AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 76 Wednesday,
No. 207 October 26, 2011

Part III

Department of Labor

Office of Labor-Management Standards

29 CFR 404

Labor Organization Officer and Employee Reports; Final 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: Final rule.

SUMMARY: The Office of Labor-Management Standards of the Department of Labor (Department) is revising the Form LM–30 Labor Organization Officer and Employee Report and its instructions upon review of the comments received in response to its August 10, 2010 Notice of Proposed Rulemaking (NRPM). The Form LM–30 implements section 202 of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA or Act), the purpose of which is to require officers and employees of labor organizations (unions) to publicly disclose possible conflicts between their personal financial interests and their duty to the labor union and its members. The rule revises 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. The principal revisions are: Union leave and no docking payments are not required to be reported on the Form LM–30; union stewards and others representing the union in similar positions are not covered by the Form LM–30 reporting requirements; the requirement to report certain bona fide loans is limited, as is reporting of payments from certain trusts, unions, and employers in competition with employers whose employees are represented by an official's union; and the scope of reporting required of officers and employees of international, national, and intermediate body unions is revised. This rule also establishes a new form and instructions, as well as regulatory text concerning certain reporting obligations. This rule largely implements the Department's proposal in the NPRM, with modifications of several minor aspects of the layout of the form and instructions.

DATES: This rule is effective on November 25, 2011, and it is applicable to Form LM–30 filers with fiscal years beginning on or after January 1, 2012. For filers with fiscal years beginning prior to January 1, 2012, the Department will accept either the Revised Form LM–30 published with this rule, the pre-2007 Form LM–30, or the 2007 Form LM–30.

FOR FURTHER INFORMATION CONTACT: Andrew R. Davis, Chief of the Division of Interpretations and Standards, 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: The Regulatory Information Number (RIN) identified for this rulemaking changed with publication of the Spring 2010 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–AA01) has been assigned to the Office of Labor-Management Standards.

I. Background

A. Introduction

This final rule, which revises the Form LM–30 and its instructions, is part of the Department's ongoing effort to effectively administer the reporting requirements of the LMRDA. The Form LM–30 Labor Organization Officer and Employee Report is designed to provide for the disclosure of payments to, and interests held by, union officers and employees, when such payments and interests pose an actual or potential conflict of interest. In developing the proposed rule and considering and responding to the comments submitted on the proposal, the Department has kept in mind that a fair and transparent reporting system for union officers and employees must consider the interests of unions, their members, and the public, and must balance the benefits served by disclosure with the burden placed on reporting individuals and labor organizations.

The Form LM–30 implements section 202 of the LMRDA, 29 U.S.C. 432. Under section 202,[1] union officers and employees (collectively, union officials) 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 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. 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;
4. 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;[2]
5. Business transactions or arrangements with an employer whose employees the filer's union represents or is actively seeking to represent; and
6. Payment of money or any 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 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

[1] Unless otherwise stated all references to statutory provisions, *e.g.,* ''section 202,'' are to provisions in the LMRDA. 29 U.S.C. 401–531.

[2] These trusts are defined by section 3(l) of the Act 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.

Unless otherwise specified, references to ''trust'' in this preamble are to these statutorily defined trusts, which are sometimes referred to as ''section 3(l) trusts.''

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 issued its proposed revisions to that rule on August 10, 2010, stating its view 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—had not been accomplished. See 75 FR 48416. The Department, at 75 FR 48417, explained that the 2007 rule left unresolved fundamental questions about the reporting obligations of union officials and raised policy and legal issues warranting reexamination by the Department. These fundamental questions regarding the Form LM–30 reporting requirements included—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, the Department identified questions concerning the layout of the 2007 Form LM–30 and instructions and whether they provided useful and adequate assistance to filers.

Prompted by these uncertainties about the 2007 rule, the Department, on March 19, 2009, issued 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.[3] Further, the Department held a stakeholder meeting on July 21, 2009 to solicit comments regarding the 2007 rule and potential revisions to the Form LM–30. In the NPRM, the Department invited comment on the proposed changes with respect to their benefits, the ease or difficulty with which union officers and employees would be able to comply with these changes, and whether the changes would better implement the LMRDA. The Department invited general and specific comments on any aspect of this proposal; it also invited comment on specific points, as noted throughout the text of the 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 explained:

> [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.

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 recognized that a reportable interest was 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

[3] The Department modifies this non-enforcement policy with the publication of today's rule. For filers with reportable payments or interests in fiscal years beginning prior to January 1, 2012, the Department will accept either the Revised Form LM–30 published with this rule, the 2007 Form LM–30, or the pre-2007 Form LM–30. For filers with reportable payments or interests in fiscal years beginning on or after January 1, 2012, the Department will accept only the Revised Form LM–30.

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 firmly established 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, a balance of these interests was central to the 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 officers' 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 Rulemaking on Form LM–30

The Department is modifying the Form LM–30 for the following reasons, which the Department identified in the NPRM as the bases for its proposed changes:

(1) The 2007 Form LM–30 rule created uncertainty for the regulated community, presented unresolved questions regarding the rule's reporting requirements, engendered 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; and the extension of the Form LM–30 reporting requirement to individuals serving as union stewards or in similar positions representing the union.

(2) The revisions adopted in this rule better balance the disclosure of information and the burden imposed on union officials.

(3) The revisions in this rule better clarify the form and instructions and organize the information in a useful format.

As explained in the NPRM, the Department fully recognizes the importance of union officer and employee reporting and the disclosure of pertinent financial information to union members and the public. This rule effectuates these purposes and reflects a proper 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. The Department has carefully considered the comments received from the regulated community and the public about the 2007 rule and the changes proposed by the Department. Generally, the Department has included in the final rule the changes proposed. Unless otherwise stated herein, the Department has made these changes for the reasons stated in the NPRM. Rather than restate in full the reasons set out at length in the NPRM, the Department has attempted to limit repetition to those instances where a more detailed discussion is needed to provide context to comments received on the proposed rule and the Department's response to those comments.

E. Review of General Comments Received in Response to NPRM

The Department received 62 unique comments to the NPRM, from 286 commenters.[4] Of the 62 unique comments received, 39 expressed opposition to the Department's proposal to revise Form LM–30, 22 supported the proposal, and an additional comment, from a labor organization, expressed neither support nor opposition to the proposal, but requested an industry-specific exemption to the LM–30 reporting requirement.[5]

Comments that expressed, in whole or in part, general support or opposition to the NPRM will be discussed in this section of the rule. Comments on specific changes and revisions to Form LM–30 will be addressed in subsequent sections, which are organized by topic.

Review of General Comments in Support of NPRM

Comments submitted by 17 national/international unions, two federations of labor organizations, one local union, one law firm (on behalf of various clients, including unions, insurance companies, and service providers to unions and benefit plans), and one public policy organization generally expressed strong support for the Department's proposed revisions to Form LM–30.

Multiple union commenters, a public policy organization, and a law firm generally supported the Department's NPRM, but expressed concerns about certain aspects of the proposal or suggested certain modifications. These issues and proposed modifications will be discussed later in this rule, in the relevant sections to which each topic applies.

