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29 CFR Part 404

Labor Organization Officer and Employee Reports; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 404

RIN 1215–AB74
RIN 1245–AA01

Labor Organization Officer and Employee Reports

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

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Office of Labor-Management Standards of the Department of Labor (Department) is proposing to revise the Form LM–30 and its instructions. 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, the purpose of which is to require officers and employees of labor organizations to publicly disclose possible conflicts between their personal financial interests and their duty to the labor union and its members. The proposed rule would revise the Form LM–30 and its instructions, based on an examination of the policy and legal justifications for, and utility of, changes enacted in the Form LM–30 Final Rule (2007 rule), published on July 2, 2007. 72 FR 36105. Following promulgation of the 2007 rule, fundamental questions remain regarding the complexity of the form and its instructions, as well as the scope and extent of the LM–30 reporting obligations. These questions include the coverage of union stewards and others representing the union in similar positions; the reporting of certain loans and union leave and "no docking" payments; the reporting of payments from certain trusts, unions, and employers in competition with employers whose employees are represented by an official's union; and the reporting of certain interests held and payments received by higher level union officials. The Department proposes revisions to the 2007 form, its instructions, and the regulatory text concerning such reporting obligations. The Department invites general and specific comment on any aspect of this proposed rule.

DATES: Comments must be received on or before October 12, 2010.

ADDRESSES: You may submit comments, identified by RIN 1215–AB74 or RIN 1245–AA01. (The Regulatory Information Number (RIN) identified for this rulemaking changed with publication of the Spring Regulatory Agenda due to an organizational restructuring. The old RIN (1215–AB74) was assigned to the Employment Standards Administration, which no longer exists; a new RIN (1245–AB01) has been assigned to the Office of Labor-Management Standards.) The comments can be submitted only by the following methods:

Internet: Federal eRulemaking Portal. Electronic comments may be submitted through *http://www.regulations.gov*. To locate the proposed rule, use the RIN numbers shown above. Follow the instructions for submitting comments.

Delivery: Comments should be sent to: Denise M. Boucher, Director of the 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. Because of security precautions the Department continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments.

The Office of Labor-Management Standards (OLMS) recommends that you confirm receipt of your delivered comments by contacting (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call (800) 877–8339 (TTY/TDD). Only those comments submitted through *http://www.regulations.gov*, hand-delivered, or mailed will be accepted. Comments will be available for public inspection at *http://www.regulations.gov* and during normal business hours at the above address.

The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. The *http://www.regulations.gov* Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department cautions commenters not to include their personal information such as Social Security numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public via the *http://www.regulations.gov* Web site. It is the responsibility of the commenter to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Denise M. Boucher, Director of the 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) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The proposal to revise the Form LM–30 and its instructions is part of the Department's continuing effort to effectively administer the reporting requirements of the LMRDA. The LMRDA's various reporting provisions are designed to empower labor organizations, their members, and the public by providing certain information about the finances of labor organizations and union officers and employees. A fair and transparent government regulatory regime must consider and balance the interests of labor organizations, their members, and the public, including the benefits served by disclosure, the burden placed on reporting entities, and preserving the independence of unions and their officials from unnecessary government regulation.

The Form LM–30 implements section 202 of the LMRDA, 29 U.S.C. 432. Under section 202,[1] union officers and employees are required to file reports if they, or their spouses or minor children, engage in certain transactions, or have financial holdings, which may constitute a conflict of interest with their union responsibilities. The Act requires public disclosure of certain financial interests held, transactions engaged in, and income received. Subject to certain exclusions, these interests, transactions, and incomes include:

1. Payments or benefits with monetary value from, or interests in, an employer whose employees the filer's union represents or is actively seeking to represent;

2. Transactions involving any stock, bond, security or loan to or from, or other interest in, an employer whose employees the filer's union represents or is actively seeking to represent;

3. Business transactions or arrangements with an employer whose employees the filer's union represents or is actively seeking to represent;

[1] Unless otherwise stated all references to statutory provisions, *e.g.*, "section 202," are to provisions in the LMRDA.

4. Income or any other benefit with monetary value from, or other interest in, a business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with an employer whose employees the filer's union represents or is actively seeking to represent;

5. Income or any other benefit with monetary value from, or other interest in, a business any part of which consists of buying from, or selling or leasing directly or indirectly to, or otherwise dealing with the filer's union or a trust in which the filer's union is interested; and

6. Payment of money or other thing of value from any employer not covered under the above categories, or payment of money or other thing of value from a person who acts as a labor relations consultant to an employer.

The Form LM–30 had remained essentially unchanged from 1963 until 2007. In 2005 the Department published a Notice of Proposed Rulemaking (NPRM) that proposed far-reaching changes to the form. 70 FR 51165 (Aug. 29, 2005). After a notice and comment period, the Department issued the 2007 final rule. 72 FR 36105 (July 2, 2007). The 2007 rule brought significant changes to the LM–30 and its instructions and represented, in some instances, a sharp departure from the Department's previous interpretations of section 202. The rule completely revised the layout and overall structure of the Form LM–30, lengthening the form from two to nine pages with the creation of five schedules, continuation pages, and various sections consisting of instructions and examples. (The 2007 form and instructions are available at *http://www.dol.gov/olms*.) Upon review of the 2007 rule, and input from the regulated community, the Department believes that many of the objectives sought to be met by the 2007 rule—including simplification of the reporting requirements and adherence to the reporting scheme intended by Congress—were not accomplished. The 2007 rule left unresolved fundamental questions about the reporting obligations of union officials, questions raising policy and legal issues warranting reexamination by the Department. These fundamental questions regarding the Form LM–30 reporting requirements include—the coverage of stewards and other union representatives serving in similar positions; the reporting of certain loans and union leave and "no docking" payments; the reporting of payments from certain trusts and unions; the reporting of payments from businesses that compete with an employer whose employees are represented by an official's union or whose employees the union is actively seeking to represent; and reporting by higher level union officials about relationships with businesses and employers that pose conflicts concerning subordinate affiliates of their union. In addition, there are questions as to whether the layout of the 2007 Form LM–30 and instructions provides useful and adequate assistance to filers.

As further discussed in later sections of this notice, these questions prompted the Department, on March 19, 2009, to issue a non-enforcement policy regarding the 2007 Form LM–30 reporting requirements, allowing filers to use either the pre-2007 or 2007 Form LM–30 report. Further, the Department held a stakeholder meeting on July 21, 2009 to solicit comments regarding the 2007 Form LM–30 and potential revisions to the Form LM–30. The Department invites comment on the proposed changes with respect to their benefits, the ease or difficulty with which labor organization officers and employees will be able to comply with these changes, and whether the changes would better implement the LMRDA. Information about specific union provisions relating to conflict of interest standards for union officials is also invited. Interested parties and the public are invited to draw upon their experience with similar conflict and disclosure standards in other settings such as government employment, accounting, corporate governance, legal and judicial practice, medicine, and journalism. The Department invites general and specific comments on any aspect of this proposal; it also invites comment on specific points, as noted throughout the text of this notice.

B. History of the LMRDA's Reporting Requirements

In enacting the LMRDA in 1959, a bipartisan Congress expressed the conclusion that in the labor and management fields "there 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(b), 29 U.S.C. 401(b).

The LMRDA was the direct outgrowth of a Congressional investigation conducted by the Select Committee on Improper Activities in the Labor or Management Field, commonly known as the McClellan Committee. The LMRDA addressed various ills through a set of integrated provisions aimed at labor-management relations governance and management. These provisions include financial reporting and disclosure requirements for labor organizations, their officers and employees, employers, labor relations consultants, and surety companies. *See* 29 U.S.C. 431–36, 441.

To highlight the potential conflicts of interest to which union officers and employees could be susceptible, the Senate Committee Report presented the following illumination of section 202:

> [This section] requires a union officer or employee to disclose any securities or other interest which he has in a business whose employees his labor union represents or "seeks to represent" in collective bargaining. When a prominent union official has an interest in the business with which the union is bargaining, he sits on both sides of the table. He is under temptation to negotiate a soft contract or to refrain from enforcing working rules so as to increase the company's profits. This is unfair to both union members and competing businesses.

Senate Report No. 187 (1959) (Senate Report) at 15, reprinted in NLRB Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 (2 volumes) (Leg. History), 1 Leg. History, at 411.

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 can be summarized 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 the 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:

> The committee bill attacks the problem [of conflicts of interest] by requiring union officers and employees to file reports with

the Secretary of Labor disclosing to union members and the general public any investments or transactions in which their personal financial interests may conflict with their duties to the members. The bill requires only the disclosure of conflicts of interest as defined therein. The other investments of union officials and their other sources of income are left private because they are not matters of public concern. No union officer or employee is obliged to file a report unless he holds a questionable interest in 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.

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 No. 741 (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").

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."

House Report, at 10–11, reprinted at 1 Leg. History, at 768–69. Senate Report, at 14, reprinted in 1 Leg. History, at 410. *See* generally Restatement (Second) of Trusts (1959) §§ 170, 173; Restatement (Second) of Agency (1958) §§ 381, 387–98.

The reporting provisions of the Act represent, in part, 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 Archibald Cox, Internal Affairs of Labor Unions Under the Labor Reform Act of 1959, 58 Mich. L. Rev. 819, 824–29 (1960). 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 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 1407–08. *See also* Ethical Practices Code II: Health and Welfare Funds, id., 2 Leg. History, at 1406–07.

The Act was crafted with particular regard for the unique function and status of labor unions. Then Senator John F. Kennedy, who was the chief sponsor of the Senate bill, S. 505, which served as the foundation for the LMRDA, stated that the legislation was "designed to permit responsible unionism to operate without being undermined by either racketeering tactics or bureaucratic controls. It is designed to strike a balance between the dangers of to [sic] much and too little legislation in this field." 105 Cong. Rec. S816 (daily ed. Jan. 20, 1959), reprinted in 1 Leg. History, at 969.

As noted by Senator Kennedy above, a balance of these interests was central to the bipartisan enactment of the LMRDA. Congress sought to address legitimate concerns about illegal and undemocratic behaviors without permitting that concern to be used as an excuse for undermining organized labor. Further, Congress sought to address the importance of balancing necessary disclosure and regulation with undue intrusion on union operations and the protection of union officer's privacy interests. As stated in the Senate Report, "[t]he committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization * * * in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents." Senate Report, at p. 7, reprinted in 2 Leg. History, at 403. Professor Archibald Cox played a pivotal role in drafting the legislation that ultimately became the LMRDA. His testimony before the Senate subcommittee that was considering this legislation presaged the language in the Senate Report, describing the reporting obligation as a limited one. He testified: "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." Hearings on S. 505 before the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare (1959) (Senate Hearings), at 123; *see* Senate Report, at 15, reprinted in 1 Leg. History, at 411. Professor Cox additionally noted that because the reporting requirements were based, in part, upon the Ethical Practices Code formulated by the AFL–CIO, union officials who adhered to this code would have "virtually nothing to disclose in his report to the public." Senate Hearings, at 123.

C. Statutory Language

Section 202 provides in its entirety:

SEC. 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. 29 U.S.C. 432.

D. Rationale for Proposing Rulemaking on Form LM–30

The Department is proposing modifications to the Form LM–30 for the following reasons:

(1) The 2007 Form LM–30 rule continues to create uncertainty for the regulated community, which continues to have questions regarding the rule's reporting requirements and has raised strong objections to key aspects of the rule, such as the reporting of certain loans, including mortgages and student loans, the reporting of union leave and "no docking" payments (*i.e.,* payments made by a represented employer to employees engaged in union representational or other activities), and reporting by individuals serving as union stewards or in similar positions representing the union.

(2) Upon review, we now believe that the revisions we are proposing better balance the disclosure of information and the burden imposed on union officials.

(3) Upon review, we now believe that the revisions we are proposing better clarify the form and instructions, and organize the information in a useful format.

The Department fully recognizes and supports the importance of union officer and employee reporting and the disclosure of pertinent financial information to union members and the public. However, the LMRDA requires a balancing of transparency with the need to maintain union autonomy and to avoid overburdening unions and their officials with unnecessary reporting requirements. Because the 2007 rule did not adequately consider this balance, it did not succeed in properly implementing the LMRDA.

Following promulgation of the 2007 Form LM–30, the Department received numerous comments from the regulated public regarding the difficulty entailed in reading and understanding the 2007 form and instructions. Many commenters asserted that the 2007 rule was legally flawed and some aspects of the rule have been challenged in a lawsuit, *AFL–CIO* v. *Chao,* No. 1:08-cv-0069 (CKK) (D.D.C.) (stayed on March 26, 2009). In the Department's view, the following issues warranted particular attention: the reporting of union leave and "no docking" payments, the coverage of union stewards as officials required to file the Form LM–30, and the reporting of loans. In an effort to clarify the reporting requirements associated with the 2007 Form LM–30, the Department created a Frequently Asked Questions (FAQs) section on its Web site (*http://www.dol.gov/olms/regs/compliance/RevisedLM30_FAQ.htm*). The confusion about the new reporting requirements also prompted the Department to issue written guidance on its Web site, on March 19, 2009, announcing a non-enforcement policy under which it will accept either the pre-2007 Form LM–30 or the 2007 Form LM–30 (*http://www.dol.gov/olms/regs/compliance/GPEA_Forms/blanklmforms.htm*). The Department there announced its intention to revise the Form LM–30 in order to review questions of policy and law surrounding these reporting requirements. The Department explained that the 2007 rule left unanswered fundamental questions regarding the scope and extent of the reporting obligations and that litigation challenging some aspects of the form remained pending. Given these considerations, the Department determined that it would not be a good use of resources to bring enforcement actions based upon a failure to use a specific form to comply with the statutory reporting obligation. Accordingly, the Department has refrained from initiating enforcement actions against union officers and union employees based solely on the failure to file the report prescribed by the 2007 rule, as long as individuals meet their statutorily-required filing obligation in some manner. This non-enforcement posture remains in effect.

On July 21, 2009, OLMS held a stakeholder meeting to solicit comments regarding the 2007 rule. OLMS received a number of comments on several significant issues. These comments included the following —

- The Department should revert to the old (pre-2007) Form LM–30 and instructions because they were less confusing than the new (2007) form and instructions, which are "overwhelmingly complicated."
- The current interpretations of "labor organization employee" and the "bona fide employee exception," which require reporting by union stewards and others of "no docking" and union leave payments, are beyond the Department's

statutory authority, are overly burdensome, and capture transactions that do not pose conflicts of interest; they also discourage union members from serving as union stewards.

- The reporting of bona fide loans is not beneficial to the public and requiring the reporting of home mortgages is invasive.
- While the reporting of extra-market loans from businesses is defensible, the reporting of market-term loans is unreasonable and overbearing.
- The Department should not have required union officials to report payments and interests from employers or businesses with relationships to other levels of the union hierarchy other than the official's own. If there is any "look down" reporting, it should be restricted to officials with oversight authority.
- The Department should retain the $250 de minimis threshold for reporting, as well as the related $20 threshold for recordkeeping and the "widely-attended gathering" exception.
- The Department should not have required officials to report payments by trusts, unions, and others; reports should have been limited to payments by entities that are organizing targets of the official's union.

The Department has considered the comments received at the stakeholder meeting in reviewing the 2007 rule and proposing changes to that rule.

II. Authority

A. Legal Authority

The legal authority for the notice of proposed rulemaking is set forth in sections 202 and 208 of the LMRDA, 29 U.S.C. 432, 438. Section 208 of the LMRDA provides that the Secretary of Labor shall have authority to issue, amend, and rescind rules and regulations prescribing the form and publication of reports required to be filed under 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. 29 U.S.C. 438.

B. Departmental Authorization

Secretary's Order 08–2009, issued November 6, 2009, contains the delegation of authority and assignment of responsibility for the Secretary's functions under the LMRDA to the Director of the Office of Labor-Management Standards and permits re-delegation of such authority. *See* 74 FR 58835 (Nov. 13, 2009).

III. Reasons for Proposed Revisions to the 2007 Form LM–30 Reporting Requirements

The Department proposes changes to five areas of the Form LM–30 reporting requirements: (1) The reporting of union leave and "no docking" payments, and, more broadly, the bona fide employee exception; (2) the coverage of individuals serving as union stewards or in similar positions representing the union, such as a member of a safety committee or a bargaining committee; (3) the reporting of bona fide loans; (4) the reporting of payments from employers competitive to the represented employer, certain trusts, and unions; and (5) the reporting by national, international, and intermediate union officers and employees.

First, the Department proposes to return to the historical practice whereby union officers and employees were not required to report compensation they received under union leave and "no docking" policies established under collective bargaining agreements or by custom and practice of the workplace. The requirement in the 2007 rule that union officials must report "no docking" and union leave payments has been strongly criticized as unduly burdensome. The Department agrees that this reporting requirement imposes undue burden and may impede individuals from running for union office and otherwise serving in important union roles. The 2007 rule was based on the premise that such payments are for work performed on the union's behalf, rather than the employer's, and thus not payments made under the "bona fide employee" exception of section 202 of the LMRDA. The Department now believes that the term "bona fide employee," as used in that section, is most naturally read to distinguish between, on the one hand, payments that are made to a union official by virtue of his or her employment by the company making the payment, and, on the other hand, payments that are made to union officials without regard to such employment. This interpretation better accords with the purposes of the statute than the interpretation embodied in the 2007 rule that focuses on whether the union or the employer making the payment exercises primary control over an individual's discrete, temporal activities as a union official.

