedule 3

Employer's Relationship with Your Labor Organization (Complete for employers only, that is, if you answered "yes" to Item 6a on page 2)

A. Employer's Relationship with Labor Organization. Check the box (and letter, as appropriate) that describes the nature of the employer's relationship with your labor organization.

B. Details of the Employer's Relationship with Labor Organization. Provide a detailed description of the relationship between the employer and your labor organization. For example, if you checked Box 4, the description might read: "The XYZ Charity received a donation from Local ABC in June 2005" or Local ABC pays "Health Care PrePaid, Inc., a not-for-profit entity, to provide insurance coverage to its members." Or if you checked Box 5a, the description might read: "The employees of National Union DEF are represented by my union, National Union DEF Staff Union. The two entities are parties to a collective bargaining agreement that is in effect from October 1, 2005 to September 30, 2009." Your report will be deficient if you provide unclear or nonspecific descriptions. If you need additional space to describe the business dealings, use the Additional Information Schedule.

B(1). Value. Enter the monetary value of the relationship described in Item B, if applicable. For example, as for the premium payments paid by the labor organization to HealthCare PrePaid, Inc., as described in Item B, record the $125,000 in premium payments in the space provided. If there are no payments or transactions with a monetary value, or if you do not know and cannot estimate the value, enter N/A and explain in the Additional Information Schedule.

Schedule 4

Business's Dealings with Union(s), Trust(s), or Employer(s) (Complete for businesses only, that is, if you answered "yes" to Item 7a on page 2)

A. Name of Union, Trust, or Employer. If the business has engaged in buying from, selling or leasing to, or otherwise dealing with your union, with a trust in which your union is interested, or in substantial part with an employer whose employees your union represents or is actively seeking to represent, enter the legal name of each such union, trust, or employer.

B. Union, Trust, or Employer. Indicate whether the entity listed in Item A is a union, trust, or employer.

C. File Number. If the union, trust, or employer has filed reports with OLMS, enter its file number, if known. If you do not have a file number for the union, trust, or employer, enter its complete address in the Additional Information Schedule.

D. Description of Dealings. Describe in detail the nature of the purchases, sales, leases, or other dealings between the business and the union, trust, or employer listed in Item A. For example, if the business and Union A arranged a payroll service in the amount of $45,000 for union members, you might describe the dealing as follows: "One payment for payroll services for Union A members." You report will be deficient if you provide unclear or nonspecific descriptions. If you need additional space to describe the business dealings, use the Additional Information Schedule.

E. Value. Enter the exact value of the purchase, sale, lease, or other dealings between the business and the union, trust, or employer listed in Item A, if known or easily obtainable; otherwise, enter a good faith estimate of the fair market value and explain the basis for the estimate in the Additional Information Schedule. The fair market value may be determined by:

- The purchase price
- Recent appraisal
- Assessed value for tax purposes, adjusted to reflect market value if the assessed value is computed at less than 100% of the market value
- The year-end book value of stock that is not publicly traded, the year-end exchange rate of corporate stock, or the face value of corporate bonds or comparable securities
- The net worth of a business partnership or business venture
- The equity value of an individually-owned business or any other recognized indication of value (such as the sale price on the stock exchange at the time of the report or, for transactions, the sale price on the stock exchange at the time of the sale).

If the exact value is not known and cannot be estimated, enter "N/A" and explain the situation in the Additional Information Schedule.

Additional Information Schedule

A. Schedule/Item. Enter the schedule or item to which the additional information applies.

B. Additional Information. Enter the additional information for the schedule or item listed in Column A.

All terms in italics are defined in Part III of these instructions (pages 9-13).

Selected Sections and Definitions From The Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA) And the Labor Management Relations Act, 1947, as amended (LMRA)

LMRDA § 3 [29 U.S.C. §402]. Definitions

For the purposes of titles I, II, III, IV, V (except section 505), and VI of this Act-

(a) "Commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof.

(b) "State" includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331-1343).

(c) "Industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.

(d) "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, or receivers.

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

(f) "Employee" means any individual employed by an employer, and includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice or because of exclusion or expulsion from a labor organization in any manner or for any reason inconsistent with the requirements of this Act.

(g) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(h) "Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

(i) "Labor organization" means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

(j) A labor organization shall be deemed to be engaged in an industry affecting commerce if it -

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended; or

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council, subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection, other than a State or local central body.

(k) "Secret ballot" means the expression by ballot, voting machine, or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed.

(l) "Trust in which a labor organization is interested" 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.

(m) "Labor relations consultant" means any person who, for compensation, advises or represents an employer, employer organization, or labor organization concerning employee organizing, concerted activities, or collective bargaining activities.

(n) "Officer" means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body.[...]