Review of General Comments in Opposition to NPRM

The comments submitted in opposition to the NPRM include the above-referenced form letter, 36 additional comments submitted by individuals, and two comments submitted by public policy organizations. A third public policy organization opposed some aspects of the proposal.

Most of the opposing comments, apart from those submitted by the public policy organizations, were general in nature and did not directly, if at all, address the Form LM–30 or the Department's proposed revisions. The above-referenced form letter stated that the proposed Form LM–30 regulations should be rejected because they would undermine efforts regarding recent changes made to unions' reporting and disclosure requirements, which were designed to increase transparency. The letter also stated that union members have relied on the LMRDA to ''discourage and expose'' corruption.

Two individuals that identified themselves as union members asserted that conflict-of-interest reporting requirements should not be lessened, and voiced their support of transparency. While some private citizens limited their comments to expressing general dissatisfaction with the current political administration, other commenters expressed general anti-union sentiment, and did not refer to the proposed revisions to Form LM–

[4] One of the unique comments was a form letter submitted by 225 individuals. Additionally, one commenter submitted two versions of the same comment.

[5] The labor organization suggested that the Form LM –30 reporting obligation should not apply to union officials who receive free admission to performances for union-related purposes, or for purposes of voting for industry awards. The union offered clarifying language that would exempt these examples of free admission from Form LM–30 reporting. The issue will be addressed in section III.E. of the preamble.

30 or any aspect of LMRDA reporting requirements. Additional commenters made general statements that unions should be held accountable for potential conflicts of interest, and generally should not be exempt from reporting requirements. Apparently misunderstanding the Department's proposal, multiple commenters erroneously characterized the NPRM as an effort to eliminate conflict-of-interest reporting altogether.

In response to these comments, the Department notes that its proposal and this final rule have been drafted with the purpose of best effectuating the disclosure requirements of the LMRDA. The goal has been to revise the 2007 rule in a way that achieves that purpose. Contrary to the suggestions by several commenters, the Department's proposals are not designed to achieve arbitrary goals or political objectives. Indeed, many commenters appear to have overlooked that most aspects of the 2007 rule were left unchanged by the Department's proposal and this final rule. As a matter of policy and statutory interpretation, the Department believes that the approach adopted in this rule reflects an improvement over those aspects of the 2007 rule that have been revised.

One public policy organization disputed the Department's statement that the 2007 rule raised ''significant policy and law questions.'' Rather, in the commenter's view, the objections to the 2007 rule are ''political'' in nature, deriving from the ''regulated community.'' The commenter stated that the NPRM should be immediately withdrawn ''due to the Department's inconsistent application of the term ''employer'' to different parts of the LMRDA'' (discussed below in section III, part D, of this preamble). The commenter explained its view that the 2007 changes were necessary additions to ensure needed transparency, and urged the Department to enforce the 2007 rule. The Department disagrees with these general comments. In the Department's view, it is evident from a cursory review of the 2007 rule, the compliance issues it presented, the history surrounding the Form LM–30 and its enforcement, and the comments received at the July 21, 2009 stakeholder meeting, that the 2007 rule presented fundamental policy and legal questions deserving of the Department's scrutiny. As a result of its review of the 2007 rule, the Department has developed an approach that more effectively targets actual or potential conflict-of-interest payments and balances the need for transparency with the legitimate interests of union officials and transparent labor-management relations.

Another public policy organization voiced strong opposition to the NPRM, and stated that the NPRM ''provides no evidence that is consistent with LMRDA language'' to justify its proposed revisions to Form LM–30. The commenter stated that ''[s]ince 1959, the Department has essentially ignored Form LM–30 reporting and disclosures.'' The commenter argued that the NPRM proposes to ''hide [union-employer] collusions,'' and ''essentially abandons individual workers in its analysis.'' For the reasons mentioned above in response to a similar comment, the Department disagrees with the assertions. The interest of workers, union members, and the public in labor-management transparency is a significant goal of the statute, and has been a primary consideration in this rulemaking. The importance of balancing the benefits of disclosure against the burdens that recordkeeping and reporting imposed on the legitimate activities of unions and their officials likewise undergirds the proposal and the final rule. The Department fully explains in the sections that follow in this preamble the rationale for the changes made by this final rule and how they comport with the LMRDA's disclosure provisions.

One public policy organization challenged the Secretary's authority to make the proposed revisions under section 208 of the LMRDA, and suggested that the proposed rule, therefore, is inval *Id.* Section 208 of the LMRDA, 29 U.S.C. 438, authorizes the Secretary of Labor to issue, amend, and rescind rules and regulations to implement the LMRDA's reporting provisions. The commenter reads section 208 as a ''one-way ratcheting mechanism'' that only permits the Secretary to add additional reporting requirements, not revise existing requirements. In its view, the changes proposed by the Department could be effectuated only if Congress amends the Act.

The Department disagrees with the commenter's distinctive view of section 208. Section 208 grants the Secretary 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.'' The verbs ''amend'' and ''rescind'' do not constrain this authority; they allow the Secretary to make changes, but do not compel any particular modification. Further, the words themselves do not connote that amendments and rescissions must add to (rather than subtract from) the reporting requirements. The verb ''rescind,'' for example, suggests removal or abrogation in general, and is equally applicable to both reporting requirements and reporting exemptions.

The Department fully understands that its ''rules and regulations prescribing the form and publication of reports required to be filed'' must conform to the statute. As explained throughout this preamble, the proposed changes, as adopted in this final rule, are entirely consistent with the language and purpose of the LMRDA. By revising the Form LM–30 to feature a simplified format and more concise, clear instructions, the final rule will facilitate filers' compliance with Form LM–30 reporting requirements and increase the form's utility to the public.

The same commenter suggests that the Department has disregarded the intent of Congress and conferred upon itself the authority to create administrative exemptions in derogation of the statutory requirements. The Department disagrees, noting, as discussed throughout this preamble, that the changes are based upon the Department's reasoned interpretation of the Act. The Department additionally notes that while the term ''administrative exemption'' has long been used to describe certain exceptions from a general reporting obligation (as the term was also used in the 2007 rule), they have always been based on a reasonable interpretation of the statute. The commenter overlooks that the Department retains discretion under the statute in crafting rules, and that how this discretion is exercised is appropriately based on policy considerations.

The commenter added that the Secretary may limit disclosure by utilizing de minimis thresholds, but argued that union officials must still adhere to record retention requirements in LMRDA section 206. While the intent of the comment is not clear, such recordkeeping requirements apply to records needed to verify required reports and the detail required to be included on the reports. They do not apply to information not required to be reported.