Second, the Department proposes to return to the historical practice of excluding union stewards and similar union representatives from Form LM–30 reporting. The Department believes that this practice comports with the language of section 202 and better effectuates labor-management relations than the interpretation embodied in the 2007 rule.

Third, the Department also proposes an administrative exemption whereby union officials generally need only report loans from bona fide credit institutions if the terms of such loans are on terms more favorable than those available to the public. The 2007 rule required more extensive reporting and made distinctions among various relationships and credit institutions that were difficult to understand and apply. The proposed rule also incorporates the Department's clarification, as set forth in Frequently Asked Questions (FAQs), that union officials as a general rule are not required to report on savings accounts, CD, credit cards, *etc.* where such instruments contain the same terms offered to other customers without regard to an individual's status as a union official.

Fourth, the Department also proposes to limit the reporting obligation with respect to interests in and payments from employers that compete against employers represented by the official's union or that the union actively seeks to represent. It is the Department's view that disclosure of such payments is important, but only where an official is involved with the organizing, collective bargaining, or contract administration activities related to a particular represented employer or possesses significant authority or influence over such activities. This ensures that meaningful information will be provided to union members without imposing undue burden on officials who do not occupy positions of influence over the union's organizing, collective bargaining, or contract administration activities related to the represented employer. Similarly, the Department proposes to modify the scope of reporting insofar as payments from certain trusts and unions are concerned. The Department proposes to return to its historical practice of not requiring officials to report on payments they receive from trusts or, as a general rule, from unions. The Department, however, will continue to require officials of a staff union to report any payments they receive from the union-employer whose employees the staff union represents.

Finally, the Department is proposing to revise and clarify the scope of reporting for officials of international, national, and intermediate unions. The proposed rule states that officers and employees of these higher level unions must look at payments they receive from employers and businesses with

relationships with lower levels of the official's union (*e.g.,* a local or other subordinate body), as well as with the official's own level of the union, when applying the Form LM–30 reporting requirements. The 2007 rule excepted employees, as distinct from officers, from this "top-down" reporting obligation. In the Department's view, the LMRDA does not support that distinction for LM–30 reporting purposes. Officers and employees of the union are held to the same reporting obligations under the Act. The 2007 rule also established confusing exceptions to the "top-down" reporting obligations for officers. Payments from businesses that dealt with represented employers were exempt, while the instructions did not specify the reportability of payments from businesses that dealt with lower level unions. Further, union officers were not required to report any payments or other financial benefits received by their spouses and minor children from employers and businesses involved with a lower level union. The Department is proposing to remove these exceptions.

In developing the proposed changes, the Department has reviewed the reporting examples utilized in the 2007 rule and the substantial guidance issued after the rule's publication as answers to FAQs in order to identify the extent to which, if at all, reporting will be changed under the Department's proposals if adopted in a final rule. A final rule will supersede any inconsistent interpretation or other guidance. The Department identifies in the margin those instances where the proposed rule, if adopted, would not change the reporting obligations under the examples and FAQs.[2] As discussed later in the text, examples will generally not be included in the proposed instructions.

A. The Bona Fide Employee Reporting Exception Under Section 202

Sections 202(a)(1) and (5) of the LMRDA require a labor organization officer or employee to report payments that the official, his or her spouse, or minor children receive from an employer whose employees the labor organization represents or is actively seeking to represent, "*except payments and other benefits received as a bona fide employee of such employer.*" 29 U.S.C. 432(a)(1) & (5) (Emphasis added).

The 2007 revisions to the Form LM–30 narrowed the Department's longstanding reading of this "bona fide employee" exception, significantly extending the reporting requirements of section 202 beyond union officers and employees to union stewards and others. The 2007 rule required them to report compensation paid to them by their employers for time spent representing the union on labor-management relations matters in accordance with a union leave or "no docking" policy. Under a union leave policy, the employer continues the pay and benefits of an individual who works full time on such matters. Under a "no docking" policy, the employer permits individuals to devote portions of their work day or work week to labor-management relations business, such as processing grievances, with no loss of pay.

Until regulatory changes to the Form LM–30 were adopted in 2007, the Department's policy, as established in 1963 to implement Form LM–30 reporting (28 FR 14384 (Dec. 27, 1963)), excepted from reporting payments and other benefits received for certain activities other than productive work directed by the employer making the payment. Specifically, the instructions to the 1963 Form LM–30 stated that the following payments and benefits were exempt from Form LM–30 reporting:

> [p]ayments and benefits received as a bona fide employee of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan; and payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) Required by law or a bona-fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such collective bargaining agreement, or (c) made pursuant to a policy, custom or practice which the employer has adopted without regard to any holding by such employee of a position with a labor organization.

Pre-2007 Form LM–30 Instructions, Part A (Items 6 and 7) at (iv).

Thus, before the 2007 rule, persons receiving payments for service under a union leave or "no docking" policy were not required to report such payments. For example, where a union officer was excused from his regular work to handle grievances and was paid his regular wages while doing so, the payments were exempted from reporting. Similarly, union officers or employees who continued to participate in employer group insurance and pension plans while they served the union were not required to report such benefits. The Department explained the basis of the policy in the LMRDA Interpretive Manual: "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 Interpretative Manual, section 248.005. This reporting exception was based on the presumption that union leave and "no docking" arrangements operating either pursuant to a collective bargaining agreement or in accordance with custom or practice are ordinary and transparent, not requiring their reporting under section 202.

Based largely on the policy choice, evident in the 2007 rule, to promote fuller disclosure to union members and the public, even where there might be considerable burden associated with such reporting, the Department determined to require union officials, including stewards, to report "no docking" and union leave payments. As stated in the preamble to the rule:

> 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.

72 FR at 36109. To achieve this result, the Department utilized a new definition of "bona fide employee," a term not defined in the pre-2007 Form LM–30 or its instructions. This new definition is incorporated in the 2007 Form LM–30 Instructions (Definition D4, page 10).[3] 72 FR at 36125.

[2] Most of the examples in the 2007 instructions will continue to accurately reflect reporting requirements if the Department's proposal is adopted in a final rule. Thus, the following will continue to accurately reflect reporting requirements: examples 2–15, at pp. 3–4 of the instructions; examples 1–5, at p. 6 of the instructions; examples 1 and 2, at p. 7 of the instructions; and examples 1, 3–15, and 17, at pp. 8–9 of the instructions. Several of the FAQs are based on requirements that the Department proposes to change. The following FAQs, however, will continue to accurately reflect reporting requirements if the Department's proposal is adopted in a final rule: 2–10, 12–26, 28, 30–37, 39, 44, 47, 49–50, 54, 56–69, 72–76, and 79–88. It should be noted, however, that some of the comments and FAQs, such as FAQs 49 and 73, while remaining accurate, were intended to illustrate issues that are less likely to arise under the proposed rule. Others, such as FAQs 1 and 77, while largely accurate, contain some statements that are based on or refer to interpretations that will be superseded if the Department's proposal is adopted in a final rule.

[3] The instructions provide:

> 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

Continued

The Department justified this new reporting requirement upon its reading of section 202(a)(1). 72 FR at 36126. This section establishes a general obligation to report payments received by a union officer or employee whose employees are represented by the official's union or the union actively seeks to represent. This section, however, also excepts from this requirement "payments received as a bona fide employee of such employer." In the 2007 rule, the Department interpreted this exception to apply only where the payment was made for time expended solely on the employer's behalf. 72 FR at 36109, 36124, 36126. Thus, under the reasoning of the 2007 rule, where a union official serving as an officer or as a steward was performing work on behalf of the union, he or she was not being paid for services rendered as a "bona fide employee" of the employer making the payment. Because the individual was acting on behalf of the union and thus subject to its control while performing these union-related activities, the Department reasoned that the official was not a bona fide employee of the employer during the time for which such remuneration was paid. *See* 72 FR at 36126; *see also* 70 FR at 51183 (proposed rule).

The Department proposes to return to its longstanding interpretation of the "bona fide employee" reporting exception. Under this prior interpretation, payments made by an employer under a union leave or "no docking" policy to a union official are payments received as a "bona fide employee" of the employer and, as such, not required to be reported on Form LM–30. We are proposing this change for several reasons. First, the approach taken in the 2007 rule does not comport with what the Department considers to be the best reading of the language of section 202. Second, it creates substantial burden for union officials on matters unlikely to pose conflicts of interest, thus unduly interfering with the internal workings of labor unions and labor-management relations. Third, as a matter of policy, there is no persuasive reason why union officials must report such payments, while employers making such payments are under no similar obligation.

Section 202 applies to "every officer * * * and every employee of a labor organization," requiring as a general rule the reporting of any payments received from a represented employer "except payments and other benefits received as a *bona fide* employee of such employer," emphasis added. An individual's status as an employee is based on the various factors articulated in the common law. *See* Nationwide Mutual Ins. v. Darden, 503 U.S. 318 (1992). "Bona fide" is synonymous with "good faith" or "genuine," *i.e.,* without fraud or deceit.[4] Thus, section 202(a)(1) is most naturally read to except from reporting payments to a current or former employee of the company making the payment unless made under the guise of employment, such as where payment was for a no show job with the company, in an amount that unreasonably exceeds the value or amount of the work performed, or the payment is made on terms inconsistent with the parties' negotiated agreement or the workplace custom and practice. Where a payment made to an individual working on behalf of the union by his current or past employer is sanctioned by a collective bargaining agreement or custom or practice of the workplace, the legitimacy or "bona fides" of the payment is established.

Further, as noted in the 2007 rule, union leave and "no docking" payments were common at the time the LMRDA was enacted. 72 FR at 36126. Yet, the Department is unaware of any concerns about conflicts of interest presented by such payments, unlike other payments such as for no show work, featherbedding, or similar practices, raised in the hearings before the McClellan Committee or in any of the legislative materials relating to the LMRDA. As noted in the 2007 rule, the legislative history does not shed light on whether Congress had a specific intention to require or not the reporting of such payments by union officials. *See* 72 FR at 36126. While, as noted in the 2007 rule, legislative silence is not generally a conclusive guide to interpreting statutory text, it is notable that Congress did not identify union leave or "no docking" payments as requiring disclosure to union members and the public as a matter of course. *See* 72 FR at 36126. Equally significant, such payments were not in any way proscribed by the AFL–CIO codes of ethics that strongly influenced the reporting provisions of the LMRDA. *See* 72 FR at 36112–13. Employers have historically agreed to compensate stewards, safety and health committee representatives and others for such work because they see it as adding value to their organization. A number of States such as Oregon and Washington require the establishment of joint labor-management safety and health committees. *See http://www.cbs.state.or.us/external/osha/pdf/rules/division_1/437-001-0765.pdf; http://www.lni.wa.gov/wisha/rules/corerules/HTML/296-800-130.htm. See also* Emily A. Spieler, Perpetuating Risk? Workers' Compensation and the Persistence of Occupational Injuries, 31 Hous. L. Rev. 119, n. 505, 514, 518, 520 (1994) (identifying States requiring such committees). Having employees serve on employee assistance programs and wellness committees is also seen as a cost effective business decision by many employers. *See* Edward Cohen-Rosenthal and Cynthia E. Burton, Mutual Gains: A Guide to Union-Management Cooperation 80–83 (1993) (Mutual Gains).

Moreover, such payments, where established by a collective bargaining agreement or custom or practice of the workplace, do not present the sort of conflict of interests presented by other payments to union officers and employees. Rather, they serve the mutual goals of employers and unions. They help ensure that individuals with first-hand knowledge of an employer's workplace will be able to take a position with the union, a benefit not only to the union and employer but also the represented employees. Such payments are voluntary; without the assent of both

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.

[4] *See Black's Law Dictionary* (8th ed. 2004), which defines the term as: "1. Made in good faith; without fraud or deceit. 2. sincere; genuine"; *The Random House Dictionary of the English Language, Unabridged* (2d ed. 1987), which defines the term as: "1. made, presented, *etc.* in good faith; without deception or fraud. * * * 2. genuine.—syn. 1. honest, sincere, lawful, legal. 2. genuine.—ant. spurious, deceitful, false." *See also Black's* "bona fide operation," defined as "[a] real, ongoing business"; and "bona fides," defined as "1. Good faith. 2. *Roman law.* The standard of conduct expected of a reasonable person, esp. in making contracts ands similar actions; acting without fraudulent intent or malice."

management and labor, the payments cannot be made. They are not kept secret from employees; they must be in writing or reflect the custom and practices in the workplace. Additionally, these payments are usually made under the terms of a collective bargaining agreement and tied to the same rate of pay that the union official would have received under the agreement for time worked at his or her trade. Further, a potential consequence of requiring the reporting of payments received under union leave or "no docking" policies is that union members will be discouraged from running for union office and others from serving as stewards or in other voluntary positions—an unnecessary yet significant increase in burden. As a matter of policy, the Department believes that its historical position to except union leave and "no docking" payments from reporting promotes the purposes of the LMRDA and is consistent with the Congressional plan that the government avoid unnecessary intrusion into internal union affairs. *Cf. Wirtz* v. *Local 153, Glass Bottle Blowers Assn.*, 389 U.S. 463, 470–71 (1968).

Finally, the Department proposes to modify the interpretation of "bona fide employee" with respect to its application to union leave and "no docking" payments because it creates a significant inconsistency between the application of reporting exceptions and the reporting burden on union officers and employees compared with the corresponding exceptions and burden on employers through the Form LM–10, which effectuates the reporting requirements under section 203.

Section 203(a)(1) requires the reporting of certain payments, transactions, arrangements, and agreements with officers, agents, shop stewards, other representatives, and employees of labor organizations. This section exempts from employer reporting, "payments of the kind referred to in section 302(c) of the Labor Management Relations Act [LMRA]," which includes any payment of money or other thing of value from an employer 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." LMRA Section 302(c)(1), 29 U.S.C. 186(c)(1).

Courts have held that "no docking" and union leave payments meet the requirements of the section 302(c)(1) exemption.[5] Thus, the Department has historically exempted such payments from Form LM–10 reporting. *See* Exception (c) to Item 8.a. of the Form LM–10 Instructions; LMRDA Interpretative Manual, at sections 253.305, 253.320, 253.321, 253.322, and 253.323. The 2007 rule requires union officials to report union leave and "no docking" payments on the Form LM–30, but employers are not similarly required to report such payments to their employees on a corresponding Form LM–10 report. The Department has reexamined the policy underlying the current requirement and has concluded it is unreasonable to impose these reporting requirements on union officers and employees, while employers, due to a statutory exemption (by reference to LMRA section 302), are not required to report such payments on the Form LM–10.[6]

For the foregoing reasons, the Department proposes to rescind the 2007 requirement to report union leave and "no docking" payments on the Form LM–30 and invites comment on this proposal.

B. Form LM–30 Reporting by Union Stewards

The 2007 rule extended the union officer and employee reporting obligation to union stewards, treating them as employees of the union by virtue of their receipt of "no docking," union leave, or "lost time" payments. The Department now proposes to return to its longstanding position that union stewards are not covered by the Form LM–30 reporting requirements. The Department articulated this position in the Form LM–30 instructions issued in 1963, and this position had remained essentially unchanged for over 40 years. The 1963 regulation, 28 FR 14384 (Dec. 27, 1963), establishing the pre-2007 form and instructions did not anywhere suggest that union stewards were union employees.[7] *See* pre-2007 Form LM–30 Instructions.

In extending the union officer and employee reporting obligation to union stewards in the 2007 rule, the Department determined that a union steward receiving "no docking," union leave or "lost time" payments would be considered to be a labor organization employee within the meaning of the Form LM–30. As stated in the preamble to that rule: "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." 72 FR at 36109. Stewards were deemed to be "labor organization employees" by virtue of their receiving either "lost time payments" from the union or union leave or "no docking" payments from an employer. (*See* the definition of "bona fide employee" and "labor organization employee" in sections D4 and D11, respectively, of the LM–30 instructions, *see* 72 FR at 36178, 36180.)

Generally, a union steward is responsible for informing employees of their rights under the collective bargaining agreement and applicable law, investigating grievances filed by union members, representing union members in presenting those grievances to management, and otherwise enforcing the collective bargaining agreement. *See* generally Herman Erickson, The Steward's Role in the Union 29–54 (1971). Often, these individuals continue to receive pay from their employers while performing these functions for the union, in the form of union leave or "no docking" pay. In other instances, the stewards perform these functions on their own time (*e.g.,* breaks, meal periods, and before or after working hours). As a general rule, stewards continue to perform their regular jobs for an employer while serving in this role. As a need arises, consistent with a collective bargaining agreement or custom and practice, they will temporarily interrupt their work at their trade to help resolve grievances that arise in the workplace. Union members who volunteer on safety committees and the like engage in similar functions, often receiving payments from their employer while

[5] *See Caterpillar* v. *UAW,* 107 F.3d 1052, 1055 (3d Cir. 1997), citing *NLRB* v. *BASF* Wyandotte Corp., 798 F.2d 849, 854–56 (5th Cir. 1986); *BASF Wyandotte Corp.* v. Local 227, 791 F.2d 1046 (2d Cir. 1986); *Herrera* v. *International Union, UAW*, 73 F.3d 1056 (10th Cir. 1996), aff'g 858 F.Supp. 1529, 1546 (D. Kan. 1994); *Communications Workers* v. *Bell Atlantic Network Servs., Inc.*, 670 F.Supp. 416, 423–24 (D.D.C. 1987); *Employees' Independent Union* v. *Wyman Gordon Co.*, 314 F.Supp. 458, 461 (N.D. Ill. 1970).