LMRDA § 202 [29 U.S.C. §432]. Report of Officers and Employees of Labor Organizations

(a) Filing; contents of report

Every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services) shall file with the Secretary a signed report listing and describing for his preceding fiscal year--

(1) any stock, bond, **security**, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child derived directly or indirectly from, an employer whose employees such labor organization represents or is actively seeking to represent, except payments and other benefits received as a bona fide employee of such employer;
(2) any transaction in which he or his spouse or minor child engaged, directly or indirectly, involving any stock, bond, security, or loan to or from, or other legal or equitable interest in the business of an employer whose employees such labor organization represents or is actively seeking to represent;
(3) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent;
(4) any stock, bond, security, or other interest, legal or equitable, which he or his spouse or minor child directly or indirectly held in, and any income or any other benefit with monetary value (including reimbursed expenses) which he or his spouse or minor child directly or indirectly derived from, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with such labor organization;
(5) any direct or indirect business transaction or arrangement between him or his spouse or minor child and any employer whose employees his organization represents or is actively seeking to represent, except work performed and payments and benefits received as a bona fide employee of such employer and except purchases and sales of goods or services in the regular course of business at prices generally available to any employee of such employer; and
(6) any payment of money or other thing of value (including reimbursed expenses) which he or his spouse or minor child received directly or indirectly from any employer or any person who acts as a labor relations consultant to an employer, except payments of the kinds referred to in Section 186(c) of this title.

(b) Report of certain bona fide investments

The provisions of paragraphs (1), (2), (3), (4), and (5) of subsection (a) of this section shall not be construed to require any such officer or employee to report his bona fide investments in securities traded on a securities exchange registered as a national securities exchange under the Securities Exchange Act of 1934 [15 U.S.C. §78a et seq.], in shares in an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1et seq.], or in securities of a public utility holding company registered under the Public Utility Holding Company Act of 1935 [15 U.S.C.A. §79 et seq.], or to report any income derived therefrom.

(c) Exemption from filing requirement

Nothing contained in this section shall be construed to require any officer or employee of a labor organization to file a report under subsection (a) of this section unless he or his spouse or minor child holds or has held an interest, has received income or any other benefit with monetary value or a loan, or has engaged in a transaction described therein.

LMRA §302(c) [29 USCS § 186(c)]. Exceptions.

The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital

care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, (B) child care centers for preschool and school age dependents of employees, or (C) financial assistance for employee housing: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceedings directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, as amended [29 USCS §§ 151-158, 159-169], or this Act; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor-Management Reporting and Disclosure Act of 1959; or (9) with respect to money or other things of value paid by an employer to a plant, area or industrywide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.)

LMRDA § 501 [29 U.S.C. 501]. Fiduciary responsibility of officers of labor organizations

(a) Duties of officers; exculpatory provisions and resolutions void

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) Violation of duties; action by member after refusal or failure by labor organization to commence proceedings; jurisdiction; leave of court; counsel fees and expenses

When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

(c) Embezzlement of assets; penalty

Any person who embezzles, steals, or unlawfully and willfully abstracts or converts to his own use, or the use of another, any of the moneys, funds, securities, property, or other assets of a labor organization of which he is an officer, or by which he is employed, directly or indirectly, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

If You Need Assistance

The Office of Labor-Management Standards has field offices located in the following cities to assist you if you have any questions concerning LMRDA reporting requirements.

Atlanta, GA
Baltimore, MD
Birmingham, AL
Boston, MA
Buffalo, NY
Chicago, IL
Cincinnati, OH
Cleveland, OH
Dallas, TX
Denver, CO
Detroit, MI
Grand Rapids, MI
Guaynabo, PR
Honolulu, HI
Houston, TX
Kansas City, MO
Las Vegas, NV
Los Angeles, CA
Miami (Ft. Lauderdale), FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark (Iselin), NJ
Philadelphia, PA
Pittsburgh, PA
St. Louis, MO
San Francisco, CA
Seattle, WA
Tampa, FL
Washington, DC

Consult local telephone directory listings under United States Government, Labor Department, Office of Labor- Management Standards, for the address and telephone number of the nearest field office. Copies of labor organization annual financial reports, employer reports, labor relations consultant reports, and union officer and employee reports filed for the year 2000 and after can be viewed and printed at http://www.unionreports.dol.gov.

Copies of reports for the year 1999 and earlier can be ordered through the Web site. Information about OLMS, including key personnel and telephone numbers, compliance assistance materials, the text of the LMRDA, and related Federal Register and Code of Federal Regulations (CFR) documents, is also available on the Internet at: http://www.olms.dol.gov.

For questions on Form LM-30 and/or the instructions, call the Department of Labor's toll-free number at: 1-866-4-USA-DOL (1-866-487-2365) or email olms-public@dol.gov.

If you would like to receive via email periodic updates from the Office of Labor-Management Standards, including information about the LM forms, enforcement results, and compliance assistance programs, you may subscribe to the OLMS Mailing List from the OLMS Web site: http://www.olms.dol.gov.

All terms in italics are defined in Part III of these instructions (pages 9-13).

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