Finally, the commenter suggested that a statement used in the 2010 NPRM demonstrates the Department's intention to undermine congressional intent. The NPRM, at 75 FR 48416, states that the LMRDA reporting provisions ''are designed to empower labor organizations, their members, and the public.'' The commenter reads the statement as proof that ''DOL embraces a view that part of the LMRDA's purpose is to 'empower labor unions'

when, in fact, its purpose is to shield union members and the public from corrupt union officials.'' In response, the Department in no way intended to intimate that the LMRDA was designed to ''empower labor organizations,'' as distinct from their membership. As the commenter also recognizes, the LMRDA's disclosure provisions provide information that empowers union members and the public by promoting union self-governance and financial integrity. At the same time, and as recognized in the NPRM, the Department cannot disregard the burden that reporting places on unions and union officials. As stated in the 1959 Senate Committee Report and repeated in the NPRM: ''The 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 No. 187, at p. 7, reprinted in 2 Leg. History, at 403, quoted at 75 FR 48418. Thus, in regard to its impact upon unions, the intent of the LMRDA is not to intrude on the legitimate role of unions in labor-management relations, but, rather, to advance the interests of employees by furthering union and workplace democracy and reducing or eliminating labor-management financial corruption.

Comments on Reporting Burden Created by 2007 Rule

Most union commenters asserted that the 2007 changes to the Form LM–30 reporting requirements are not justified in light of the burden they impose, and voiced support for the rescission of some of these requirements, which one commenter described as ''extremely burdensome to filers, and confusing and misleading to the public.'' Another international union commented that the 2007 revisions to Form LM–30 ''impose[d] a severe burden on union filers with no corresponding benefit to union members or the public and raised fundamental legal and policy questions with which OLMS is still struggling.''

A federation of labor organizations stated that in challenging the 2007 rule it had argued that the 2007 ''changes in the universe of potential Form LM–30 filers and in the scope of interests and receipts subject to reporting exceeded the Department's statutory authority.'' The commenter concurs with the NPRM that the 2007 changes to the Form LM–30, had they gone into effect, would have been unduly burdensome and could have deterred people from running for union office. One commenter concurred with the comments submitted by the federation, and stated that ''the prior regulatory scheme * * * was unduly burdensome and far beyond the original intent of the law.'' Another commenter stated that the 2007 LM–30 reporting requirements ''create a trap for even the most scrupulous and detail-oriented union official,'' adding that [''b]y setting [a]standard that in some respects is impossible to meet, the current rules discourage involvement in union activities.''

Echoing the burden theme, one international union commenter stated that the Form LM–30 reporting requirements outlined in the 2007 rule require ''unnecessary reporting of many financial transactions and arrangements that pose no threat of a conflict of interest,'' and create a ''crushing burden on [its] officers and employees.'' It added that these new requirements ''discourage[ ] involvement in union activities to the detriment of both the union and its employer partners.'' Yet another commenter supported the Department's proposal, as it targeted the ''unnecessary over-complication, confusion, and burden caused by its 2007 rule.''

One union commenter challenged the 2007 rule as claiming to enhance ''transparency,'' but rather imposed ''expensive and time-consuming'' requirements, to the detriment of the members. Noting the increased volume of information required to be reported on the 2007 Form LM–30, another international union questioned whether such additional information would effectively reveal actual or potential conflicts of interest.

Comment on 2007 Rule's Impact on Compliance Assistance Efforts

One local union commenter cited the intensive, multi-faceted training and compliance assistance efforts undertaken by the commenter's union when the 2007 rule was adopted, and supports the proposed changes, as they would reduce the ''complication associated with compliance.'' The commenter stated that its union ''would much rather devote these human resources to matters that have more widespread and direct benefits for our members,'' such as negotiating contracts, processing grievances, and organizing unrepresented workers to protect the wages and fringe benefits of its membership.

Comments on Striking a Fair Balance Between the Conflict-of-Interest Disclosure Requirement and Union Officials' Legitimate Privacy Interests

Numerous commenters supported the Department's proposal in its effort to balance the legitimate needs and interests of unions and their officials with the need for conflict-of-interest reporting that advances labor-management relations, union democracy, and union financial integrity. For example, one commenter stated, ''The goal of the proposed Rule, to restore a fair balance between the interests of unions, their members and the public, is appropriate and necessary.'' Following this theme, another commenter stated that the Department's proposal better balances union officials' privacy interests with the need for members to have information concerning conflicts of interest that could undermine the union's ability to represent the employees. Another commenter, a federation of labor organizations, stated that it supported the Department's proposal ''because, in the main, the proposal accomplishes the Department's statutory purpose of striking the proper 'balance' between '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.'' 75 FR at 48416. An international union commenter offered support for the proposed changes, stating that they are well grounded, consistent with congressional purpose in drafting the Act, and successful in striking an appropriate balance between the goals of greater conflict-of-interest transparency while not establishing unnecessary burden for union officials.

II. Authority

A. Legal Authority

The legal authority for this rule 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. Revisions to the 2007 Form LM–30 Reporting Requirements

This rule implements five changes to the Form LM–30 reporting requirements, as proposed in the NPRM: (1) The elimination of reporting of union leave and no docking payments, and, more broadly, a revised interpretation of the bona fide employee exception; (2) the removal from 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 elimination of reporting for certain bona fide loans and other financial transactions on Parts A and B of the form; (4) the limitation on reporting of payments from employers competitive to the represented employer, certain trusts, and unions; and (5) a revision of the reporting required of national, international, and intermediate union officers and employees.

First, this rule returns 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 pursuant to a custom and practice under such collective bargaining agreements. These payments are made by a represented employer to its employees who are serving on behalf of the union on labor-management relations matters. Under a union leave policy, the employer continues the pay and benefits of an individual who often 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. The requirement in the 2007 rule that union officials must report union leave and no docking 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 are thus not payments made under the ''bona fide employee'' exception of section 202 of the LMRDA. Upon reconsideration, the Department has determined 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, this rule returns 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, this rule establishes administrative exemptions for Parts A and B of the form, whereby union officials generally need only report loans from bona fide credit institutions if such loans are on terms more favorable than those available to the public. The 2007 rule required more extensive reporting and made confusing and complex distinctions among various relationships and credit institutions. This rule also incorporates the clarification, as set forth in 2007 Form LM–30 Frequently Asked Question (FAQ) 70, that union officials as a general rule are not required to report on savings accounts, certificates of deposit (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.[6]

Fourth, this rule limits the reporting obligation with respect to interests in and payments from employers that compete with employers represented by the official's union or that the union actively seeks to represent. 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. Establishing such limitation on disclosure 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, this rule modifies the scope of reporting insofar as payments from certain trusts and unions are concerned. The Department returns to its historical practice of not requiring officials to report on payments they receive from trusts or, as a general rule, from unions. Officials of a staff union are, however, still required to report on Part A any payments they receive from the union-employer whose employees the staff union represents.

Finally, this rule revises and clarifies the scope of ''top-down'' reporting for officials of international, national, and intermediate unions. This rule effectuates the Department's proposal in the NPRM that officers and certain employees of these higher level unions must look at payments they receive from employers and businesses with relationships with lower levels of their unions (*e.g.,* a local or other subordinate body), as well as with their own level of the union, when applying the Form LM–30 reporting requirements. However, based on a review of the comments, the Department has determined to adopt a modification of its proposed expansion of the scope of top-down reporting for union employees of national, international, and intermediate body labor organizations. All higher-level union employees that have significant authority or influence with respect to affiliates will also need to report these matters in relation to subordinate affiliates. Higher-level union employees without such significant authority or influence over affiliates or officials of affiliates will not be subject to these top-down reporting obligations.