[6] *See* LMRDA Interpretative Manual, at section 241.600. This section states that the reporting exceptions in section 203 do not affect the reporting by union officers and employees in section 202, "*where* the applicable provision of section 202 does not provide a pertinent exception." (Emphasis added.) Section 202, however, contains a pertinent exception: the bona fide employee exception, which, as noted in the text, has historically been interpreted as applying the regular wage exception of LMRA section 302(c) to various subsections of section 202. *See* LMRDA Interpretative Manual, section 248.005.

[7] In the unusual situations where the position of steward is a constitutional office in the union, or an individual, although serving as a steward, is an employee of the union under circumstances distinct from his or her status as steward, or is an employee of the union because the steward position is a paid union position, such individuals, both historically and under the Department's proposal, are subject to the reporting requirements of the Form LM–30.

they are engaged in such duties. These individuals likewise interrupt their usual jobs on an as needed basis to perform tasks that advance the mutual interests of labor and management.

Upon review, the Department believes that the 2007 rulemaking did not satisfactorily address or adequately support the expansion of the Form LM–30 reporting requirements to include stewards. Rather, the rule focused on the "bona fide employee" exception of section 202, which, as mentioned, was revised to require the reporting of "no docking" and union leave payments.[8] (*See* the discussion above concerning this change to the "bona fide employee exception.") The rule also provided, almost in passing, that stewards as well as union officers and employees needed to report such payments. The Department justified this new requirement by stating that 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.* 72 FR 36124. (Emphasis added). Having so defined the question, the Department answered it in the negative. Thus, the Department reasoned that stewards who received their regular compensation from the employer during time spent on union work did not receive this compensation as a "bona fide employee of the employer," and the compensation was therefore reportable. As stated in the preamble to the 2007 rule: "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 performances of services for the union." 72 FR 36144.[9]

Upon review, the Department believes that the Form LM–30 reporting requirements should not be expanded to include stewards. The issue as to whether union stewards may be regarded as employees of a labor organization required to file reports under section 202 of the LMRDA, solely on the basis of having received union leave, "no docking," or "lost time" payments, raises legal and practical concerns. An examination of the text of the relevant provisions of Title II of the LMRDA suggests that Congress did not intend that stewards be considered to be union employees. Section 202 of the LMRDA requires reporting from "every officer of a labor organization and every employee of a labor organization (other than an employee performing exclusively clerical or custodial services)." Separately, Congress, in section 203, mandated that employers report certain payments to unions and certain categories of individuals with a relationship to unions. Section 203(a)(1) requires an employer to report direct or indirect payments or loans "to any labor organization or officer, agent, *shop steward,* or other representative of a labor organization, or employee of any labor organization." (Emphasis added). Section 203 thus refers to "officer" and "employee" as well as "agent, shop steward, or other representative of a labor organization." The absence of similar language in section 202 is a strong indication of Congressional intent to exclude agents, stewards, and similar representatives from the prescribed reporting requirements. Additional support for this position can be gleaned from the LMRDA's legislative history. An early version of the bill that became the LMRDA, H.R. 4473, included a section 208, "Individual Reports of Officers, Agents, Shop Stewards, and Representatives of a Labor Organization." 1 Leg. History 166, 227–30. As evidenced by the title of that section, the bill would have imposed a plain reporting requirement on union officers, employees, *and* stewards and representatives. However, the final language of section 202 includes only union officers and employees.

The foregoing demonstrates the reasonableness of the Department's view that Congress made deliberate decisions as to when it would and would not include shop stewards within a regulated class. Congress, revealingly, did not include the term "stewards" in describing the regulated class established by section 202, despite inserting the term in other LMRDA sections, thus indicating that those members who serve as "shop stewards" are of a different category than "labor organization employees." When Congress wanted financial payments made to stewards to be reported, it knew how to do so. Section 203 requires employers to report payments made to stewards. Had Congress wanted stewards to be covered under section 202, it could have likewise inserted the phrase "shop stewards" in that section.

Additionally, the 2007 rule created uncertainty regarding the reporting obligation of union members, other than stewards, who volunteer to serve on various committees in the workplace, *e.g.,* those who serve on health and safety committees. As discussed above, employers have historically agreed to compensate stewards and union members who work on these committees because they see it as adding value to their company and several States require the establishment of joint labor-management safety and health committees. The Department believes that union members who perform functions similar to those performed by stewards should not be required to file a Form LM–30. As support for this proposition, the Department notes, as discussed above, that section 202, in addition to not including the term "steward," does not reference "representative" of a union.

Imposing obligations on union stewards and other volunteers may also intrude in internal union affairs. Union stewards and other representatives perform valuable tasks and extending onerous reporting requirements to them would "chill" future offers to serve. Imposing reporting burdens on such individuals clearly will temper the willingness of individuals to volunteer

[8] Definition 11 of the 2007 Form LM–30 instructions reads:

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.

72 FR at 36180.

[9] The estimates in the 2007 rule do not appear to reflect fully the burden imposed on stewards by its new reporting requirements. *See* 72 FR at 36155. The baseline burden estimates were derived from the number of LM–30 forms that had been filed by union officials, a number that necessarily failed to account for stewards because they had never been required to file such reports. In the final rule, the Department added to the baseline by estimating the number of stewards and others receiving "no docking" and union leave payments based on a 1980 study of collective bargaining agreements. *Id.* Because the study was limited to provisions in selected collective bargaining agreements, it contained no estimate of the number of stewards who received union leave or "no docking" payments by virtue of custom or practice in their workplace. Moreover, although only a few unions attempted to quantify the number of stewards in their comments on the 2005 NPRM, the number is obviously greater than the total number of filers (6,916; union officers, stewards, and non-steward union employees) estimated by the Department in the 2007 rule. *See* 72 FR at 36153. Although the Department attempted to take into account that some stewards would be filing reports, it is unclear from the burden analysis how it derived this estimate. It appears that the Department assumed, without so stating, that most stewards would not have to report "no docking" or union leave payments because of the 250-hour threshold and further assumed, even though it is not apparent from the rule, that this would exempt stewards that did not meet the threshold from having to report other interests or payments covered by section 202. *See* 72 FR at 36154–55.

to serve in such positions—a loss to the union, the employer, and these individuals' fellow employees. Discouraging union representatives from taking time during the workday to attend to such matters can only have a deleterious effect on the labor relations system's capacity to resolve disputes at the workplace fairly and expeditiously. This could impede labor-management relations in the workplace as members are deterred from volunteering to serve in such important roles.

The practical problems faced by stewards and other representatives in maintaining records necessary to meet the reporting burden placed on them were not fully considered in the 2007 rule. Unless the employer has a payroll reporting system that allows the union stewards to clock in and out every time they have to perform union work, the stewards would have to keep their own records. A member's work on behalf of the union is not always performed during a series of discrete intervals where it is easy to determine when union work begins and ends. Sometimes, such representatives will briefly engage in union work when a co-worker comes and speaks to the on-duty steward. Sometimes the conversation occurs when the representative is on the way to the break room or at lunch. Sometimes union work occurs during a work-related conversation with a supervisor or manager and a grievance question comes up. Thus, the amount of time required to perform steward and similar functions may vary significantly from day-to-day and week-to-week and is therefore not easy to predict. For example, in the building and construction trades, with its very mobile workforce and short-term employment on construction projects, stewards will change from job to job, not just from week to week.

For the foregoing reasons, the Department proposes to rescind the definition of "labor organization employee" in the 2007 Form LM–30 and to insert the following language in the revised Form LM–30 Instructions in Section II, Who Must File:

> For purposes of the Form LM–30, an individual who serves the union exclusively as a union steward or as a similar union representative, such as a member of a safety committee or a bargaining committee, is not considered to be an employee of the union.

The Department seeks comment on the definition of "labor organization employee," and the addition of the above language in Section II of the revised Form LM–30 Instructions, including its treatment of shop stewards and others in similar positions voluntarily serving on behalf of the union.

C. Reporting of Loans Under Sections 202(a)(3) and (4)

The Department proposes to amend the Form LM–30 to exempt from reporting under sections 202(a)(3) and (4) of the LMRDA marketplace transactions with bona fide credit institutions, including loans, interest, dividends, and payments and credit extended through credit card transactions, provided that they are arms length transactions in accordance with usual business practice. In so doing, the Department establishes the balance between privacy and disclosure intended under the LMRDA—to disclose only an official's actual or potential conflicts of interests, while keeping private his or her bona fide investments "because they are not matters of public concern." Senate Report, at 15, reprinted in 1 Leg. History, at 411.

The Act requires union officers and employees to disclose "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 [they] 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 the official's labor organization represents or is actively seeking to represent" (section 202(a)(3)) and "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" (section 202(a)(4)).

The 2007 rule established the general requirement that union officials report the details of any loan received from any employer, business, or trust with which the official's union had dealings or any employer whose employees are represented by the official's union (or whose employees the union actively seeks to represent). 72 FR at 36133–38.

Under the proposal, union officials as a general rule will not be required to report loans or other marketplace transactions with bona fide credit institutions, such as interest, dividends, and payments and credit extended through credit card transactions, provided that they are arms length transactions in accordance with usual business practice. The 2007 rule engendered strong protests from union officials, and some segments of the financial services industry, as intrusive and complicated. Shortly after the rule was published, the Department had to issue guidance, identifying several kinds of payments from credit institutions that did not need to be reported, such as savings and checking accounts, and certificates of deposit, but also explaining that credit card arrangements would not have to be reported by union officials.[10]

Upon review of this issue, the Department notes that the 2007 rule reflected a basic policy choice that the disclosure of information, even where the risks of a conflict of interest were not apparent, was a paramount interest that generally outweighed the privacy interests of union officials and the reporting burden on union officials. In making this choice, the Department, as evidenced by its treatment of loans, may not have given sufficient weight to Congress's concern that the LMRDA should not unnecessarily regulate unions and their officials. The Department now believes that the better policy is to require the reporting of loans from a credit institution, as a general rule, only where the loan is on other than market terms. Loans made on market terms are of little or no interest to union members, yet they disclose to members and the general public matters about which union officials, no less than other individuals, have a legitimate expectation of privacy.

Furthermore, by establishing a routine business transaction exemption to loan reporting under sections 202(a)(3) and (a)(4), the Department would prevent the submission of superfluous reports that would overwhelm the public with unnecessary information, thus inhibiting the discovery of true conflict of interest payments. At the same time, the Department would prevent unnecessary burdens on union officers and employees and avoid interference with the privacy of such officials.

[10] The Department issued a series of Form LM–30 FAQs pertaining to the 2007 form, of which FAQs 70–73 deal with issues surrounding payments from credit institutions. In particular, FAQ 70 stated, in part, that union officials do not need to report "credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to the official's status in the labor organization." FAQs 71 and 72 outlined the obligations of union officials regarding home loans, which clarified that such loans must be reported if received from a trust in which the official's union is interested, a business that deals with the official's union or a trust in which the union has an interest, or a business, a substantial part of which deals with an employer the official's union represents or is actively seeking to represent. Finally, FAQ 73 affirmed that the de minimis exemption applies to transactions, interests, and dividends from a financial institution, even if it had dealings with the official's union.

Without such exception, a union official would have to report each mortgage or other bank loan received from any credit institution that deals with his union, section 3(l) trust, or, in substantial part, with his or her represented employer. In the Department's view, the burden would outweigh the value of the additional information disclosed. The Department concurs with its reasoning in the 2007 rule to except from reporting under section 202(a)(6) loans, interest, and dividends earned during the regular course of business with a bona fide credit institution, because of the burden associated with reporting what "are among the most common financial transactions undertaken by individuals." 72 FR 36118. The Department believes that this reasoning applies as well to bona fide loans received from a credit institution covered under sections 202(a)(3) and (4).

As such, the Department proposes the following exemption for income and other benefits of monetary value received from a business and otherwise reportable by the union official on Part B of the proposed LM–30:

Bona fide loans. Do not report bona fide loans, including mortgages, received from national or State banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, if the loans are based upon the credit institution's own criteria and made on terms unrelated to the official's status in the labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to the official's status in the labor organization.

This exemption is limited to bona fide loans from legitimate financial institutions. The Department does not propose to alter other longstanding interpretations of section 202 that require union officers and employees to report other payments from vendors, service providers, financial institutions, and other businesses, that deal in substantial part with the represented employer or in any part with either the official's union *or* any trust in which the official's union is interested.

The Department does not believe arms length loan transactions with a bona fide credit institution (other than where its employees are represented by an official's union or whose employees the union actively seeks to represent) present an actual or potential conflict of interest with the official's duties to his or her labor organization, because these loans, particularly mortgage loans, are usual transactions. The monetary value of bona fide loans obtained at market rates from credit institutions does not create the conflict of interest that arises with respect to other kinds of income from or interest in a business that deals with a represented employer, union, or section 3(l) trust. In contrast, a non-bona fide loan, gift, or other benefit derived from a transaction other than at arms length provides the union official with a net monetary gain, and consequently a potential desire to deal with a business in some way contrary to the interests of the union.[11]

Therefore, for the foregoing reasons, the Department proposes an administrative exemption under section 202(a)(3) and (4) for reporting bona fide loans made on market terms.

D. Scope of Reporting Requirements Under Section 202(a)(6)

Sections 202(a)(1)–(5) of the LMRDA establish conflict of interest reporting requirements concerning payments received by union officers and employees from two sets of entities: (1) Employers that a union represents or is actively seeking to represent; and (2) businesses, such as vendors and service providers, that buy or sell to the represented and potentially represented employers, the union official's union, or trusts in which the official's union is interested. In each case, the reporting obligation is triggered by the particular relationship that exists between an official's union and the entity from which the official holds an interest in or receives a payment.

By contrast, section 202(a)(6) does not specify any relationship between an entity and an official's union, nor does it enunciate when payments must be reported. Rather, it more broadly requires union officials to report any payment of money or other thing of value 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 LMRA).

In addressing the scope of reporting required under section 202(a)(6) of the LMRDA, the Department, in its 2007 rule, attempted to clarify that section 202(a)(6) covers payments not captured in section 202(a)(1)–(5) that otherwise would create or pose a potential conflict between the financial interests of the union official and the interests of his or her union. 72 FR at 36128–29. As cited in the 2007 rule, the Department has long accepted this position, as LMRDA Interpretative Manual section 248.005 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." 72 FR at 36129. Further, the 2007 rule made clear that section 202(a)(6) is not restricted to matters that directly involve labor-management activities, but can be read to encompass any employer who makes a payment that could present a financial conflict of interest for the union official. *Id.*

The Department retains the view that section 202(a)(6) was intended to be a "catch-all" provision, requiring reporting under circumstances that were not set forth in the first five provision of section 202(a). Although it would be impractical to delineate all possible circumstances that would trigger a reporting obligation under section 202(a)(6), the Department proposes a return to the guiding principles of the LMRDA Interpretative Manual. Only payments that present a conflict of interest or the reasonable potential for a conflict of interest should be reported. Those that do not present an actual or potential conflict of interest should not be reported. *See* LMRDA Interpretative Manual section 248.005.

In applying this principle, the Department proposes to retain, in Part C of the proposed form, the requirement to report five types of payments outlined in the 2007 rule, regardless of the relationship the employer has with the filer's union. These payments to a union official (or the official's spouse or minor child) from any employer or labor relations consultant to an employer, are for 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 employer whose employees the filer's organization represents or whose employees the union is actively seeking to represent; and (5) to influence the

[11] The proposed modification does not relax the obligation to report on loans or other financial transactions (including credit card arrangements and interest bearing accounts) where a union official receives terms more favorable than the market allows, or payments on the loan are extended or forgiven because of preferential treatment as a union official.

However, loans received from employers or businesses that are not financial institutions will have to be reported as will any loans on other than market terms from employers or businesses that have a relationship with the official's union, and, pursuant to section 202(a)(1) and (a)(2), any loans from an employer represented by the official's union (or whose employees it actively seeks to represent).

outcome of an internal union election. 72 FR at 36128, 36173. These payments create an actual or potential conflict between the filer's financial interests and his or her duties to the labor organization.

The Department also proposes to retain the general requirement that officials report payments from employers and labor relations consultants, from whom a payment would create an actual or potential conflict between the filer's personal financial interests and the interests of the filer's labor organization (or duties to the labor organization). The instructions for the proposed Form LM–30 list examples of such actual or potential conflicts of interest; however, the list should not be considered exhaustive. The examples include, as did the 2007 rule, payments from business competitors to the employer whose employees the union official's union represents or whose employees the union is actively seeking to represent, although, as explained below, a qualification has been added to this example to ensure that only actual or potential conflict of interest payments are reported; and payments from an employer that 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 the official's labor organization.

As discussed below, the Department proposes to narrow the scope of reporting required under section 202(a)(6) with respect to (1) payments from business competitors to the employer whose employees the union official's union represents or whose employees the union actively seeks to represent; (2) payments received from trusts; and (3) payments from unions.

1. Obligation To Report Payments From Business Competitors to the Employer Whose Employees the Union Official's Union Represents or Whose Employees the Union Is Actively Seeking To Represent

The 2007 rule requires a union official to report payments 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." 72 FR at 36173. On review, the Department proposes to modify this requirement to avoid undue burden on union officials by requiring reporting only of actual or potential conflict of interest payments.

Under the 2007 rule, all union officers and employees were required to report all payments from all competitors to the represented employer. To do so, they are required to undertake research in order to discover whether they, their spouses, or their minor children, hold any interests in or received any payments from competitors to their union's represented employers. Union officials must track each gift, loan, or payment received. Union officials with a side business, such as catering, IT services, printing, or landscaping, would have to review each business receipt. They would then have to review the source of each gift, loan or payment, and determine which of these individuals or entities constitute "competitors" to the employer of the union members. Then they would have to perform the same analysis for their spouses and minor children. Only then could they make the determination of whether a report was owed.

In contrast, the reporting requirement in the proposed rule focuses on payments that represent an actual or potential conflict of interest. Such payments would include those from an employer in competition with an employer whose employee's the official's labor organization represents or is actively seeking to represent if the official is involved with the organizing, collective bargaining, or contract administration or is actively engaged in the organizing activities related to a particular represented employer or possesses significant authority or influence over such activities. The proposed instructions state:

> Complete Part C if you, your spouse, or your minor child received, directly or indirectly, any payment of money or other thing of value (including reimbursed expenses) from any employer (other than a Represented Employer under Part A or Business covered under Part B above) from whom a payment would create an actual or potential conflict between your financial interests and the interest of your labor organization or your duties to your labor organization. Such employers include, but are not limited to, an employer in competition with an employer whose employees your labor organization represents or whose employees your union is actively seeking to represent, if you are involved with the organizing, collective bargaining, or contract administration activities or possess significant authority or influence over such activities. You are deemed to have such authority and influence if you possess authority by virtue of your position, even if you did not become involved in these activities.

Examples may help illustrate the difference between the existing Form LM–30 and the narrower reporting requirement proposed here. An individual employed part-time by a union to handle computer problems works full time for a technology company that is a competitor to a company whose employees are represented by the union. Under the 2007 rule, the individual would have to file a Form LM–30 to report the payments he receives from his full-time job. Under the proposed rule, he would not have to report these payments. In a contrasting example, an individual employed by a union as an organizer also works part-time for a technology company that is a competitor to a company whose employees the union is actively attempting to organize. Under the proposed rule and the 2007 rule, the individual would have to file a Form LM–30 to report payments he receives from the technology company.

Restricting this reporting requirement to those officials involved with organizing, collective bargaining, or contract administration activities related to a particular represented employer or who possesses significant authority or influence over such activities, will relieve unnecessary burden on filers and ensure that Form LM–30 reports contain useful information for the employees of the represented employer, the employees of the competitor, and the public. Individuals elected to a union's governing body and employees of a union, such as a director of organizing, who possess such authority by virtue of their positions, would be required to report interests held in and payments received from competitors with a represented employer.

2. Obligation To Report Payments Received From Trusts

The Department believes that the Department's historical position that union officials were not required to file reports from "an employer that is a trust in which your labor organization is interested as defined in section 3(l) of the LMRDA" reflects a better policy choice than the position taken in the 2007 rule to require such reporting. *See* Form LM–30 Instructions, p. 5. Such a trust is defined as 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." *See* Form LM–30 Instructions, p. 13.

In the preamble to the 2007 rule, the Department explained its view that loans and other payments from a section 3(l) trust to a union official pose a conflict of interest between the official's

personal financial interests and his or her duty to the union. The Department took the position that the interests of the trust and the union are not always congruent. 72 FR at 36136. It stated that the money that "a participating union pays into a trust" is money that otherwise "would be maintained in the union's own account." *Id.* The union's own money would be reported on its Form LM–2 annual financial disclosure report. "[W]ithout 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 coffer." *Id.* In other words, trust money was deemed to be union money. After further consideration of this issue, the Department believes that the position taken in the 2007 rule was not well founded.

Prior to the 2007 rule, payments from trusts to union officers and employees were not reportable by union officials. The Department's longstanding view is reflected in an opinion, which is dated December 20, 1967 and signed by the head of OLMS's predecessor agency, Frank M. Kleiler, and the Department's Solicitor, Charles Donahue. Indeed, for 40 years, this was written policy. The opinion letter responds to an inquiry from several union officials concerning whether reporting is required of union officers who receive payments from the union and from employer-established pension and welfare plans. The letter concluded that no report was required because none of the trusts were businesses or employers and because the information sought was obtainable under a statute that predated ERISA. Kleiler-Donahue Ltr., p. 2. The letter also determined that trusts were not businesses, because they were not engaged in commercial activities. *Id.,* p. 3. The letter also concluded that there was no conflict of interest between the union officer's loyalty to the union and his service to the trust. *Id.,* p. 4. In addition, the letter considered whether trust funds constituted employers under the LMRDA. The letter stated: "Even assuming that such trust funds may be recognized as 'employers' for some purposes, we must reject the notion that Congress intended to treat such employers as employers under" the LMRDA's union officer and employee reporting provisions. *Id.* As there stated:

> Congress was concerned with arrangements with the primary employer, that is, the one whose employees the union represents or seeks to represent, which might impair the union officer's loyalty as a representative of that organization [vis-à-vis] the employer. Even assuming that a trust fund could successfully be characterized as a primary employer, which we doubt, we fail to perceive the existence of a conflict where a union official received payments from a trust fund for which he also works, even if this arrangement is approved by employer representatives on the trust. The employer representatives are acting in their role as trustees and thus no conflict of interest situation with which Congress was concerned arises.

Id., p. 4–5. The opinion letter noted that even under the provision of the LMRDA that requires reporting from employers other than the "primary employer," the absence of a conflict of interest indicates that the payments are not reportable. The letter noted that "most, if not all" of these payments would be exempted as ordinary compensation, and would not be reportable under the LMRDA, anyway. *Id.* Finally, the letter noted that the transactions involved were already required to be reported under a statute predating ERISA. *Id.,* p. 5. The Kleiler-Donahue opinion letter was simply noted without any substantive discussion in the 2007 rulemaking. 72 FR at 36154.

The Department has now reconsidered its basis for the policy shift. Upon review of the policy enunciated in the Kleiler-Donahue letter, the Department is convinced of its significance and its persuasive value. As the letter notes, payments from trusts to union officers and employees—wages to employees or reimbursed expenses—are payments reported elsewhere and, more importantly, pose "no conflict with which Congress was concerned." Kleiler-Donahue Ltr., p. 5.

On these foregoing bases, the Department proposes to return to the 40-year understanding of the Form LM–30, and exempt from reporting payments from trusts to union officers and employees.

3. Obligation To Report Payments From Unions

The Department has reconsidered the general requirement in the 2007 rule that union officials report must payments received from a labor union. The Department's position was based on the conclusion that payments from a labor union (to the extent it has any employees and thus is an employer) should not be treated differently from payments from any other employer in situations that arguably pose the possibility of a conflict of interest. 72 FR at 36140–41. The Department believes that its proposed approach better takes into account the LMRDA's distinctions between labor organizations and employers. For this reason, the Department proposes to modify this reporting requirement.

The 2007 rule requires union officials to report payments where the employer is a labor union that:

a. Has employees the official's union represents or is actively seeking to represent;

b. Has employees in the same occupation as those represented by the official's union;

c. Claims jurisdiction over work that is also claimed by the official's union;

d. 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

e. Has made a payment to the official for the purpose of influencing the outcome of an internal union election.

Item A.5 on Schedule 3 of the 2007 Form, 72 FR at 36163. The Department proposes to remove this provision. However, this proposal will not affect a staff union official's obligation to report payments he or she receives from a union-employer whose employees the official's union represents. Any such payments would be reportable under Part A of the proposed form and previously had been reportable under Part A of the pre-2007 form as payments from an employer whose employees the official's labor organization represents (or actively seeks to represent). There is no need to require their reporting under section 202(a)(6). Compare 29 U.S.C. 432(a)(1), (a)(2), and (a)(5) to 29 U.S.C. 432(a)(6). This "staff union" scenario represents an obvious archetypal conflict of interest: a non-wage payment from an employer to a union officer. In this instance, the labor union is acting in the capacity of an employer in a labor-management situation and making a payment that poses an obvious conflict. However, the Department believes that Congress simply did not intend labor unions, apart from this instance, to be treated as employers for purposes of Form LM–30 reporting.

As the statutory analysis, below, explains, Title II of the LMRDA provides a reticulated reporting regime, setting forth distinct but interrelated reporting requirements. Section 201 contains reporting rules for labor organizations, section 202 requires reports from union officers and employees, and section 203 requires reports from employers and labor consultants. Under section 201, the assets, liabilities, receipts and disbursement of labor unions are reported on the Department's Form LM–2, Form LM–3, and Form LM–4. These forms require all covered labor organizations to account for disbursements, including those to officers and employees of other unions. Depending on the dollar amount, some of the payments may be individually

itemized on the Form LM–2, and some may be aggregated with other information. But, in either case, they are incorporated in the Form LM–2. Pursuant to section 201(c), moreover, labor organization members can view the union's underlying records to learn the exact amount and recipient of each disbursement. Consequently, additional reporting on Form LM–30 would be inconsistent with the statutory scheme, unduly burdensome, and unnecessarily duplicative of other reporting requirement.

Moreover, the Department, in reconsidering this question, has concluded that a preferred reading of the LMRDA would not consider labor unions or trusts as employers, as each of these entities is treated separately under the Act. In drafting the LMRDA reporting and disclosure requirements, Congress mandated separate requirements for the discrete statutory actors: "labor organizations," "labor organization officers" and "labor organization employees," "employers," "labor relations consultants," and "trusts in which a labor organization is interested." (While there are no reporting requirements for section 3(l) trusts, section 208 authorizes the Secretary to establish such requirements for labor organizations concerning such entities.) Further, the statute separately defined five of these six terms. *See* sections 3(e), 3(i), 3(l), 3(m), and 3(n) of the LMRDA. The 2007 rule, in contrast, characterized "labor organizations" as employers, pursuant to section 202(a)(6).

Section 201 requires "labor organizations" to disclose, among other financial transactions and information, disbursements to many individuals and entities, including employers, businesses, their own officers and employees and, potentially, those of other labor organizations. Section 203 requires "employers" to file certain reports. As applied to section 202, "labor organization" officers and employees must report payments from "employers" and "businesses" that have certain relationships to the official's "labor organization." The statute thus sets out employers and labor organizations as distinct and separate entities. There is nothing in the statute that indicates that Congress intended that the category of employers also would include labor organizations, or that Congress meant for officers and employees to report transactions with labor organizations. It seems apparent that, if Congress had intended that transactions with labor organizations be included in reporting under section 202, it would have explicitly included labor organizations in that section.[12]

Additionally, the Department believes that this reading of the statute better implements the labor union and labor-management reporting requirements of the LMRDA. First, as stated previously, conflict of interest payments from labor organization-employers represented by staff unions are reportable on Form LM–30 pursuant to sections 202(a)(1), (2), and (5). Second, the Form LM–2, LM–3, and LM–4 Labor Organization Annual Disclosure Reports require all covered labor organizations to disclose any disbursement, including those to officers and employees of other unions, pursuant to section 201. Such disbursements include those addressed in provisions 5(b)–(e), quoted above, all of which constitute payments from labor organizations in their capacity as the representative of employees, not as an employer of employees. A member or other viewer of LM reports would naturally look to the labor organization's annual financial disclosure report, and not the Form LM–30 reports, to view disbursements from their labor organization. Further, pursuant to section 201(c), union members can view the underlying records of their union's reports to ascertain further information related to the payments to third party union officials.

E. Scope of Form LM–30 Reporting by National, International, and Intermediate Body Union Officials

The Department proposes to remove the definition of "labor organization" (Part III, D10, of the 2007 instructions), which addresses the reporting obligation of national, international and intermediate body officials under section 202 of the LMRDA. In its place, the Department will rely on the statutory definition of "labor organization" under section 3(i) and (j) of the LMRDA, and proposes the inclusion of the following language to clarify the top-down reporting obligation of national, international, and intermediate body officials:

> When applying the Form LM–30 reporting requirements, a national, international, or intermediate union officer or employee must look at employers and businesses with requisite relationships with lower levels of the official's union (*e.g.,* a local or other subordinate body), as well as the official's own level of the union.

The Department's proposal will require union employees to report the same interests and payments that union officers are required to report. Further, the Department proposes to restore the obligation that these officers and employees report any interests in or payments received from businesses that deal with employers whose employees are represented by subordinate affiliates of their union (and any employers such affiliates are actively seeking to represent), as well as businesses that deal with the official's union or such subordinate affiliates of their union, including their section 3(l) trusts, and to require that union officials report interest and payments or other financial benefits received by their spouses and minor children from such employers. The 2007 rule removed the obligation to report on these interests and payments.

Section 202 requires union officers and employees to report certain payments and interests from employers and businesses that have specified relationships with the official's labor organization in order to disclose potential conflicts of interest. The Department has long recognized that such potential conflicts could be related to a national or international union official's responsibility to either the immediate union that he or she serves or some other union within the labor organization's hierarchy. For example, in section 241.100 of the LMRDA Interpretative Manual, the Department addressed the reporting standards for international union officers, as follows:

> Section 202(a)(3) of the Act requires reports from "every officer of a labor organization" of income 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." An international union officer must report his income from such a business 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.

Recognizing that the pre-2007 Form LM–30 Instructions did not expressly address this type of issue, and seeking to ensure proper disclosure of conflict of interest payments under section 202 of the Act, the 2007 rule defined "labor organization" in a way that reached such payments. 72 FR at 36121–24. This definition of "labor organization" and the related reporting instructions

[12] This reasoning is consistent with LMRDA Interpretative Manual section 260.005. This section provides that no report is required for activities performed by an attorney on behalf of a union (distinct from activities performed for an employer), even though the attorney meets the definition of "labor relations consultants" under section 3(m), because the only section of the Act which requires reports from labor relations consultants is section 203(b), which provides for reports from every person who has an agreement with an *employer* for certain purposes.

prescribed a "top-down" approach to disclosure, which requires national, international, and intermediate body officers to "look-down" to lower levels of the union hierarchy in determining the full scope of their section 202 reporting responsibilities. The reporting standard is significantly narrower than that set forth in the 2005 NPRM, which had proposed to require officials to also report conflict of interest payments and interests involving any higher-level affiliate of the official's union—a "look-up" approach to complement the "look-down" approach. 70 FR at 51182–83. The 2007 rule also differs from the 2005 proposal in that the rule narrowed the "top-down " reporting obligation to union *officers,* excepting employees from this obligation. 72 FR at 36123–24, emphasis added. Further, under the 2007 rule, the officers of intermediate, national, or international unions are not required 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. They also are 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.

Upon review, the Department believes that the approach taken in the 2007 Form LM–30 instructions, at Part III, D10, does not achieve the policy choice that best comports with the purposes served by section 202. First, the 2007 rule requires only officers (and not employees) of national, international, and intermediate unions to report payments from and interests in entities that deal with lower levels of the officers' labor organizations. 72 FR at 36123–24. As recognized under the LMRDA statutory scheme, union employees, not solely union officers, can hold positions of considerable authority and influence in all levels of a union hierarchy. Such employees include key administrative personnel such as business agents, heads of departments or major units, attorneys, and organizers who exercise substantial independent authority. *See* section 3(q), 29 U.S.C. 402(q). Moreover, union employees, like union officers, may also have interests in or receive payments from the same entities that pose the same actual or potential conflict with the interests of their union or their duties to their union. For example, an international union organizer may have a business interest in an employer that a subordinate local is trying to organize. Under the 2007 rule, this interest would not be reported. Maintaining the same reporting rules for officers and employees throughout all sections of the Form LM–30 increases the clarity and consistency of the LM–30 reporting requirements.

Secondly, Part III, D10, of the 2007 Form LM–30 instructions exempt the reporting of "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." 72 FR at 36122. The exception does not adequately consider longstanding policy of the Department, cited above. It also creates the possibility of unreported conflicts of interest. For example, an employee of an international union may have a side business selling information technology services. The business may contract with a grocery market organized by an affiliated local union to maintain the market's payroll system. Under the 2007 rule, the international union employee would not have to report his or her IT business and its relationship with the employer represented by the affiliated local.

Further under the 2007 rule, a national/international or intermediate officer is not required to report payments and other financial benefits received by the spouse or by a minor child as a bona fide employee of a business or employer involved with a lower level of the officer's organization. For example, the Secretary Treasurer of an international union has a spouse that is the head of purchasing for an auto parts manufacturer that deals with an employer of the union members. Under the 2007 rule, the Secretary Treasurer would not have to report the position and income of the spouse. Such payments must be reported under the proposed rule, as they were prior to the 2007 rule.

Additionally, the existing instructions, at Part III, D10, are potentially confusing to Form LM–30 filers because of these inconsistencies with the overall LM–30 reporting scheme. In addition, the Department finds, on review, that the instructions explaining the "top-down" reporting requirements are vague and often difficult to follow. For example, the 2007 LM–30 Instructions list various exceptions noting what is not required to be reported (with respect to top-down reporting), yet fail to clearly delineate what top-down scenarios must be reported. *See* 2007 LM–30 Instructions, D10 at p. 11–12.

For the foregoing reasons, the Department has determined to apply the principles of longstanding policy articulated in section 241.100 of the LMRDA Interpretative Manual to officers and employees of national, international, and intermediate unions. When applying the Form LM–30 reporting requirements, a national, international, or intermediate union officer or employee must look at employers and businesses with requisite relationships with lower levels of the official's union (*e.g.,* a local or other subordinate body), as well as the official's own level of the union.