The 2007 rule also established confusing exceptions to the ''top-down'' reporting obligations. 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, these officials 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. This rule effectuates the Department's proposal to remove these exceptions.

In developing this rule, the Department has reviewed the reporting

[6] See the 2007 Form LM–30 FAQs at *http://www.dol.gov/olms/regs/compliance/RevisedLM30_FAQ.htm.*

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 this rule. This rule supersedes any inconsistent interpretation or other guidance. The Department identifies in the margin those instances where the rule does not change the reporting obligations under the examples and FAQs.[7] As discussed later in the text, examples will generally not be included in the revised instructions.

A. The Bona Fide Employee Reporting Exception Under Section 202

This rule effectuates the Department's proposal to return to its historical position that union officials should not report union leave and no docking payments. 75 FR 48421. As discussed above, these payments are made by a represented employer to its employees who are serving on behalf of the union on labor-management relations matters in accordance with the parties' collective bargaining agreement. First, the historical interpretation under which such compensation was not reported—to which this rule returns—comports more readily with the language in section 202, than the interpretation underlying the Department's 2007 interpretation. Second, such reporting imposes a substantial burden on union officials on matters unlikely to pose conflicts of interest and removing this burden ensures that there will be no undue interference with the internal workings of labor unions and labor-management relations. Third, there is no persuasive reason, as a matter of policy, why union officials must report such payments, while employers making such payments are under no similar obligation. See 75 FR 48421–48423.

[7] Most of the examples in the 2007 instructions continue to accurately reflect reporting requirements as articulated in this rule. Thus, the following continue to accurately reflect reporting requirements: Examples 2–15, at pp. 3–4 of the instructions; examples 1–2, 4–5, 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. Note that the NPRM had incorrectly stated that example 3, at p. 6 of the instructions would continue to accurately reflect reporting under this rule. Several of the FAQs are based on requirements that the Department changes with this rule.The following FAQs, however, continue to accurately reflect reporting requirements: 2–10, 12–26, 28, 30–37, 39, 44, 47, 49–50, 54, 56–59, 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 revised rule. Others, such as FAQs 1 and 77, while largely accurate, contain some statements that are based on or refer to interpretations that are superseded by this rule.

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).

Until the 2007 rule, the Department's policy had been to exclude from reporting payments and other benefits received for activities undertaken on behalf of the union, as well as for any other ''activities other than productive work,'' but paid for by the employer. Thus, the instructions for 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 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.

Pre-2007 Form LM–30 Instructions, Part A (Items 6 and 7) at (iv). See 28 FR 14384 (Dec. 27, 1963).

The 2007 rule narrowed the exemption in the Form LM–30 instructions, as quoted above, by limiting it to situations where such payments were made pursuant to a bona fide collective bargaining agreement and totaled 250 or fewer hours during the filer's fiscal year.

1. Review of Comments Received

The Department received 17 substantive comments on the issue of the union leave and no docking payments. Of these 17 comments, 14 supported the removal of reporting for such payments: 12 unions, one law firm, and one public policy organization. Additionally, three comments opposed the change, including two public policy groups, and 225 individuals who sent in form letters.

a. Comments in Support of NPRM

The Department received 13 comments that provided general support for removing union leave and no docking payments from the Form LM–30 reporting requirements, with about one-half providing specific comments in support of the changes. One international union commenter concurred with the view that the ''legitimacy'' of such payments is established when they are included in a collective bargaining agreement or employment practice, and that they do not pose conflict-of-interest problems like ''no show work, featherbedding, or similar practices.'' The commenter further stated that requiring reporting for such payments for union officials, and not employers, imposes an ''unnecessary burden'' on the officials and deters employees from serving as representatives. A national union concurred with the Department's view, as expressed in the NPRM, that such payments do not pose a conflict of interest, and also noted that employers are not required to report such payments on the Form LM–10.

Another international union maintained that such reporting would be burdensome, unrelated to the purpose and intent of the statute, and ''disruptive of many well-established labor-management relationships.'' The commenter also stated that such arrangements are known to the employees, who benefit along with the employer from this practice, and it presented evidence of the burdensome nature of reporting such payments. It explained that union officials would be required to keep track of all hours worked under union leave or no docking arrangements and calculate benefits as well as wages earned, adding that such information would not easily be obtained from the employer, who may not desire to release it. Such reporting, the commenter contended, may discourage employee participation in the union, and would not disclose conflicts of interest in that no docking arrangements are already known to employees in a bargaining unit either by being required by a collective bargaining agreement or being made pursuant to a custom under a collective bargaining agreement. Further, the commenter stated that members know that when stewards or other union representatives ''administer the contract, process grievances, or represent members in disciplinary actions,'' they are receiving payment from the employer.

A national union discussed the burden and disincentive that reporting union leave and no docking payments would have on employees' willingness to serve the union. Another national union emphasized that such payments, received pursuant to a collective bargaining agreement, are made with full knowledge of the employees and

thus reporting is not needed to provide transparency. The union explained that the burden that such reporting would impose would discourage members from representing their fellow employees in ''grievances, serving on safety and health committees, and participating in collective bargaining.'' An international union stressed that such payments do not pose conflicts of interests, as they ''primarily serve'' the employers by promoting ''prompt and fair resolution of grievances and other workplace issues so that work continues and morale remains high.''

Further, a national union stated that in determining whether or not a payment is received ''as a bona fide employee,'' a distinction must be made between payments made ''by virtue'' of a union official's employment with the employer and payments made without regard to such relationship. In this union's experience, employees volunteer to serve, on their own personal time, on joint labor-management, safety and health, and other committees, with the collective bargaining agreement only ensuring that they do not lose any compensation or benefits.

Finally, a law firm supported the Department's proposed return to its historical position that union leave and no docking payments are not reportable. It urged the Department to clarify that employers are not required to report such payments under section 203 of the Act. The firm asserted that such payments should be considered to be made as ''compensation for, or by reason of, [an employee's] service as an employee for such employer.''[8] It stated that without such clarification an employer may feel obligated to report such payments, even though union officials are not required to report their receipt of such payments. As the Department discusses in later sections of the preamble, this rulemaking solely addresses reporting under section 202 of the Act and that interpreting section 203 requirements would be beyond its scope.

b. Comments in Opposition to NPRM

The three comments opposing this aspect of the Department's proposal offered arguments in support of the 2007 rule's premise that union leave and no docking payments presented a conflict of interest for union officials and must be reported to ensure appropriate transparency. Two of the commenters argued that the Department's proposal was based on an impermissible reading of the statute.

A public policy organization offered some specific observations regarding the effect of allowing union leave and no docking to go unreported. It claimed that the Department lacked authority under the Act to excuse union officials from reporting such payments, suggesting that the proposed rule was based simply on the new Administration's dissatisfaction with the reporting requirement rather than a considered view of the statute's requirements. The comment argued that payments for work done for the union cannot be received as a ''bona fide employee.''