IV. Proposed Revisions to the Regulations, Form, and Instructions

The Department is proposing changes to the Form LM–30 to simplify its use by filers, chiefly by reducing the length of the form (from nine pages to two pages) and its instructions (from 22 pages to 13 pages) and eliminating or modifying some burdensome and unnecessarily intrusive reporting requirements. The 2007 rule established a lengthy, complicated form and instructions. Although the length of these documents was due, in part, to the inclusion of numerous examples, many of these examples provided little practical assistance to filers and, in their entirety, the examples created a perception among filers that they were required to make extensive and complex legal and accounting determinations. The proposed instructions contain only a few examples. While particular filers may have questions about whether certain matters should be reported, the Department believes that these questions are better addressed through compliance assistance than by imposing a burden on all filers to read about complex issues that concern a very small number of filers. The Department also is proposing to revise the format of the instructions to define key terms as they first appear in the instructions, rather than to collect the definitions in the middle of the instructions, the approach taken in the 2007 rule.

The discussion that follows describes the Department's proposal to revise its regulations implementing section 202(a) of the LMRDA, 29 CFR 404.4, and the Form LM–30 and its accompanying instructions, which are incorporated into the regulations by reference. 29 CFR 404.3.

A. Regulations

Only one proposed change involves the regulatory text. 29 CFR 404.1(f). In section 404.1(f), the Department proposes to remove the definition of "labor organization," which had been added in the 2007 rule to establish the scope of reporting required of higher level union officers. Paragraphs (g) through (j) of section 404.1 also will be

re-designated as (f) through (i), respectively. As discussed below, the term "labor organization" is separately defined in the LMRDA, and language regarding the scope of reporting for national, international, and intermediate union officers and employees has been added to the proposed instructions.

B. Proposed Form

In this notice, the Department proposes the implementation of a new Form LM–30, entitled "Labor Organization Officer and Employee Annual Report," which will feature a revised, simplified format. The Department believes its proposed form will better facilitate filers' compliance with LM–30 reporting requirements than earlier forms and increase the form's utility to the public.

With respect to layout, the proposed form more closely resembles the pre-2007 form than the lengthier 2007 form. The proposed form, which is two pages in length, contains four sections: a section that contains basic identifying information on the filer and labor organization, and Parts A through C. Parts A, B, and C are designed to capture reportable transactions with a represented employer, a business that has dealings with the official's union, a trust in which the union has an interest, or has substantial dealings with a represented employer, and other employers or labor relations consultant, respectively. The form has been simplified by removing numerous schedules, checklists, and examples. While the inclusion of this information in the 2007 form was intended to assist filers, it is the Department's present view that these additions made the form more confusing and difficult to complete.

The proposed form does not contain the summary schedule that was on the first page (Item 5) of the 2007 form. The Department doubts the utility of the summary schedule. The Department does not believe that requiring the reporting of "total reported income or other payments" and "total reported assets" is useful information, by itself, and may be misleading. Without knowing the context to the reportable transaction or transactions, a viewer does not have a basis to assess the actual or potential conflict of interest and the impact such a conflict would have on the official's duties to the labor organization. For a filer with multiple payments, a summed total on the front page of the form is misleading, even if the totals are separated by assets and other payments, since a viewer of the form can only judge a conflict of interest by looking at the monetary value of the payment or interest along with its source and other pertinent circumstances. A sum of money or other payment or asset, in of itself, has no meaning, and can lead to confusion for the viewer and reflect unfairly on the filer. Further, presenting a figure for "total reported income or other payments" gives the impression that this total represents income and payments received by the filer, when in fact, this figure might also include items such as interest in personal or real property, insurance, or share holdings.

The proposed form does not contain sections on Employer and Business Relationships (Items 6 and 7, respectively, on the 2007 form). The Department does not believe that this general information adds to the usefulness of the form, because this information is reported on each schedule. A bulleted checklist for the relationships has also been eliminated.

The proposed form's contact information sections in Parts A, B, and C generally collect the same information requested in Schedule 1 of the 2007 form, except that the proposed form will not ask whether the filer, filer's spouse, or minor child had a relationship with the employer, business, or labor relations consultant *at the end of the reporting period,* as this information does not aid the viewer of the form in assessing any conflict of interest for the fiscal year in question. The proposed form also eliminates the requirement that a filer provide the Web site address of the employer, business, or labor relations consultant in which the filer holds an interest or receives a payment. The Department does not believe that the Web site address is necessary, since viewers of the form can independently locate this information.

In place of the separate Additional Information Schedule, which was included in the 2007 form, the proposed instructions simply provide guidance on how to provide additional information. Filers who choose to file a paper copy of the form are instructed to attach a separate letter-size page, with identifying information. Filers who choose to file electronically will be able to add additional information as needed.

A section-by-section discussion of the proposed form follows:

First Section—Basic Identifying Information (Items 1–5)

The first section of the proposed form gathers basic information about the filer and his or her labor organization. Item 1 requests the LM–30 file number, and Item 2 calls for the fiscal year covered in the report. Item 3 provides a box to identify the form as an amended report. Filers must provide their contact information in Item 4, which includes lines for their name and street address (both required), and an e-mail address (optional). In Item 5, they must provide identifying information about their labor organization, indicate whether they are an officer or employee, and note their officer position or job title. If the filer serves as an officer or employee in more than one labor organization, this information is captured on an Item 5 Continuation Page.

Below the first section, the proposed form states, "Complete Part A, B, or C if, during the past fiscal year, you or your spouse or minor child directly or indirectly had a reportable interest in, transaction or arrangement with, or received income, payment, or benefit from the entities described below."

Part A—Represented Employer (Items 6 and 7)

In the proposed form, "Represented Employer" is defined as "an employer whose employees your labor organization represents or whose employees it is actively seeking to represent." If the filer had a reportable interest, transaction, benefit, arrangement, income, or loan from his/her "Represented Employer," he or she must provide in Item 6 the employer's contact information, including the name and telephone number of a contact person. In Item 7a, the filer must provide the nature of the interest, transaction, benefit, arrangement, income, or loan, and in Item 7b, he or she must provide the amount or value. As stated above, the Department has removed the requirement that filers report the Web site address for the employer.

As will be explained in the Proposed Instructions section below, the filer must complete a separate Part A for each "Represented Employer" or transaction reported. A Continuation Button is located below Part A if the filer needs to complete one or more additional Part As.

Part B—Business (Items 8–12)

The proposed form provides that the filer must complete Part B if he or she had a reportable interest in, transaction or arrangement with, or received income, payment, or benefit from "[a] business, such as a vendor or service provider, (1) a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with the business of a Represented Employer described in Part A or (2) 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."

If the filer has reportable activity with such a business, he or she must provide in Item 8 the contact information for the business, including the name and telephone number of a contact person. In Item 9, the filer must indicate the entity the business deals with by checking the box for (a) labor organization, (b) trust, or (c) employer. If the filer checks the box for trust or employer, he or she must provide the trust or employer's name and contact information in Item 10. The filer must provide the nature of the dealings in Item 11a, and the value of the dealings in Item 11b. Additionally, the filer must provide in Item 12a the nature of the interest, benefit, arrangement, or income. Item 12b calls for the amount or value of the interest, benefit, arrangement, or income. As stated above, the Department has removed the requirement that filers report the Web site address for the business. As will be explained in the Proposed Instructions section below, the filer must complete a separate Part B for each business or transaction reported. A Continuation Button is located below Part B if the filer needs to complete one or more additional Part Bs.

Part C—Other Employer or Labor Relations Consultant (Items 13 and 14)

The proposed form provides that the filer must complete Part C if he or she had a reportable interest in, transaction or arrangement with, or received income, payment, or benefit from "an employer (other than a Represented Employer or Business covered under Parts A and B above) from whom a payment would create an actual or potential conflict between your personal financial interests and the interests of your labor organization (or your duties to your labor organization); or a labor relations consultant to such an employer or to the Represented Employer listed in Part A."

If the filer has reportable activity with such an employer or labor relations consultant, he or she must provide in Item 13a the contact information for the employer or labor relations consultant. In Item 13b, the filer must indicate whether the entity is an employer or consultant. The filer must provide the nature of the payment in Item 14a, and the amount or value of the payment in Item 14b. As stated above, the Department has removed the requirement that filers report the Web site address for the employer or labor relations consultant.

As will be explained in the Proposed Instructions section below, the filer must complete a separate Part C if reporting more than one employer, labor relations consultant, or transaction. A Continuation Button is located below Part C if the filer needs to complete one or more additional Part Cs.

Signature and Verification (Item 15)

The filer must provide his or her signature, date, and telephone number in Item 15, which is located on the bottom of the first page. As explained in the instructions, filers are instructed to view the OLMS Web site for further information on how to electronically sign and submit the Form LM–30. The signature line on the proposed form is identical to that on the 2007 form, except for the fact that the proposed form assigns the heading "Signature and Verification" to Item 15. The signature line on the 2007 form did not include a heading.

C. Proposed Instructions

1. General

The proposed instructions reflect significant changes in both layout and content from the 2007 form. The content has been changed to reflect the specific changes discussed in the preceding sections of the notice. Other changes have been made to add clarity and eliminate unnecessary repetition. The discussion immediately below highlights significant changes between the proposed and 2007 instructions.

As noted above, the proposed form and instructions reinstate the general "Parts A, B, and C" format featured in the pre-2007 form and instructions instead of the multiple-schedule format introduced in the 2007 form and instructions. The Department believes that the proposed format is clearer and more streamlined and will make the form much easier for filers to understand and complete, without affecting the usefulness of the information disclosed.

The proposed instructions do not include a separate "Definitions" section, which was included in the 2007 instructions. The proposed instructions instead present definitions and clarifications of key terms in the context of the sections in which they appear in the document. When a definition follows a section of the instructions, the term to be defined is italicized. Further, if a defined term is used in multiple places, the later references refer back to the section in which the term is first used and defined. The Department believes that this approach will help filers understand key terms as they read through the instructions, and will eliminate the need for filers to frequently refer to a separate "Definitions" section to determine what must be reported and how it must be reported.

The Department also proposes to remove the examples that are dispersed throughout the 2007 instructions. The numerous examples in the 2007 instructions, many of which involved situations confronted by a very small number of filers, made the form unnecessarily complex and difficult to complete, without meeting the intended goal of providing helpful guidance. Following the publication of a revised Form LM–30, the Department intends to provide compliance assistance support to Form LM–30 filers.

Additionally, the Department proposes to modify the definitions of some key terms that are found in the 2007 Form LM–30 Instructions. First, the Department proposes to remove the definition of "bona fide employee" as used in the 2007 rule and add the bona fide employee exemption found in the instructions for the pre-2007 form. The language to be added reads:

> Payments and benefits received *as a bona fide employee* of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan; and payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time are: (a) Required by law or a bona-fide collective bargaining agreement, or (b) made pursuant to a custom or practice under such collective bargaining agreement, or (c) made pursuant to a policy, custom or practice which the employer has adopted without regard to any holding by such employee of a position with a labor organization.

Emphasis added. Second, the Department proposes to modify the definition of "labor organization employee." As a result, the Department proposes the following language for insertion into the revised Form LM–30 Instructions in Section II, Who Must File: "For purposes of the Form LM–30, an individual who serves the union exclusively as a union steward or as a similar union representative, such as a member of a safety committee or a bargaining committee, is not considered to be an employee of the union."

Third, the Department proposes to remove the definition of "labor organization" (Part III, D10), which had been added to the 2007 rule in order to describe the reporting obligation of national, international and intermediate body officers under section 202 of the LMRDA. As explained earlier in the notice, the term "labor organization" is

separately defined in the LMRDA, and language regarding the scope of reporting for national, international, and intermediate union officers and employees has been added to the proposed instructions. The proposed text removes language that excepted employees of international, national, and intermediate unions from reporting about conflicts of interest involving subordinate affiliates of their union.

The reasons for these changes are discussed in detail in section III, parts A and B, of this notice.

2. Particular Sections and Parts

Section I, Why File: This section presents general information about the reporting requirements of section 202. This information is identical to that presented in the 2007 instructions, except that it has been simplified to refer to the individual completing the form as "you," instead of "filer."

Section II, Who Must File: The 2007 instructions presented a lengthy *Section II, Who Must File and What Must Be Reported* (located on pages 1–9). The proposed instructions have divided this into two separate, concise sections, *Section II, Who Must File* and *Section III, What Must Be Reported.* The Department believes that this change will enable filers to more easily understand this basic information. This section states that "*(a)ny officer or employee of a labor organization* (other than an employee performing clerical or custodial services exclusively), as defined by the LMRDA, must file Form LM–30 if, during the past fiscal year, the officer or employee, or his/her spouse, or minor child, either directly or indirectly, held any legal or equitable interest, received any payments, or engaged in any transactions (including loans) of the types described in these instructions." "Labor organization employee" is defined as "any individual (other than an individual performing exclusively clerical or custodial services) employed by a labor organization within the meaning of any law of the United States relating to the employment of employees." It also provides: "For purposes of the Form LM–30, an individual who serves the union exclusively as a union steward or as a similar union representative, such as a member of a safety committee or bargaining committee, is not considered to be an employee of the union." The term "minor child" is also defined as someone younger than 21 years of age.

The reporting exceptions for insubstantial payments and gifts, including attendance at widely attended gatherings, are unchanged from the 2007 instructions, but their discussion has been moved to *Section X, Completing Form LM–30.*

Section III, What Must Be Reported: This proposed section simply refers filers to Parts A, B, and C of the instructions for information about financial transactions and interests that must be reported.

Section IV, Who Must Sign the Report: This section specifies that the labor organization officer or employee is required to sign the completed Form LM–30.

Section V, When to File: The information in this section is substantively identical to the information in *Section IV, When to File* in the 2007 instructions.

Section VI, How to File: The proposal provides for submission of the For LM–30 in paper format or electronically. Filers will be able to choose between the two options. Proposed Section VI provides information regarding these filing options, including how to obtain the form, and instructions on submitting it, from the OLMS Web site.

The Department plans significant improvements to electronic submission processes that will simplify the electronic signature procedure and eliminate the associated costs to filers. Specifically, the Department will implement a simplified electronic signature that only requires the filer to acquire a Personal Identification Number (PIN) and password, which the Department will provide at no cost to the filer. The Department believes that electronic reporting is, generally, easier for filers, and that it will enable the Department to better incorporate submitted forms into its Electronic Labor Organization Reporting System (e.LORS), ensuring easy access to information for the public.

Section VII, Public Disclosure: With the exception of a slight change in wording, this section is unchanged from the Public Disclosure section in the 2007 instructions.

Section VIII, Officer and Employee Responsibilities and Penalties: With the exception of a slight change in wording in the first sentence (changed "required to file" to "required to sign"), this section of the proposed instructions is identical to the information in the *Section VII, Officer or Employee Responsibilities and Penalties* in the 2007 instructions.

Section IX, Recordkeeping: This section contains information identical to that in the *Recordkeeping* section of the 2007 instructions.

Section X, Completing Form LM–30: This section presents detailed instructions on completing all of the information items in the Form LM–30. The Department believes that the placement of this section on page 3 of the proposed instructions represents a significant improvement over the 2007 instructions, which does not begin to instruct filers on completing the form until page 14.

This section begins with an introduction that includes information on electronic completion of the form. The 2007 instructions did not provide this information. The Department believes that most filers will submit the form electronically, which justifies instructions geared towards this method. Additionally, the Department will provide compliance assistance support for both paper format and electronic filing.

This section provides information on completing Information Items 1 through 5, which gather basic identifying information about the filer and his or her labor organization. With the exception of minor changes in wording, these "basic identifying" information items are the same as in the 2007 instructions.

Next, the proposed instructions feature the heading, "Information Items—Parts A, B, and C." The proposed form features the simpler "Parts A through C" approach, as opposed to the multiple-schedule format introduced in the 2007 form, the proposed instructions differ from the 2007 instructions, especially in format, but also in content.

First, the subsection "General Instructions for Reportable Transactions and Interests" begins with: "You must report only if, during the past fiscal year he/she, or his/her spouse or minor child, *directly or indirectly:* (1) Held an interest; (2) engaged in a transaction; or (3) received income, payment or other economic benefit with monetary value covered by the Act."

Next, the instructions provide information on the scope of filing for national, international, and intermediate union officers and employees, which (as explained above in section III, part E, of this notice) operates to require union employees, to report the same top-down information now required of union officers. This change is discussed in greater detail in section III, part E, of this notice.

The definition of "directly or indirectly" is presented directly below this introductory language. This definition, including its two examples, is unchanged from the 2007 rule.

The proposed subsection, General Exclusions, describes the general reporting exemptions, "insubstantial payments and gifts" and "widely-attended gatherings," both of which are

unchanged from the 2007 rule. Next, the definition for "trust in which a labor organization is interested" is provided. This definition is unchanged from the 2007 rule.

Filers are also instructed to complete a separate Part A, B, and/or C if they are reporting more than one entity or transaction. The instructions explain that additional Parts A, B, and C are available by clicking the Continuation Button on the electronic form or attaching a separate Part A, B, or C, if using a paper format.

Part A (Items 6 and 7): Represented Employer

The proposed instructions for Part A present information on how to complete Items 6 and 7, which pertain to the Represented Employer. Specifically, the instructions state: "Complete Part A if you (1) held an interest in, (2) engaged in transactions (including loans) or arrangements with, or (3) derived income or other economic benefit of monetary value from, an employer whose employees your labor organization represents or is actively seeking to represent." The instructions state that payments received as "director's fees" must be reported. This requirement was contained in the 2007 instructions.

Next, the definition for "actively seeking to represent" is provided. This definition is unchanged from the 2007 rule.

The subsection Part A Exclusions lists items that do not need to be reported in Part A. The first three exclusions—(i), (ii), and (iii)—are substantively unchanged from the 2007 instructions These relate, respectively, to de minimis payments or other financial benefits; holdings, transactions and income from bona fide investments in securities traded on a national securities exchange and other designated securities; and holdings—of $1,000 or less—or income of $1,000 or less—from bona fide investments in other securities. The fourth exclusion, "Payments and benefits received as a *bona fide employee,*" emphasis added, has been modified to incorporate the historical interpretation given payments received by union officials under union leave and "no docking" policies established by collective bargaining agreements or workplace custom or practice.

Since the first Part A Exclusion refers to "bona fide investments," this term is defined in this section. The definition for "bona fide investment" is unchanged from the 2007 rule.

The instructions here advise that filers should not report on the form bank account numbers, policy numbers, social security numbers, or similar information.

In the proposed instructions, the following definitions are presented in connection with Information Item 7: "arrangement," "benefit with monetary value," "income," and "legal or equitable interest." All of these definitions are unchanged from the 2007 rule. The note to item 7 has been revised to eliminate an example which does not appear helpful. Additionally, specific instructions are provided on how to complete Items 6 and 7, which are described in the above subsection, Proposed Form.

Part B (Items 8–12): Business

In the proposed instructions, the filer is instructed:

> Complete Part B if you held an interest in or derived income or other benefit with monetary value, including reimbursed expenses, from a business (1) a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with the business of an employer whose employees your labor organization represents or is actively seeking to represent, or (2) 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. Report payments received as director's fees, including reimbursed expenses. Complete a separate Part B for each such business and for each such interest or item of income connected with that business.

Definitions for "substantial part" and "dealing" are provided. These definitions are unchanged from the 2007 rule.

The subsection Part B Exclusions lists items that do not need to be reported in Part B. Two of the Part B exclusions are retained from the 2007 rule (relating to holdings, transactions and income from bona fide investments in securities traded on a national securities exchange and other designated securities; and holdings—of $1,000 or less—or income of $1,000 or less—from bona fide investments in other securities). These two Part B exclusions are the same as the exclusions set forth in (i) and (ii) in Part A. However, the proposed rule proposes to provide an exception regarding market place transactions from bona fide credit institutions, as explained in greater detail in section III, part C, of this notice.

The Department also proposes to exempt union officials from reporting certain interests in or payments received from businesses, "a substantial part of which * * * deals with the business of an employer whose employees the labor organization represents or is actively seeking to represent," section 202(a)(3), or "from a business * * * dealing with [the official's] labor organization," section 202(a)(4). Specifically, the proposed instructions read:

> *Bona fide loans.* Do not report bona fide loans, including mortgages, received from national or State banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, if the loans are based upon the credit institution's own criteria and made on terms unrelated to the official's status in the labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to the official's status in the labor organization.

Additionally, specific instructions are provided on how to complete Items 8 through 12, which are described in the above subsection, Proposed Form.

Part C (Items 13 and 14): Other Employer or Labor Relations Consultant

In the proposed instructions, the filer is instructed:

> Complete Part C if you, your spouse, or your minor child received, directly or indirectly, any payment of money or other thing of value (including reimbursed expenses), from any employer (other than a Represented Employer under Part A or Business covered under Part B above), from whom a payment would create an actual or potential conflict between your financial interests and the interest of your labor organization or your duties to your labor organization. Such employers include, but are not limited to, an employer in competition with an employer whose employee's your labor organization represents or whose employees your union is actively seeking to represent, if you are involved with the organizing, collective bargaining, or contract administration or is actively engaged in the organizing activities related to a particular represented employer or possesses significant authority or influence over such activities. You are deemed to have such authority and influence if you possess authority by virtue of your position, even if you did not become involved in these activities. Additionally, complete Part C if you received a payment of money or other thing of value from a labor relations consultant to a Represented Employer or Part C employer.

The italicized portion represents a change from the 2007 instructions, as explained in section III, part D, of this notice. The Department removed "labor organizations" and "trusts in which your labor organization is interested" from the scope of section 202(a)(6) and Part C, as explained in section III, part D, of this notice.

The subsection Part C Exclusions lists items that do not need to be reported in Part C. The first administrative exemption in Part C—relating to payments of the kind referred to in section 302(c) of the Labor Management Relations Act, 1947, as Amended (LMRA)—remains substantially the same as that in the 2007 instructions; the only change is that LMRA section 302(c) is not quoted in the instructions (instead, the reader is directed to a later part of the instructions where this section is set forth in full).

The second administrative exemption in Part C—relating to bona fide loans interests or dividends from a bona fide credit institution—is modified slightly from the 2007 rule; specifically, the following sentence, present in the 2007 instructions, is not included in the proposed instructions: "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.' " Accordingly, the proposed rule excepts from reporting under Part C:

> (ii) Bona fide loans (including mortgages), 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 credit institution's own criteria and made on terms unrelated to your status in a labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to your status in the labor organization.

The third administrative exemption in Part C returns to the Department's historical interpretation, exempting:

> (iii) Interest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to your status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees your labor organization represents or actively seeks to represent.

The Department believes that the 2007 rule did not adequately justify the removal of this exemption. Further, interest on bonds or dividends on stock are routine business transactions, which do not ordinarily raise conflict of interest questions. Their inclusion would increase the burden on union officials, without any apparent benefit to the public. Indeed, the reporting of non-conflict of interest payments could hide from scrutiny those payments that are in need of transparency. Finally, in order to ensure that actual or potential conflict of interest payments are reported, the Department has provided two qualifications on this exemption: the payments must be received under circumstances and terms unrelated to the recipient's status in a labor organization and the issuer of such securities is not an enterprise in competition with the represented employer.

Additionally, specific instructions are provided on how to complete Items 13 and 14, which are described in the above subsection, Proposed Form.

The Department has also retained the section 202(a)(6) requirements that an official report:

- Any payment of money or other thing of value from a labor relations consultant to a Part C employer;
- Payments from an employer that 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 the official's union; and
- Any payments from an employer (not covered by Parts A or B), or from any labor relations consultant to an employer, for 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 seeks to represent; and

(5) To influence the outcome of an internal union election.

See 72 FR at 36128, 36130, 36173.

Remainder of Instructions

The instruction for Item 15, Signature and Verification, states that the completed Form LM–30 must be signed by the officer or employee and that forms submitted electronically must use digital signatures. The instructions indicate that the filer must enter the telephone number used by the filer to conduct official business, and note that the filer does not need to report a private, unlisted telephone number.

The proposed instructions then feature: "Selected Definitions from the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA)" [LMRDA section 3]; "Related Provisions of the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA)—Report of Officers and Employees of Labor Organizations" [LMRDA section 202]; Section 302(c) of the Labor Management Relations Act, 1947, as Amended [Sec. 8(c) of the National Labor Relations Act, as Amended]; and an "If You Need Assistance" section, which includes a list of OLMS field offices and explains the information available on the OLMS Web site. This information is only slightly changed from the 2007 instructions.

V. Regulatory Procedures

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. This rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. It is not "economically significant" as defined in section 3(f)(1) of Executive Order 12866. Specifically, in the Paperwork Reduction Act (PRA) analysis below, the Department estimates that the proposed rule will result in a total burden on labor union officers and employees of $138,621, which is significantly less than the $100,000,000 threshold that triggers an economic analysis.

Unfunded Mandates Reform

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 13132 (Federalism)

The Department has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that the proposed rule does not have federalism implications. Because the economic effects under the rule will not be substantial for the reasons noted above and because the rule has no direct effect

on States or their relationship to the Federal government, 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."

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 proposed 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.

Paperwork Reduction Act

This statement is prepared in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501. As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed, continuing, and revised collections of information in accordance with the Paperwork PRA (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public understands the Department's collection instructions; respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A. Summary of the Proposed Rule: Need and Economic Impact

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

The Labor-Management Reporting and Disclosure Act (LMRDA or Act) was enacted to protect the rights and interests of employees, labor organizations and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. Provisions of the LMRDA include financial reporting and disclosure requirements for labor organizations and others as set forth in Title II of the Act. *See* 29 U.S.C. 431–36, 441. The Department has developed several forms to implement the union annual reporting requirements of the LMRDA. Under section 202 of the Act, 29 U.S.C. 432, union officers and employees are required to file reports if they, or their spouses or minor children, engage in certain transactions or have financial holdings that may constitute a conflict of interest. The Department has developed the Form LM–30, Labor Organization Officer and Employee Report, to implement section 202.

This proposed rule modifies the financial disclosure report that section 202 requires to be filed by labor organization officers and employees. The revised paperwork requirements are necessary, because the proposed rule reduces the burden associated with completing the form. As discussed above, the form, as proposed, has been simplified and will no longer have to be filed by certain individuals, notably stewards, and certain interests and transactions, including most bona fide loans, will not have to be reported. The proposed rule also signals the Department's efforts to achieve the goals of greater transparency and disclosure, while mitigating burden on labor organization officers and employees by eliminating reporting on matters without demonstrated utility.

The proposed Form LM–30 will provide transparency of the financial practices of union officers and employees, which the Act requires to be public information. These reports 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. Accurate disclosure and increased transparency 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.

The proposed financial disclosure form will promote increased compliance with the statute by clarifying the form and instructions, organizing the information in a more useful format, and modifying it to better meet the requirements of the LMRDA and the Department's policy judgments consistent with its discretion under the Act.

Published at the end of this notice are the proposed Form LM–30 and instructions. Electronic versions of the pre-2007 and 2007 Form LM–30s and instructions are available for download from the Department's Web site at *http://www.olms.dol.gov*. The proposed Form LM–30 and instructions also will be made available via the Internet. The information collection requirements contained in this Notice of Proposed Rulemaking have been submitted to OMB for approval.

B. Overview of the Proposed Form LM–30 and Its Instructions

The proposed Form LM–30 largely returns to the format of the pre-2007 Form, which has two pages and four parts: (1) An introductory section (Items 1–5); (2) Part A; (3) Part B; and (4) Part C. The layout of the forms (pre-2007 and proposed) are largely identical, with several minor changes, the most important of which are highlighted below. One modification relates to the introductory section (Items 1–5) and the descriptions of Part A, B, and C, which were made more user-friendly by the use of descriptions that paraphrase the statutory language rather than repeating it verbatim. (All of the changes described below are addressed in greater detail in previous sections in this notice.)

Items 1–5 require reporting of basic information, including the filer's LM number and fiscal year, an indication of whether or not the form is amended, as well as contact information for the filer and union, the latter of which will have a continuation page for a filer with an affiliation with more than one union.

Part A (Items 6, 7a, and 7b) requires reporting of the interest, income, benefit, transaction or arrangement from an employer whose employees the filer's labor organization represents or is actively seeking to represent. Item 6 requires reporting of the contact information for such an employer.

Part B comprises Items 8, 9, 10, 11a, 11b, 12a, and 12b, which requires reporting of income and other benefits derived from a business that deals in substantial part with an employer described in Part B, the filer's union, or a trust in which the filer's union is interested. Item 8 requires reporting of the contact information for such business, and Items 9–11 require the filer to identify the entity with which such business deals, and the nature and value of the dealings. In Item 12, the filer is to report the nature and value of the income or other benefit derived from such business.

Part C comprises Items 13a, 13b, 14a, and 14b, and requires reporting of payments from an employer (other than one required to be included in the Part A or B report) from whom a payment would constitute a conflict between the filer's financial interest and the interests of his or her labor organization or duties to such organization. It also requires reporting of payments from a labor relations consultant to a represented employer or a Part C employer. Item 13 requires reporting of the contact information for such employer or labor relations consultant, and in Item 14 the filer is to detail the nature and amount or value of the payment(s) from the employer or labor relations consultant.

Item 15 captures the signature and verification information for the form. The filer must sign the form, include date and telephone number, and verify its authenticity.

The instructions to the proposed Form LM–30 are a hybrid between the pre-2007 and 2007 versions. Several changes are proposed to make them more user-friendly. Like the pre-2007 form, the instructions consist of ten sections, with the first nine consisting of: Section I, Why File; Section II, Who Must File; Section III, What Must be Reported; Section IV, Who Must Sign the Report; Section V, When to File; Section VI, How to File; Section VII, Public Disclosure; Section VIII, Officer and Employee Responsibilities; and Section IX, Recordkeeping. Section X, Completing Form LM–30, provides most of the information assisting filers on how to complete each item in the form, and what data must be included in each part.

As a general matter, the definitions in the 2007 instructions were largely retained, although they were distributed to the appropriate section of the proposed instructions. The definition of "labor organization employee" has been retained; however, the addition of a note exempts from the reporting requirements those individuals who serve as stewards or as representatives of the union in similar positions. Additionally, the Department proposes to remove the regulatory definition of "labor organization" as confusing and unnecessary in light of other changes and proposes the inclusion of language to clarify the top-down reporting obligation of national, intermediate, and intermediate body officials. The examples from the 2007 version were not retained, as the Department believes they added unnecessary length and complexity to the form without providing practical assistance to most filers.

The instructions also include an excerpt of statutory sections, including section 3 of the LMRDA, which includes definitions of the key terms used in the Act, section 202 of the LMRDA, and section 302 of the Labor Management Relations Act.

Further description of the proposed Form LM–30 and instructions can be found in section IV (Proposed Revisions to the Regulations, Form, and Instructions) of this notice.

C. Methodology for the Burden Estimates

The Department first estimated the number of Form LM–30 filers that will submit the revised form. Then, it proposed the estimated number of minutes that each filer will need to meet the reporting and recordkeeping burden imposed by the proposed form, as well as the total burden hours. The Department then estimated the cost to each filer for meeting those burden hours, as well as the total cost to filers. The Department has also estimated the Federal costs associated with the proposed rule. Please note that some of the burden numbers included in this PRA analysis will not add perfectly due to rounding.

1. Number of Proposed Form LM–30 Filers

The Department estimates that 1,932 union officers and employees will submit the proposed Form LM–30. This figure represents the total pre-2007 and 2007 Form LM–30 reports submitted during Fiscal Year (FY) 2009. (In FY 2009 the Department established an enforcement policy that enabled union officers and employees to use either the pre-2007 form or the more complex 2007 version in satisfying their reporting obligation under section 202 of the LMRDA.)

2. Hours To Complete and File Proposed Form LM–30: Reporting and Recordkeeping

The Department has estimated the number of minutes that each Form LM–30 filer will need for completing and filing the proposed form (reporting burden), as well as the minutes needed to track and maintain records necessary to complete the form (recordkeeping burden). The estimates are included in Table 1, which describes the information sought by the proposed form and instructions, where on each form the particular information is to be reported, if applicable, and the amount of time estimated for completion of each item of information. The proposed reporting regime more closely resembles the pre-2007 Form LM–30, in both form and content, than the 2007 form.

In proposing these estimates, the Department is aware that not all union officers and employees will be required to file the Form LM–30, as well as the fact that not all of those who file will need to complete each Part of the form. However, for purposes of assessing an average burden per filer, the Department assumes that the average filer serves as an officer or employee for one labor organization, and that the filer receives reportable payments or interests for a single entity on Parts A, B, and C, respectively.

Additionally, the below estimates are for all filers, including first-time filers and subsequent filers. While the Department considered separately estimating burdens for first-time and subsequent filers, the nature of Form LM–30 reporting militates against such a decision. Union officers may serve for relatively short periods of time and reportable transactions may not go on into subsequent years for a variety of reasons. Where the Department has reduced burden estimates for subsequent year filings, it generally did so with regard to annual reports, specifically labor organization annual reports, Forms LM–2, LM–3, and LM–4. In contrast, the Form LM–30 is only required for union officers and employees in years that they engage in reportable transactions. Further, these officials do not have the same benefit of the "institutional memory," particularly those officials only recently elected or hired. *See* 72 FR at 36157, n. 4. As such, the burden estimates assume that the union officer or employee has never before filed a Form LM–30.

Recordkeeping Burden. The recordkeeping estimate of 15 minutes per filer represents a 5-minute change from the 20-minute estimate for the 2007 Form LM–30. 72 FR at 36157. This estimate reflects new exemptions to reporting of union leave and "no docking" payments, and mortgages and other loans, as well as the decision to eliminate reporting from trusts and unions under section 202(a)(6), which reduces the complexity of the recordkeeping requirements. Additionally, most of the financial books and records needed to complete the form are maintained in the filer's normal course of business, both union and personal. Finally, the 15 minutes accounts for the 5-year retention period required by statute. *See* section 206, 29 U.S.C. 436.

Reporting Burden. The reporting burden of 75 minutes addressed in Table 1 reflects the time required to read the Form LM–30 instructions to

discover whether or not a report is owed and determine the correct manner to report the necessary information. The Department estimates that the average filer will need 30 minutes to read the instructions, which is substantially less than the 55 minutes estimated in the 2007 Form LM–30. 72 FR at 36157.[13] This reduction is due in part to the reduced scope of required reporting. In particular, the Department proposes to eliminate the requirement to report union leave and "no docking" payments, bona fide loans, and payments from trusts and unions pursuant to section 202(a)(6). Further, the creation of a more concise and consolidated form and instructions, with definitions and other explanations placed in a more readily accessible format, will enable filers to more quickly ascertain the necessary reporting requirements.