Additionally, the public policy organization claimed that by eliminating reporting, ''de facto no-show jobs'' and ''featherbedding'' would be concealed and substantial payments to union officials would go unreported. Such payments, in its view, constitute an improper ''subsidy'' for union activity. Another commenter, a public policy organization, argued that the Department's proposal would conceal instances of ''no-show jobs,'' and other fraudulent arrangements. This public policy organization also asserted that, in proposing to remove union leave and no docking payments from Form LM–30 reporting, the Department was ignoring the structure of the statute and establishing an ''administrative exemption.''

The individuals who commented by form letter also addressed this issue and stated that no docking reporting should not be removed because most stewards receive no extra compensation for their duties, which could make them susceptible to ''other forms of rewards.''

The two public policy organizations stated that the burden associated with the 2007 rule is significantly overstated. One organization stated that the Department's proposal overlooked how the 2007 rule mitigated burden by establishing a 250-hour reporting threshold. One of the organizations argued, albeit without further support, that most union officials would not have to report their union leave or no docking payments, because these payments would not meet the 250-hour threshold.

The organization also argued that the Department's burden estimates in the 2010 NPRM demonstrated the absence of any significant burden associated with reporting union leave and no docking payment, noting that the Department estimated that the proposed changes would only reduce recordkeeping time by five minutes (15 minutes in the proposed rule as opposed to 20 minutes in the 2007 rule) and the overall reporting by 30 minutes (90 minutes in the proposed rule as opposed to 120 minutes in the 2007 rule).

A public policy organization also objected to the Department's assessment of the burden associated with the 2007 rule, as discussed in the NPRM. It stated, on one hand, that any burden is not the result of the 2007 rule but has existed since the enactment of the statute (even if the Department, in the commenter's opinion, did not always enforce the Form LM–30 requirements), and, on the other hand, that the 2007 rule created no additional burden because only ''atypical financial arrangements that benefit some union officials'' were reportable under the rule.

Taking issue with the view that union leave and no docking payments pose no conflict of interest where required by a collective bargaining agreement or made pursuant to a custom under a collective bargaining agreement, another public policy organization argued that these payments create ''the definite possibility of becoming a conflict of interest.'' In this regard, it cited a dissenting opinion in *Caterpillar* v. *UAW,* 107 F.3d 1052, 1060 (3d· Cir. 1997)(Alito, J. dissenting), where the dissenting judge stated such payments create a conflict, because ''union negotiators * * * may agree to reduced benefits for employees in exchange for financial support for the union.''

One public policy organization acknowledged that the courts have determined that union leave and no docking are not unlawful under LMRA Section 302, but it nevertheless contends that the courts have ''misconstrued'' such provision, and that such payments, as well as the granting of ''super-seniority'' to union officials, do create a conflict of interest for the union officials, as the officials could exchange benefits for the bargaining unit as a whole for benefits for themselves. The comment asserted that ''any special benefit'' creates a conflict of interest, and it cites *United States* v. *Phillips,* 19 F.3d 1565, 1566–69 (11th Cir. 1994), to illustrate this point. It also contended that disclosure furthers the public's and government's ability ''to determine the validity of the financial transaction.'' Additionally, the commenter rejected the idea that union leave and no docking provided value to the employer, insisting, for example, that the payments did not increase the speed of handling grievances, and that, in any event, such considerations have no relevance to the statute.

[8] The Department of Justice, not this Department, is responsible for interpreting and enforcing section 302 of the Taft-Hartley Act. The language quoted is from section 302(c) of the statue.

The public policy organization also contended that any conflict of interest should be disclosed so members can ''exercise their democratic rights'' when choosing representatives, and that the Department will hamper members' ability to exercise such rights by establishing a Form LM–30 that will provide ''less information on the financial activities of their representatives.'' Another public policy organization similarly argued that the Department is proposing to reduce the ''amount of information'' made available to members, the government, and the public regarding payments to union officials.

Additionally, the public policy organization argued that the effect of the union leave and no docking payments is to shift costs of union officer, employee, and steward training to the employer and to defray costs involved in the union's political activities. Thus, the commenter contended that reporting is needed for the public to be made aware of these effects. Furthermore, the commenter insisted that the effect of the NPRM's ''new definition of 'bona fide employee''' will require the filing of other LMRDA reports, including ''persuader reports'' under section 203 of the Act.

Finally, both public policy organization commenters disagreed with the Department's position that, as a matter of policy, there was no persuasive reason why union officials should report union leave and no docking payments while employers are not required to do so pursuant to the Form LM–10, Employer Report, and section 203 of the statute.

2. Response to Comments

In response to the comments received, and for the reasons stated in the NPRM and discussed herein, this rule effectuates the Department's proposal to rescind the requirement in the 2007 rule that union officials report compensation and benefits they receive under employer union leave and no docking policies. In the NPRM, as noted above, the Department advanced three reasons for its proposal: (1) The historical interpretation under which such compensation was not reported comports more readily with the language in section 202 than the interpretation in the 2007 rule; (2) the 2007 rule imposes a substantial burden on union officials to report on matters unlikely to pose conflicts of interest and this burden could unduly interfere with the internal workings of labor unions and labor-management relations; and (3) the absence of any persuasive policy reason why union officials must report receiving such payments while employers making such payments are under no similar obligation.

With regard to the language of section 202, the Department believes it is best read to require reporting of payments only when a union official is not a bona fide employee of the employer making the payment. This reading departs from the 2007 rule's approach, which sought to equate payments to ''bona fide employees'' with payments made to union officials for ''productive work'' on the employer's behalf. In the 2010 NPRM, the Department made the additional points, discussed below, in rejecting the position taken in the 2007 rule. 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.[9] Thus, section 202(a)(1) is most naturally read to except from reporting union leave and no docking payments to a current or former employee of the company making the payment unless made under the guise of employment, such as where payment is 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 under the agreement. In contrast, 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 by custom or practice of the workplace pursuant to the collective bargaining agreement, the legitimacy or ''bona fides'' of the payment, received as a result of a genuine employment relationship, is established.

In response to the comments received, the Department notes that payments received as bona fide employees may include wages and other benefits received as compensation for service as an employee of the employer, *and* other compensation, such as jury duty leave, military leave, and maternity and paternity leave. It is not relevant whether or not the payments made to employees are for work or other activities engaged in under the control or direction of the employer, as employers routinely provide payments to employees as bona fide employees in such circumstances, which the 2007 rule also recognized. See the definition of ''bona fide employee,'' in the 2007 Form LM–30 Instructions, which exempts, in part, payments or benefits received for ''leave for jury duty.'' Further, the Department does not recognize any difference between union leave and no docking payments from other types of leave payments that are not for ''productive work,'' assuming that they are all bona fide, or good faith, payments.