The Department believes that the simple data entry required by Items 1–3 will only require 30 seconds each. The Department believes that a filer will be able to enter his or her own contact information in only two minutes, in Item 4. Generally, filers will only need three minutes to enter contact information, such as for their labor organization in Item 5, as well as the contact information for the trust or employer with which the business deals, in Item 10. The Department believes, however, that filers will need five minutes, respectively, to enter the contact information for the represented employer in Item 6, the business that deals with a labor organization, trust, or employer in Item 8, and the "other employer" or labor relations consultant in Item 13. The Department believes that filers will need one minute to complete Item 9, which asks filers to indicate whether the business identified deals with a labor organization, trust, or employer.

Additionally, the Department estimates that filers will need 3 minutes to enter the financial data required in Items 7, 12, and 14, and 3.5 minutes to report the nature and value of the dealings in Item 11. Finally, the Department estimates that a filer will utilize five minutes to check responses and review the completed report, and will require two minutes to sign and verify the report in Item 15. The Department will introduce in calendar year 2010 a cost-free and simple electronic filing and signing protocol. For this reason, the burden estimate remains constant whether the form is electronically signed, or signed by hand.

As a result, the Department estimates that a filer of the proposed revised Form LM–30 will incur 90 minutes in reporting and recordkeeping burden to file a complete form. This compares with the 2007 estimate of 120 minutes per filer.

TABLE 1—REPORTING AND RECORDKEEPING BURDEN (IN MINUTES)

Burden description	Section of proposed form	Recurring burden hours
Maintaining and gathering records	Recordkeeping Burden	15 minutes.
Reading of the instructions to determine applicability of the form and how to complete it	Reporting Burden	30 minutes.
Reporting LM–30 file number	Item 1	30 seconds.
Reporting covered fiscal year	Item 2	30 seconds.
Identifying if report is amended	Item 3	30 seconds.
Reporting filer's contact information	Item 4	2 minutes.
Reporting labor organization contact information	Item 5	3 minutes.
Part A: Reporting name and contact information for employer in Part A of form	Item 6	5 minutes.
Part A: Reporting the nature of the interest, transaction, arrangement, benefit, or income, as well as the amount, received from the employer identified in Part A.	Items 7a and 7b	3 minutes.
Part B: Reporting contact information for business	Item 8	5 minutes.
Part B: Identifying if the business deals with a labor organization, trust, or employer	Item 9	1 minute.
Part B: Reporting the contact information for the trust or employer with which the business deals.	Item 10	3 minutes.
Part B: Reporting the nature and value of the dealings between the business and employer, union, or trust.	Items 11a and 11b	3½ minutes.
Part B: Reporting the nature and amount of interest held or income received from the business.	Items 12a and 12b	3 minutes.
Part C: Reporting the contact information for the employer or labor relations consultant, and identifying the entity as an employer or labor relations consultant.	Items 13a and 13b	5 minutes.
Part C: Reporting the nature and amount of payment from the employer or labor relations consultant.	Items 14a and 14b	3 minutes.
Checking responses	N/A	5 minutes.
Signature and verification	Item 15	2 minutes.
Total Recordkeeping Burden Hour Estimate per File		15 minutes.
Total Reporting Burden Hour Estimate per File		75 minutes.
Total Burden Hour Estimate per Filer		*90 minutes.*

Total Reporting and Recordkeeping Burden. As stated, the Department estimates that there are 1,932 union officers and employees that will be annually filing the Form LM–30. Thus, the estimated recordkeeping burden for all filers is 28,980 minutes ($15 \times 1{,}932 = 28{,}980$ minutes) or 483 hours (28,980/60 = 483). The total estimated reporting burden for all filers is 144,900 minutes ($75 \times 1{,}932 = 144{,}900$ minutes) or approximately 2,415 hours (144,900/60 = 2,415 hours). The total estimated burden for all filers is, therefore, 173,880 minutes or approximately 2,898 hours. *See* Table 2 below.

TABLE 2—TOTAL REPORTING AND RECORDKEEPING BURDEN FOR ALL 1,932 ESTIMATED FILERS

	Hours
Total Recordkeeping Burden	483
Total Reporting Burden	2,415
Total Burden	2,898

[13] Additionally, the Department estimates that those union officers and employees who are not required to file will spend ten minutes reading the instructions. This burden is not included in the total reporting burden, since these officials do not file and are thus not respondents.

3. Calculation of Total Costs for Labor Organization Officers and Employees to Complete the Proposed Form LM–30

The Department estimates the dollar cost to filers to complete the Form LM–30 by using fiscal year (FY) 2009 data derived from Form LM–2, Labor Organization Annual Reports, filed with the Department pursuant to section 201 of the LMRDA. The Form LM–2 is the annual financial disclosure report filed by the largest labor organizations, those with $250,000 or more in total annual receipts. The Department notes that many Form LM–30 reports are filed by lower level labor organization officers and employees, whose labor organizations file the less detailed Form LM–3 and Form LM–4 Labor Organization Annual Reports, and who are often part-time officials earning lower salaries than parent body labor organizations that file the more comprehensive Form LM–2. However, because only part-time annual salaries are reported by part-time officers on the Form LM–3 (and individual salaries are not reported on the LM–4), but not the hours upon which those part-time annual salaries are based, it is impractical to calculate an average hourly wage for union officers from the Form LM–3, whereas we can assume that the annual salaries for officers of larger locals are primarily for full-time employees, which makes it possible to determine average hourly wages. Therefore, the Form LM–2 provides the Department with more comprehensive data by which to ascertain a reasonable estimate of union officer and employee salaries.

The Department also assumes, as it did for burden estimates under the pre-2007 Form LM–30, that one-third of the forms will be filed by union presidents, secretary-treasurers, and international representatives (the last designation as a proxy for union employees), respectively. The Department derived the average hourly wage for each of these categories by utilizing data from FY 2009 Form LM–2 reports.

With respect to the international representatives analysis, the salary data derived from the Department's Electronic Labor Organization Reporting System (e.LORS) included only international or national unions and only those employee titles and gross salary data from Form LM–2, Schedule 12 of those international/national unions that included words like "national" or "international" and "representative. The next step was to eliminate blank salary entries (either nothing was listed in the Form LM–2 or a zero was listed). The inclusion of blank entries in the calculation of the average would impact the average calculation, and there are a variety of reasons why the salary can be blank or zero. Finally, the Department calculated the average hourly wage by dividing the average annual salary by 2080 hours (40 hours per week times 52 weeks per year). Next, the Department increased these figures by 43.0% to account for total compensation.[14]

The methodology and assumptions are somewhat similar for the president and secretary-treasurers averages. Here, the Department had data from FY 2009 for all Form LM–2 filers with $800,000 or more in annual receipts. The $800,000 figure was selected because it represents roughly the average of all Form LM–2 filers, and we hypothesized that larger than average Form LM–2 filers are more likely to have presidents and secretary-treasurers who file Form LM–30.

As a result, the Department estimates that union presidents earn an average hourly wage of $34.65 ($49.55 after adjusting by 43.00% for total compensation); union secretary-treasurers, $31.87 ($45.57 after adjusting by 43.00% for total compensation); and international representatives, $33.83 ($48.38 after adjusting by 43.00% for total compensation). The Department also estimated that each of these categories of union officials accounted for one-third of the Form LM–30 reports submitted and thus one-third of the total burden hours (2,898 hours divided by three equals 966). Therefore, the total cost was $138,621 (966 × $49.55 = $47,865.30; 966 × $45.57 = $44,020.62; and 966 × $48.38 = $46,735.08). The estimated cost per filer is approximately $71.75 ($47,865.30 + $44,020.62 + $46,735.08 = $13,621; $13,621/1932 = $71.75).

Finally, in its recent submission for revision of OMB #1215–0188, which contains all LMRDA forms (except the pre-2007 Form LM–30, which was approved under OMB #1215–0205), the Department estimates that its costs associated with the LMRDA forms are $2,710,726 for the OLMS national office and $3,779,778 for the OLMS field offices, for a total Federal cost of $6,490,504. Federal estimated costs include costs for contractors and operational expenses such as equipment, overhead, 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) reviewing reports, (e) obtaining amended reports if reports are determined to be deficient; and (f) providing compliance assistance training on recordkeeping and reporting requirements.

Request for Public Comment

Currently, the Department is soliciting comments concerning the information collection request ("ICR") for the information collection requirements included in this proposed regulation at section 403.2, Annual financial report, of title 29, Code of Federal Regulations, which, when implemented will revise the existing OMB control number 1245–0002 (formerly, OMB Control Number 1215–0205). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Linda Watts-Thomas at (202) 693–4223 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.* Please note that comments submitted in response to this notice will be made a matter of public record.

The Department hereby announces that it has submitted a copy of the proposed regulation to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

[14] *See* Employer Costs for Employee Compensation Summary, from the Bureau of Labor Statistics (BLS), at *http://www.bls.gov/news.release/ecec.nr0.htm.* The Department increased the average hourly wage rate for employees ($20.49 in 2008) by the percentage total of the average hourly compensation figure ($8.90 in 2008) over the average hourly wage.

other forms of information technology, *e.g.,* by permitting electronic submission of responses.

Comments on the ICR should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; *Attention:* Desk Officer for the Office of Labor Management Standards. Comments on the ICR may be submitted by using the Federal Rulemaking Portal at *http://www.regulations.gov,* or by e-mail to *OIRA_submission@omb.eop.gov,* or by fax to (202) 395–5806. Comments may also be submitted by mail. To ensure proper consideration, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking and that the OMB Control Number is referenced (*see* below). Please note that comments submitted to OMB are a matter of public record.

Type of Review: Request for new information collection.

Agency: Office of Labor-Management Standards.

Title: Labor Organization Officer and Employee Report.

OMB Control Number: 1245–0New.

Affected Public: Private Sector: labor organization officers and employees.

Estimated Number of Respondents: 1,932.

Estimated Number of Annual Responses: 1,932.

Frequency of Response: Annual.

Estimated Total Annual Burden Hours: 2,898 hours.

Estimated Total Annual Burden Cost: $138,621.

Potential respondents are hereby duly notified that, notwithstanding any other provision of law, individuals are not required to respond to a collection of information or revision thereof unless approved by OMB under the PRA and it displays a currently valid OMB control number. 35 U.S.C. 3506(c)(1)(B)(iii)(V). In accordance with 5 CFR 1320.11(k), the Department will publish a notice in the **Federal Register** informing the public of OMB's decision with respect to the ICR submitted thereto under the PRA.

List of Subjects in 29 CFR Part 404

Labor union officers and employees; Reporting and recordkeeping requirements.

Text of Proposed Rule

Accordingly, the Department proposes to amend part 404 of 29 CFR Chapter IV 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: Labor-Management Reporting and Disclosure Act Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 08–2009, Nov. 6, 2009, 74 FR 58835 (Nov. 13, 2009).

2. In § 404.1, paragraph (f) is removed and paragraphs (g) through (j) are redesignated as (f) through (i), respectively.

Signed in Washington, DC this 29th day of July, 2010.

John Lund,

Director, Office of Labor-Management Standards.

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

VI. Appendix: Proposed Form and Instructions

BILLING CODE 4510–CP–P

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

FORM LM-30
LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORT

Form Approved
Office of Management and Budget
No. XXXX-XXXX
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 BEFORE PREPARING THIS REPORT.

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

2. Fiscal Year Covered: from _____ (mm/dd/yyyy) through _____ (mm/dd/yyyy)

3. Amended Report – If this is an amended report, check here: ☐

4. Your Contact Information

Name (first, middle, last)		
Street address		
City	State	ZIP
E-mail address (optional)		

5. Labor Organization Identifying Information

Name		
Street address		
City	State	ZIP
File number		
Officer ☐	Employee ☐	
Your officer position or job title		

[Continuation button]

▶ Complete **PART A, B, or C** if, during the past fiscal year, you or your spouse or minor child directly or indirectly had a reportable interest in, transaction or arrangement with, or received income, payment, or benefit from the entities described below.

PART A – REPRESENTED EMPLOYER. An employer whose employees your labor organization represents or is actively seeking to represent.

6. Name of represented employer _____

Contact name _____ Telephone _____

Street address _____

City _____ State _____ ZIP _____

7.a. Nature of interest, transaction, benefit, arrangement, income, or loan

7.b. Amount or value of interest, transaction, benefit, arrangement, income, or loan

[Continuation button]

15. Signature and Verification

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.

Signed _____ On _____ (Date (mm/dd/yyyy)) Telephone Number _____

File Number **U** - _____

PART B – BUSINESS. A business, such as a vendor or service provider, (1) a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with the business of a Represented Employer described in Part A or (2) 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.

8. Name of business _____ Contact name _____Telephone _____ Street address _____ City _____ State _____ ZIP _____	11.a. Nature of dealings
9. Business deals with ☐ a. Labor Organization ☐ b. Trust ☐ c. Employer	11.b. Value of dealings
10. If 9.b. or 9.c. is checked give trust or employer's name _____ _____ Contact name _____Telephone _____ Street address _____ City _____ State _____ ZIP _____	12.a. Nature of interest, benefit, arrangement, or income 12.b. Amount or value of interest, benefit, arrangement, or income

[Continuation button]

PART C – OTHER EMPLOYER OR LABOR RELATIONS CONSULTANT. An employer (other than a Represented Employer or Business covered under Parts A and B above) from whom a payment would create an actual or potential conflict between your personal financial interests and the interests of your labor organization (or your duties to your labor organization); or a labor relations consultant to such an employer or to the Represented Employer listed in Part A.

13.a. Contact information for employer or labor relations consultant Name of employer or labor relations consultant _____ Contact name _____Telephone _____ Mailing address _____ City _____ State _____ ZIP _____	14.a. Nature of payment
13.b. Type of entity: Is the entity an ☐ employer or ☐ consultant?	14.b. Amount or value of payment

[Continuation button]

Paperwork Reduction Act Statement. Public reporting burden for this collection of information is estimated to average 90 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 (1245-0002, with an expiration date of 2-28-2013). Reporting of this information is mandatory and is required by the Labor-Management Reporting and Disclosure Act of 1959, as amended, for the purpose of public disclosure. 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, Office of Labor-Management Standards, Division of Interpretations and Standards, Room N-5609, 200 Constitution Avenue, NW, Washington, DC 20210.

Revised XX-XX-XXXX

DO NOT SEND YOUR COMPLETED FORM LM-30 TO THE ABOVE ADDRESS.

Instructions for 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 and his or her obligations to the union and its members.

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, if you are a 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 your fiscal year, you must file a detailed report with the Secretary of Labor (Secretary). *See* Part X 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 X, you are not required to report insubstantial payments or gifts, as there defined.

The Department's Office of Labor-Management Standards (OLMS) has developed guidance to assist with LMRDA compliance. Guidance to assist with completion of the Form LM-30 is available on the OLMS website: **www.olms.dol.gov**. For additional OLMS 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 VIII of these instructions.

II. Who Must File

Any *officer or employee of a labor organization* (other than an employee performing clerical or custodial services exclusively), as defined by the LMRDA, must file Form LM-30 ***if***, during the past fiscal year, the officer or employee, spouse, or minor child, either directly or indirectly, held any legal or equitable interest, received any payments, or engaged in transactions or arrangements (including loans) of the types described in these instructions.

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

For purposes of the Form LM-30, an individual who serves the union exclusively as a union steward or as a similar union representative, such as a member of a safety committee or a bargaining committee, is not considered to be an employee of the union

LABOR ORGANIZATION OFFICER – means (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 these four factors.

MINOR CHILD – means a son, daughter, stepson, or stepdaughter less than 21 years of age.

NOTE: Selected definitions from the LMRDA follow these instructions.

III. What Must Be Reported

The types of financial transactions and interests which must be reported are set forth in Form LM-30 and in Part A, Part B, and Part C of these instructions.

IV. Who Must Sign the Report

You (the labor organization officer or employee) must sign the completed Form LM-30.

V. When to File

A Form LM-30 report must be filed *within 90 days* after the end of your fiscal year. Fiscal year usually means the calendar year, but if you serve as an officer or employee for only a portion of the fiscal year, you may limit this report to that portion of the fiscal year. For more clarification, see instructions for Item 2 (Fiscal Year Covered).

VI. How to File

Form LM-30 is available on the OLMS website at **www.olms.dol.gov**. You can complete and submit 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 866-487-2365.

If the Form LM-30 report is prepared in paper format, the completed Form LM-30 and any additional pages must be mailed to the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210-0001

NOTE: If either the paper filing or the electronic filing is not received in the timeframe specified above, the report will be considered delinquent.

VII. Public Disclosure

The LMRDA requires that the Department make Form LM-30 and other reports required by the LMRDA available for inspection by the public. Reports may be viewed and downloaded from the OLMS website at **www.unionreports.gov**. Copies of reports and union constitutions and bylaws can also be ordered on the same website. Reports may also be examined and copies may be purchased at the OLMS Public Disclosure Room at the following address:

U.S. Department of Labor
Office of Labor-Management Standards
200 Constitution Avenue, NW
Room N-1519
Washington, DC 20210-0001

VIII. Officer and Employee Responsibilities and Penalties

The labor organization officer or employee required to sign the Form LM-30 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 required to sign Form LM-30 is also subject to civil prosecution for violations of filing requirements. Section 210 of the LMRDA 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.

IX. 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 Form LM-30 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.

X. Completing Form LM-30

While OLMS encourages you to complete Form LM-30 electronically, the Form LM-30 is available for use in both paper and electronic formats. If you are using the electronic Form LM-30, you may click on the "Validate Form" button at any time to check for errors. This action will generate an "Errors Page" listing any errors that will need to be corrected before you will be able to sign the form. Clicking on the signature lines will also perform the validation function.

If filing in paper format, submit entries that are typed or clearly printed in black ink. Do not use a pencil or any other color ink.

How to Provide Additional Information. If you are filing in electronic format, the form will permit you to add additional space to each entry.

If you are filing in paper format and need additional space to complete an item, or to attach an additional item, include the additional information on a separate letter-size (8.5 x 11) page, indicating the number of the item to which the information applies. Print clearly at the top of each page the following information: (1) your full name, (2) your 5-digit file number as reported in Item 1, if available; and (3) the ending date of the reporting period as reported in Item 2. All attachments must be labeled sequentially 1 of __, 2 of __, etc.

Information Items 1–5

Select the appropriate box for those questions requiring a "Yes" or "No" answer; do not leave both boxes blank. Enter a single "0" in the boxes for items requiring a number or dollar amount if there is nothing to report.

1. LM-30 FILE NUMBER — Enter the five-digit file number (U-XXXXX) assigned to you by OLMS as a reporting officer or employee. If you have never previously filed the 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. FISCAL YEAR COVERED — Enter the beginning and ending dates of the fiscal year covered in this report. Your fiscal year will normally be identical to the calendar year. 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. This Form LM-30 report must not 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 if you served as a union officer or employee for only part of the fiscal year, you may consider that portion of the year as the entire fiscal year for the purposes of completing this report.

3. AMENDED REPORT — Check the box if you are filing an amended report.

4. YOUR CONTACT INFORMATION —Enter your full name and the complete address where mail should be sent and received, including any building and room number. Enter your e-mail address in the space provided. If you do not have an e-mail address or choose not to provide it, leave this space blank.

5. LABOR ORGANIZATION IDENTIFYING INFORMATION – Enter the name of the labor organization (including the local number, if any) of which you are an officer or employee. Enter the complete business address of the labor organization where mail should be sent, including any building and room number. Enter the labor organization's OLMS file number. If you cannot obtain the file number of the labor organization, go to www.unionreports.gov or contact the nearest OLMS field office listed at the end of these instructions. Specify your status in the labor organization by checking the appropriate box indicating whether you are an officer or an employee. List your official position or title with the labor organization. If you serve as an officer or employee to multiple labor organizations, click on the Continuation Button to attach an additional Item 5 (if you are filing in electronic format). If you are filing in paper format, see the "How to Provide Additional Information" section on page 3.

Officer titles include, but are not limited to, president, vice president, secretary, treasurer. Job titles include, but are not limited to, business agent, organizer, attorney.

Information Items Parts A, B, and C

GENERAL INSTRUCTIONS FOR REPORTABLE TRANSACTIONS AND INTERESTS — You must report ***if***, during the past fiscal year, you or your spouse or minor

child, *directly or indirectly*: (1) held an interest; (2) engaged in a transaction or arrangements (including loans); or (3) received income, payment or other benefit with monetary value covered by the Act.

When applying the Form LM-30 reporting requirements, if you are a national, international, or intermediate union officer or employee, you must look at employers and businesses with requisite relationships with lower levels of your union (e.g., a local or other subordinate body), as well as your own level of the union.

DIRECTLY OR INDIRECTLY – means by any course, avenue, or method. *Directly* encompasses holdings and transactions in which you, your 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 you, your 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: You must disclose any benefits that you have received (or your spouse or minor child has received) 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 you (or your spouse or minor child).

The following are examples of reporting direct and indirect payments or benefits*:*

- 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 15 year-old 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 from XYZ Widgets. You have received an *indirect benefit*.

General Exclusions

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, you 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, you would have to report your receipt of individual tickets worth $20 or less to all of a professional baseball team's home games even if they 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, that 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 *trust in which a labor organization is interested.* 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.

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.

Report payments received as director's fees, including reimbursed expenses.

Complete a separate Part A, B, and/or C if reporting more than one entity or transaction. For example**,** if you (or your spouse or minor child) held stock in three (3) businesses that have lease agreements with your labor organization, then you must complete and submit a separate Part B for each business.

Additionally, if, for example, you received both income and a loan from a business that has a lease agreement with your labor organization, then you must submit a separate Part B for each transaction with this report.

Do not submit more than one Form LM-30 report for the same fiscal year. If filing in electronic format, click on the Continuation Button to generate the needed separate Parts A, B, or C. If filing in paper format, attach a separate Part A, B, or C.

PART A (ITEMS 6 and 7) – REPRESENTED EMPLOYER

Complete Part A if you (1) held an interest in, (2) engaged in transactions or arrangements (including loans) with, or (3) derived income or other benefit of monetary value from, an *employer whose employees your labor organization represents or is actively seeking to represent*. Report payments received as director's fees, including reimbursed expenses.

ACTIVELY SEEKING TO REPRESENT – means that a labor organization has taken steps during your 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 your union has taken any of the foregoing steps, you are 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.

Part A Exclusions

Part A excludes reporting with respect to the following:

(i) **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.

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 your union or a trust in which your union is interested, (3) a business a substantial part of which consists of dealing with an employer whose employees your union represents or is actively seeking to represent, or (4) a labor relations consultant to an employer.

(ii) **Holding of, transactions in, or income from**, securities not listed or registered as described in (i) above, provided any such holding, or transaction, or receipt of income is of insubstantial value or amount and occurs under terms unrelated to your status in a labor organization. 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.

(iii) **Transactions** involving purchases and sales of goods and services in the regular course of business at prices generally available to any employee of the employer. This does not apply to loans or to transactions involving interests in the employer.

(iv) **Payments and benefits** received as a *bona fide employee* of the employer for past or present services, including wages, payments or benefits received under a bona fide health, welfare, pension, vacation, training or other benefit plan; and payments for periods in which such employee engaged in activities other than productive work, if the payments for such period of time 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.

6. CONTACT INFORMATION FOR REPRESENTED EMPLOYER — Enter the name (including trade or

commercial name, if applicable, such as a d/b/a or "doing business as" name) and address of the employer whose employees your labor organization represents or is actively seeking to represent, including any building and room number. Also enter the name and telephone number of a contact person at the employer.

7. NATURE AND AMOUNT OF INTEREST, TRANSACTION, BENEFIT, ARRANGEMENT, INCOME, OR LOAN — Provide full information as to the nature and amount of each interest, transaction, arrangement, item of income, benefit, or loan. However, do not include account or social security numbers. Your report will be deficient if you provide unclear or nonspecific descriptions. If you need additional space, see the "How to Provide Additional Information" section on page 3. If an interest in real property is reported, identify the location of the property.

ARRANGEMENT – means any agreement or understanding, tacit or express, or any plan or undertaking, commercial or personal, by which you, your 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 you a job with the employer, you must report the offer unless you rejected it. A standing job offer must be reported, because it carries the potential of monetary value.

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.

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, honoraria, income and interest from insurance and endowment contracts, capital gains, discharge or indebtedness, share of partnership income, bequests or other forms of inheritance, and gifts, prizes or awards.

Enter in Item **7.a.** the nature of the interest, transaction, benefit, arrangement, income, or loan, such as the continuing use of an automobile for personal purposes, gift of a computer, payments for services) in the detail set forth below.

Enter in Item **7.b.** the amount or value of each *legal or equitable interest,* transaction, benefit, arrangement, or item of income, or loan, in the detail set forth below, and the date(s) any income or other benefit was received. 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. 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 (for information on where to provide this explanation, see the "How to Provide Additional Information" section on page 3). 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. (See the "How to Provide Additional Information" section on page 3.).

For each such interest and transaction, identify the nature of the interest held (for example, common stock, preferred stock, bonds, options, etc.) and give the total number of shares or other units held during the fiscal year. If the interest was acquired during the fiscal year or if this is your first report of the interest, give an approximate date or dates of acquisition, total cost to you, and manner of acquisition (for example, employee stock purchase plan, purchase on market, gift, etc.). If the interest was disposed of during the fiscal year, give an approximate date, total amount received by you and the manner of disposition (for example, sale on market, gift, exchange, etc.). In each case, identify the other party or parties to the transaction.

LEGAL OR EQUITABLE INTEREST – means any property or benefit, tangible or intangible, which has an actual or potential monetary value for you, your spouse, or minor child without regard to whether the you, you spouse, or minor child holds possession or title to the interest. (See the definitions of *income* and *benefit with monetary value* above in Item 7.)

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.

Other transactions or arrangements involving (1) any loan to or from the employer; (2) any business transaction or arrangement (for example, purchases and sales of goods and services not excluded under Part A Exclusion (iii) above; rentals, credit arrangements, franchises, or contracts, etc.):

For each transaction, identify the nature of the transaction and the property involved (for example, loan of money from employer, rental of loft building, located at X street, Y City, Z State, etc.) and state:

1) the total dollar amount you paid or received during the fiscal year (for example, amount of a loan, rent, sale, etc.);
2) the dollar value of existing obligation, if any, by the end of the fiscal year (for example, unpaid balance of a loan, rentals due pursuant to a lease, amount due under a contract, etc.);
3) the date transaction was entered into and the date it was terminated, if any;
4) the terms and conditions of the transaction (for example, unsecured loan under employer loan plan payable over one year, discount purchases of goods, sale and lease back one year, etc.);
5) names and addresses of intermediate parties involved in any indirect transactions (for example, loans made to you in the name of another, etc.).

For each arrangement, identify its nature 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.

PART B (Items 8 - 12) – BUSINESS

(a) Complete Part B if you held an interest in or derived income or other benefit with monetary value, including reimbursed expenses, from a business (1) a *substantial part* of which consists of buying from, selling or leasing to, or otherwise *dealing* with the business of an employer whose employees your labor organization represents or is actively seeking to represent, or (2) 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. Report payments received as director's fees, including reimbursed expenses.

SUBSTANTIAL PART – means 10% or more. Where a business's receipts from an employer(s) whose employees your 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).

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

PART B EXCLUSIONS

You do NOT need to report in Part B the items identified in the Part A exclusions set forth in (i) and (ii). (See the "Part A Exclusions" section in the instructions for Part A above.)

Bona Fide loans, Do not report bona fide loans, including mortgages, received from national or state banks, credit unions, savings or loan associations, insurance companies, or other bona fide credit institutions, if the loans are based upon the credit institution's own criteria and made on terms unrelated to your status in the labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to your status in the labor organization.

8. CONTACT INFORMATION FOR BUSINESS — Enter the name (including trade or commercial name, if any, such as "d/b/a" or "doing business as" name) and address of the business to which the interest, transaction, or benefit was connected. Also enter the name and telephone number of a contact person at the business.

9. and 10. BUSINESS DEALS WITH —Select the appropriate box describing the type of organization with which the business (referred to in Item 8) dealt. If you select 9.b. (trust) or 9.c. (employer), enter the name and address of each trust or employer in Item 10. Include the name and telephone number of a contact person.

11.a. NATURE OF DEALINGS — Describe in detail the nature of the purchases, sales, leases, or other dealings between the business and the organization specified in Items 9 and 10. For example, if the business and Union A arranged a payroll service in the amount of $45,000 for union members, the dealing could be described as follows: "One payment for payroll services for Union A members." Do not include account or social security numbers. Your report will be deficient if you provide unclear or nonspecific descriptions. If an interest in real property is reported, identify the location of the property.

11.b. VALUE OF DEALINGS — Enter the value of the purchases, sales, leases, or other dealings between the business and the organization specified in Items 9 and 10.

12.a. NATURE OF INTEREST, BENEFIT, ARRANGEMENT, OR INCOME — Enter the nature of each interest, benefit, arrangement, or income covered by Part B, including the applicable information set forth in the instructions to Item 7.

12.b. AMOUNT OR VALUE OF INTEREST, BENEFIT, ARRANGEMENT, OR INCOME — Enter the approximate dollar amount or value of interest, benefit, arrangement, or income covered by Part B, including the applicable information set forth in the instructions to Item 7.

PART C (Items 13 and 14) – OTHER EMPLOYER OR LABOR RELATIONS CONSULTANT

Complete Part C if you, your spouse, or your minor child received, directly or indirectly, any payment of money or other thing of value (including reimbursed expenses) from any employer (other than a Represented Employer under Part A or Business covered under Part B above) from whom a payment would create an actual or potential conflict between your financial interests and the interest of your labor organization or your duties to your labor organization. Such employers include, but are not limited to, an employer in competition with an employer whose employees your labor organization represents or whose employees your union is actively seeking to represent, if you are involved with the organizing, collective bargaining, or contract administration activities or possess significant authority or influence over such activities. You are deemed to have such authority and influence if you possess authority by virtue of your position, even if you did not become involved in these activities. Additionally, complete Part C if you received a payment of money or other thing of value from a labor relations consultant to a Represented Employer or Part C employer.

Employers under Part C also include, but are not limited to, an employer that 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. Report payments received as director's fees, including reimbursed expenses.

Information that must also be reported under Part C includes any payments from an employer (not covered by Parts A or B), or from any labor relations consultant to an employer, for 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 seeks to represent; and

(5) to influence the outcome of an internal union election.

PART C EXCLUSIONS

The items listed below do *not* need to be reported in Part C. Please note that these exceptions do *not* apply to the five types of payments enumerated above.

i. Payments of the kinds referred to in Section 302(c) of the Labor Management Relations (LMRA), as set forth on page 12 below, and payments your spouse or minor children receive as compensation for, or by reason of, their service to their employer.

ii. Bona fide loans (including mortgages), 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 credit institution's own criteria and made on terms unrelated to your status in a labor organization. Additionally, do not report other marketplace transactions with such bona fide credit institutions, such as credit card transactions (including unpaid balances) and interest and dividends paid on savings accounts, checking accounts or certificates of deposit if the payments and transactions are based upon the credit institution's own criteria and are made on terms unrelated to your status in the labor organization.

iii. Interest on bonds or dividends on stock, provided such interest or dividends are received, and such bonds or stock have been acquired, under circumstances and terms unrelated to your status in a labor organization and the issuer of such securities is not an enterprise in competition with the employer whose employees your

labor organization represents or actively seeks to represent.

13.a. CONTACT INFORMATION FOR EMPLOYER OR LABOR RELATIONS CONSULTANT — Enter the name, and address of the employer or labor relations consultant (including trade or commercial name, if any, such as d/b/a or "doing business as" name) from whom the payment in Part C was received. Also enter the name and telephone number of a contact person.

13.b. TYPE OF ENTITY — Select the appropriate box to indicate whether the entity that made the payment is an employer or labor relations consultant.

14.a. NATURE OF PAYMENT — For each payment or benefit reportable under Part C, identify the nature of the payment or benefit (for example, continuing use of automobile for personal purposes, gift of refrigerator, gift of a computer, payment for services not excluded above). List the date you received the payment or benefit. For each payment or benefit reported, provide a detailed description of the relationship between the employer or labor relations consultant and your labor organization. For example, if the payment was received from an employer in competition with a represented employer, indicate the name of the employer whose employees your union represents or whose employees it is actively seeking to represent and the industry or activities in which they compete. Do not include account or social security numbers. If an interest in real property is reported, identify the location of the property. Your report will be deficient if you provide unclear or nonspecific descriptions.

14.b. AMOUNT OR VALUE OF PAYMENT — Enter the amount or value of each payment, including the applicable information set forth in the instructions to Item 7.

15. SIGNATURE (Bottom of Page 1) — The completed Form LM-30, which is filed with OLMS, must be signed by you (officer or employee of the labor organization). Enter the telephone number you use to conduct official business. You do not have to report a private unlisted telephone number.

Electronically submitted forms must be signed using digital signatures. The date of signature will automatically be entered. Information about the digital signature process can be obtained on the OLMS website at **www.olms.dol.gov**.

SELECTED DEFINITIONS FROM THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

SEC. 3. 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) "Persons" 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) Not applicable.

(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 or 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

(k) 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.

(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.

(o) Not applicable.

(p) Not applicable.

(q) "Officer, agent, shop steward, or other representative," when used with respect to a labor organization, includes elected officials and key administrative personnel, whether elected or appointed (such as business agents, heads of departments or major units, and organizers who exercise substantial independent authority), but does not include salaried non-supervisory professional staff, stenographic, and service personnel.

NATIONAL LABOR RELATIONS ACT, AS AMENDED

Section 8. "(c) The expressing of any views, argument, or opinion or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

RELATED PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959, AS AMENDED (LMRDA)

Report of Officers and Employees of Labor Organizations

Sec. 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.

SECTION 302(c) OF THE LABOR MANAGEMENT RELATIONS ACT, 1947, AS AMENDED

"(c) 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, which-ever 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 of the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such dead-lock, 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 pro-viding 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; or (6) with respect to money or other thing of value paid by any employer to a trust fund established by such a 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, or (B) child care centers for preschool and school age dependents of employees: 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 proceeding 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, 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 industry-wide 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."

If You Need Assistance

The Office of Labor-Management Standards has field offices in the following cities to assist you if you have any questions concerning LMRDA and CSRA reporting requirements.

Atlanta, GA
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
Los Angeles, CA
Miami, FL
Milwaukee, WI
Minneapolis, MN
Nashville, TN
New Haven, CT
New Orleans, LA
New York, NY
Newark, NJ
Philadelphia, PA
Phoenix, AZ
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 phone number of your nearest field office.

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 available on the OLMS website at **www.olms.dol.gov**.

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 **www.unionreports.gov**. Copies of reports for the year 1999 and earlier can be ordered through the website.

For questions on Form LM-30 and/or the instructions, call the Department of Labor's toll-free number at: 866-4-USA-DOL (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 website: **www.olms.dol.gov.**

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