The Department disagrees with the commenters' conclusions that unless union leave and no docking payments to union representatives are reported there will be no disclosure of de facto ''no-show jobs,'' ''featherbedding,'' or similar abuses of the employment relationship.[10] Contrary to this commenter's view, such payments are reportable on the pre-2007 Form LM–30, the 2007 Form LM–30, *and* the revised Form LM–30, as they are payments that are not received as a *bona fide, i.e.,* good faith, employee. See IM entry 248.200; see also the NPRM at 75 FR 48422.[11] Nothing in the Department's proposal suggested otherwise. Regardless of the label the commenter might attach, *e.g.,* de facto ''no-show job,'' what is relevant is whether or not the payment was received as a bona fide employee. Further, as mentioned, the legitimacy of the payment is established when it is made pursuant to the terms of a collective bargaining agreement. Thus, the determination of whether or not such payments are made pursuant to a collective bargaining agreement, or a custom or practice made pursuant to a

[9] *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.'' See 75 FR 48422.

[10] The Department disagrees with the assertion that a union official remaining on an employer's rolls under a grant of ''super-seniority'' would have had an obligation, simply upon that status, under the Act to report all payments received from an employer. Like any union official, an official with this status would have been required to report union leave or no docking payments under the 2007 rule. However, payments made to an official for his regular production work have never been reportable under the Act. Payments received for production work are not reportable because they are received as a bona fide employee of the employer making the payment. An employee's super-seniority status does not change this analysis. See 72 FR 36127–28.

[11] The Department states that, as a general matter, union leave and no docking payments are received by union officials as bona fide employees, but it will evaluate the factual circumstance concerning any type of payment to a union official, on a case-by-case basis, if there is any question whether or not the bona fide nature of the arrangement has been established.

collective bargaining agreement, is not only relevant but statutorily necessary. ''Bona fide'' means ''genuine'' or in ''good faith,'' the application of which, in a unionized workplace, must be made in part by analyzing the collective bargaining agreement.[12]

Further, the Department disagrees with a commenter's suggestion that no docking and union leave payments are a type of ''featherbedding'' or ''no show jobs'' and as such are unlawful or at least subject to disapproval on public policy grounds.[13] Indeed, as just discussed, ''no-show jobs,'' ''featherbedding,'' and similar improper payments are distinct from those payments that an employee of the employer receives as a *bona fide* employee of such employer. Moreover, it is longstanding Departmental policy that the bona fide employee exemption can only be applied to union officials if they are current or former employees of the employer. See IM entry 243.200 (based on an opinion rendered on August 17, 1962). As stated, the bona fide nature of the payments is established by virtue of the collective bargaining agreement or by custom and practice under the collective bargaining agreement, or by policy, custom, or practice without regard to an employee's position within a labor organization. The Department emphasizes that it did not propose to exempt *any* payment from an employer to a union official pursuant to a collective bargaining agreement, nor did it propose to exempt any payment from an employer to a union official simply because the official is also a current or former employee of such employer. Rather, the Department proposed and here adopts the position that payments and other benefits from an employer to a union official are exempt if such payments and other benefits are ''received *as* a bona fide employee of such employer'' (emphasis added). See section 202(a)(1).

Additionally, as stated in the NPRM and noted in the 2007 rule, union leave and no docking payments were common at the time the LMRDA was enacted. 72 FR at 36126. As set out in the NPRM, these payments were not an issue of concern in the hearings before the McClellan Committee or in any of the legislative materials relating to the LMRDA, unlike payments such as for no-show work or featherbedding. 75 FR at 48422. 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, as explained in the 2010 NPRM, at 75 FR 48422, 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. See Senate Hearings, at 123 (statement by Professor Cox that union officials who followed the AFL–CIO Ethical Practices would have ''virtually nothing to disclose in his report to the public'').

With regard to the second reason advanced in the NPRM for removing union leave and no docking from the Form LM–30 reporting requirements, the Department continues to believe, as explained below, that such reporting imposes a substantial burden for union officials on matters unlikely to pose conflicts of interest, and thus unduly interferes with the internal workings of labor unions and labor-management relations. In response to those commenters who argued that the Department is downplaying the importance of section 202 reporting, the Department has acknowledged repeatedly in the various LM–30 rulemakings that section 202 is intended to capture payments that, although not necessarily illegal, are ''atypical financial arrangements'' that should nevertheless be disclosed to union members and the public if they present a potential conflict of interest. Such disclosure aids union democratic self-governance and assists government agencies and the public to identify potential corruption. The Department has also acknowledged that a ''special benefit'' received by a union official from a represented employer should be disclosed if it would likely constitute an actual or potential conflict of interest. At the same time, however, the Department is mindful that section 202 does not require general reporting of union officials' financial information.

In the Department's view, union leave and no docking payments, like other payments received by a bona fide employee, reflect ordinary arrangements, mutually agreed upon by the employer, the union, and the employees, that do not present such a danger of a conflict of interest or corruption. As articulated in the NPRM, the Department does not view union leave and no docking payments as presenting the type of danger that Congress intended to highlight through reporting. Such payments, where established by virtue of the collective bargaining agreement, or by custom and practice under the collective bargaining agreement, or by policy, custom, or practice without regard to an individual's position within a labor organization, do not present the sort of conflicts of interest 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 management and labor, the payments

[12] See *Caterpillar, Inc.* v. *UAW,* 107 F.3d 1052 (3d Cir. 1997) (employer's payments of salary and benefits to union grievance chairpersons did not violate section 302 of the LMRA). The majority stated that the collective bargaining agreement ''does not immunize otherwise unlawful subjects but, by defining the basis for the payments, speaks directly to the question posed by the statute as to whether the payments are ''compensation for, or by reason of * * * service as an employee.'' *Id.* at 1057.

[13] The commenter may have its own distinctive notion of how these terms may be used, but its suggestion that union officials receiving compensation or union leave benefits for the work they perform on labor-management matters is somehow improper or tainted is misplaced. Simply put, the terms ''featherbedding'' and ''no show jobs'' cannot be fairly applied to the work undertaken by union officials in representing the union and its members in administering the contract between the union and the employer. The term ''featherbedding,'' is usually associated with practices to keep workers on a company's payroll, even though the jobs are no longer needed because of changes in production methods. See Robert's Dictionary of Industrial Relations. As there defined, the term refers to ''make work for [a union's] members through the limitation of production, the amount of work to be performed, or other make-work arrangements.'' *Id.,* 251. See also 29 U.S.C. 158(b)(6) (making it an unfair labor practice for a union ''to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed''). ''No-show jobs'' is a term more commonly associated with extortion or shakedown by criminal elements, rather than as a means of preserving a worker's livelihood in the face of technological change or a payment with the object of promoting constructive labor-management relations. Unlike ''no-show jobs'' where an individual receives pay for no work, union officials are performing the work for which they are being compensated, work deemed to be in the mutual interest of the union and the employer. Clearly, ''featherbedding'' and ''no-show jobs,'' as these terms are commonly understood, cannot fairly be applied to union leave and no docking arrangements in which union officials engaged in activities that advance the collective interests of a company's workers represented by the union. While featherbedding and no-show jobs are reportable on the revised Form LM–30, union leave and no docking payments are not.

cannot be made. They are not kept secret from employees.[14]

Moreover, the Department is persuaded that an employer's agreement to pay its employees to work for or serve the union does not, in and of itself, have an influence on the duties or loyalties of the union official, since union leave and no docking payments are on the same terms as the payments the bona fide employee would otherwise receive if he or she continued work performed for and under the control of the employer. Indeed, the members themselves are paid by the same employer. Furthermore, when the union official or representative no longer serves in such a labor-management capacity he or she could return to regular full-time production work for the employer receiving the same payments and benefits received while working as a union official or representative.[15]

The Department disagrees with the view of a public policy organization that any ''special benefit'' received by a union official must be reported, or that any ''special benefit'' nurtures an environment in which self interest takes priority over the interests of a bargaining unit. Relying on *United States* v. *Phillips,* 19 F.3d 1565 (11th Cir. 1994), the commenter suggested that union leave, no docking payments, and ''special benefits'' create not only a hypothetical conflict of interest, but reflect ''in fact, how labor unions operate.'' As an initial matter, the Department strongly disagrees with the notion that financial self-interest on the part of union officials animates how unions represent the interests of their members. Additionally, the commenter's reliance on *Phillips* is misplaced.

The *Phillips* decision does not concern union leave and no docking arrangements. In that case, an employer and union officials were convicted, in part, for violating the LMRA by ignoring a collective bargaining agreement and granting *retroactive* leaves of absences, and thus pension benefits, to the officials. The Department believes the court reached the right result in that case. Further, the opinion in that case cannot be read to suggest that the improper conduct there involved was at all symptomatic of how union officers conduct their activities on behalf of their members, nor does it affect the reporting of union leave and no docking arrangements. Moreover, the result in that case lends support to the Department's proposal. In *Phillips,* the payments received were by union officials who were no longer employees of the employer at the time the benefits were arranged, and the retroactive leave was not provided for in the collective bargaining agreement. Because the benefits there at issue were not received pursuant to union leave or no docking arrangements or otherwise received by union officials as *bona fide* employees of the employer, the benefits would have to be reported under both the Department's proposal and the 2007 rule. Moreover, the commenter's reliance on *Phillips* is further undercut by that court's recognition, citing *BASF Wyandotte Corporation* v. *Local 227,* 791 F.2d 1046, 1049 (3d Cir. 1986), that no docking payments are not unlawful under the LMRA. See *Phillips,* 19 F.3d at 1575.

The Department finds instructive the discussion concerning union leave and no docking payments in *Caterpillar, Inc.* v. *UAW,* 107 F.3d 1052,1056 (3d Cir. 1997), where the court recognized that such payments, while not compensation ''for hours worked in the past, certainly were 'by reason of' that service.'' The court also noted that the union leave and no docking are arrangements in which ''every employee implicitly gave up a small amount in current wages and benefits in exchange for a promise that, if he or she should someday be elected grievance chairperson,'' the employer would continue to pay his or her salary. *Id.* Thus, such payments only benefit those union officials who are members of the bargaining unit, and all members of the bargaining unit have the potential of receiving such payments if they become union officials. Further, all represented employees benefit from the work of their fellow employees who represent them.

In response to the commenter who asserted that union leave and no docking payments constitute an improper ''subsidy'' to the union, the Department disagrees. These payments are provided by mutual agreement of the union and the employer to facilitate labor-management relations. The payments are made to current or former employees who have been selected by the union to perform this service to the bargaining unit, a practice that provides benefits to both labor and management. These payments are similar to other benefits provided to employees represented by the union such as payment for jury duty, military service, and other situations as discussed above.

In response to the commenter who questioned the impact of union leave and no docking reporting on labor-management relations, the Department is particularly concerned about the potential consequence of requiring reporting of payments received under union leave or no docking policies (*i.e.,* union members will be discouraged from running for union office and others from serving as stewards). The Department believes that its historical position to except union leave and no docking payments from reporting is consistent with the purposes of the LMRDA and 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). 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 organizations. As explained in the 2010 NPRM, a number of states require the establishment of joint labor-management safety and health committees. 75 FR 48424. Having employees serve on employee assistance programs and wellness committees is also seen as a cost-effective business decision by many employers. *Id.* The Department concurs with those commenters who stated that union leave and no docking arrangements increase the speed of grievance adjustments, and otherwise benefit labor-management relations. The Department does not view the section 202 reporting provisions as requiring the reporting of such mutually beneficial arrangements between employers and employees.

Regarding the Department's characterization of the reporting burden as ''substantial,'' the union commenters generally agreed with this assessment. However, some public policy groups disagreed, with one focusing upon the 250-hour threshold.[16] As discussed

[14] 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. Indeed, the court in *Caterpillar Inc.* v. *UAW,* stated ''each rank-and-file employee has the opportunity to vote'' on the collective bargaining agreement, which is ratified by the union membership, and which provides the membership a means to hold officials receiving the payments accountable. The court asserted that such payments thus differ from ''bribery, extortion, and other corrupt practices conducted in secret.'' See *Caterpillar* 107 F.3d at 1057. Moreover, under section 104 of the LMRDA, each bargaining unit member may receive and inspect a copy of the collective bargaining agreement.

[15] The Department also notes that a union official or representative who receives union leave or no docking payments from an employer, as a bona fide employee of the employer, does not, thereby, owe any allegiance to such employer in conflict with any duty to the union and its members, as the union appoints or elects its own representatives.

[16] The Department also disagrees with the comments regarding the significance of the 250-hour threshold, as it is not clear why the number

Continued

below, such burden is substantial, even with the 250-hour exemption.

As noted above, one commenter criticized the Department's description of the burden associated with the 2007 rule, noting that the proposed rule reflected only a five-minute recordkeeping savings. This commenter overlooked that the significant number of union officials who would be excluded from filing under the proposed and final rules will be saved the 120-minute burden imposed by the 2007 rule and, for those who do file, the reporting burden has been reduced by 25 minutes. Further, the burden estimate for the 2007 rule only tracks the number of and burden upon *respondents* (*i.e.,* filers) to the 2007 rule. As such, the 2007 rule did not include the number of and burden on union officials, stewards, and other union representatives who, although not reaching the 250-hour union leave threshold, would need to keep track of such hours to determine whether or not filing would be required for their union leave or no docking payments. See 75 FR 48424, n. 9. Moreover, the burden on respondents and non-respondents is heightened because such payments are not likely to generate a conflict of interest and may discourage individuals from serving as representatives for their fellow workers.

Additionally, as articulated by some of the commenters, it may prove difficult for union officials and representatives to obtain information concerning benefit compensation from their employers in order to comply with the union leave and no docking reporting required under the 2007 rule. These practical problems faced by union officials, 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.

As the Department explained in the NPRM, there is no persuasive policy reason why union officials must report such union leave and no docking payments, and thus bear the burden of such reporting, while employers making such payments are under no similar obligation or burden. As stated in the NPRM, the Department has reexamined the policy underlying the current requirement and has concluded that the inconsistent application is unreasonable regarding the imposition of these reporting requirements on union officials but not employers. 75 FR 48423. The Department disagrees with the commenters' statement that, in making this determination, the Department was ignoring the structure and language of the statute. To the contrary, the Department's view is entirely consistent with the statute. The specific reference in section 203 excepting from reporting ''payments of the kind referred to in section 302(c) of the [LMRA]'' does not require that section 202 be read to mandate such reporting where such payments are received by an employee.[17] Indeed, there would appear to be no reason why such payments, regularly made by some employers in the ordinary course of conducting labor relations, would require union officials, as the recipients of such payments, to report their receipt but not require employers making the payments to report them. The commenters have provided no persuasive argument to counter this observation. Additionally, the instructions, as drafted, mitigate any concern that such payments are concealed from union members. Under the rule, union leave and no docking payments must be reported unless they are made pursuant to a collective bargaining agreement, or by custom and practice under a collective bargaining agreement, or by policy, custom, or practice without regard to an individual's position within the union.

Finally, the Department notes that a commenter suggested that the proposed change would create other potential consequences affecting election law, labor-management matters unrelated to the LMRDA, persuader activity reports under section 203 of the Act, and other matters involving public policy. The commenter did not fully explain its concerns, but it appears that some of these issues involve statutes over which the Department has no authority and that none of these concerns are material to the changes proposed by this rulemaking. While the discussion of other LMRDA provisions is obviously necessary to address some issues, this rule only addresses the scope of reporting required by union officers and employees pursuant to LMRDA section 202. As discussed below, other commenters have asked the Department to use this rulemaking to resolve issues that may arise under the Act's other reporting provisions. While these comments are helpful to the Department in identifying concerns among the various regulated communities and informing the Department about how it might best direct its compliance resources, the Department cannot resolve those concerns in this rule.

B. Coverage of Stewards and Similar Union Representatives Under Section 202

The Department is effectuating its proposal to return to its longstanding policy that union stewards and similar volunteer union representatives are not as a general rule covered by the Form LM–30 reporting requirements. 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).

As proposed in the NPRM, 75 FR 48423–25, and as articulated below, the Department rescinds the definition of ''labor organization employee'' in the 2007 Form LM–30 that extends Form LM–30 coverage to such union representatives and inserts the following language in the revised Form LM–30

of hours worked pursuant to a union leave or no docking arrangement affects a potential conflict of interest. See *Caterpillar, Inc.* v. *UAW at 1056.,* in which the majority questions why Congress would sanction multiple employees receiving less than eight hours per day of no-docking payments but would criminalize eight hours of union leave payments per day for a single employee.

[17] 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.

Instructions in Section II, Who Must File.[18]

For purposes of the Form LM–30, an individual who serves the union 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 *by virtue of service in such capacity.*

In the final rule, the Department added the last phrase, in italics, for clarity. As explained in the NPRM, individuals serving as stewards or in other volunteer positions would be subject to the same reporting obligations as other officers and employees, if they are officers pursuant to their union's constitution or bylaws—an atypical situation—or otherwise qualify as a union employee. The italicized words better convey this point than the language proposed in the NPRM, which had used the adverb ''exclusively'' to qualify the statement.

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 or union leave 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 union leave or no docking payments from an employer.

As stated in the 2010 NPRM and upon further 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. (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, based upon whether or not the official qualified as a bona fide employee of the payer-employer *during the time for which payment was made.* 72 FR 36124. (emphasis added).

Upon review and reconsideration, the Department took the position in the 2010 NPRM that the Form LM–30 reporting requirements should not be expanded to include stewards. As there noted, requiring ''stewards'' to file Form LM–30 reports as ''employees,'' solely on the basis of having received union leave, ''no docking,'' or ''lost time'' payments, raises policy, interpretative, and practical concerns.

First, from a policy perspective, imposing obligations on union stewards and other volunteers (*e.g.,* those who serve on health and safety, productivity improvement, and bargaining committees) intrudes in internal union affairs. Union stewards and other representatives perform valuable tasks and extending reporting requirements to them would significantly hamper union efforts to recruit and retain stewards and other representatives.

Second, 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. While section 202 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),'' it does not require reporting from stewards. In contrast, however, Congress expressly required employer payments to stewards to be reportable, pursuant to section 203, subject to certain exceptions. The Department explained in the 2010 NPRM that 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, as explained in the NPRM. 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.

1. Review of Comments Received

The Department received 16 comments that specifically addressed this particular issue. Of these 16 comments, 13 supported the return to the historical interpretation that such individuals are not considered union employees for reporting purposes under section 202, 12 unions, and one law firm. Three comments opposed the change, including a public policy group, a legal defense foundation, as well as 225 individuals who sent in a form letter.

a. Comments in Support of NPRM

There were 13 comments in support of the proposal to rescind required reporting by union stewards. A federation of labor unions stated that the 2007 rule significantly increased the universe of potential filers, noting especially the addition of stewards and other ''on-the-job union representatives,'' as employees of the union. In the commenter's view, this imposed Form LM–30 requirements on ''tens of thousands of union members who voluntarily'' perform representation functions for fellow workers during the regular workday.

An international union supported the Department's view that steward reporting is not required based on legislative intent. The commenter stressed the NPRM's analysis of the structure of the LMRDA, which recognized that ''stewards'' are not included in section 202, as well as the legislative history and intent, such as a prior draft of section 202 that specified their inclusion. The commenter characterized the removal of stewards reporting to be ''reasonable'' and consistent with the intent of the Act, and agreed that the inclusion of stewards would hinder members' willingness to volunteer to serve their fellow workers and would be a loss to labor-management relations.

A national union stated that subjecting stewards to the reporting requirements would discourage employees from volunteering to serve in that capacity. Another national union also maintained that the 2007 rule greatly expanded the Form LM–30 reporting requirements, and stated that stewards are members who volunteer to ''play a key role'' in ensuring smooth workplace operations. Thus, they should be ''encouraged'' to serve the union and not ''punished with onerous reporting.''

An international union emphasized that requiring stewards to file the Form LM–30 would discourage members from serving in this important position. Further, according to the commenter, stewards benefit management as well as the employees and the union, and removing them from potential reporting obligations furthers labor-management relations. The commenter expressed its view that the Department should not discourage this involvement. Another international union stressed that this change in steward coverage ''will end considerable confusion'' over the

[18] The definition of ''labor organization employee'' in the NPRM included the word ''exclusively'' prior to ''as a union steward * * *''

reporting requirements, which, combined with the burden associated with the form, has, in the commenter's experience, ''deterred aspirants'' for steward and similar volunteer positions crucial for unions and the workplace.

A national union described stewards and similar positions as ''voluntary, unpaid positions'' that are filled by members who are not officers or employees of the union. Stewards generally handle grievances during breaks or before or after their regular working hours, while they also often receive union leave or no docking payments for union work during the employer's time. Regardless, the commenter contended that imposing coverage on such individuals would ''seriously undermine cooperative labor-management relations and productivity.'' Not only would individuals be discouraged from volunteering to serve, but those that do may be deterred from doing so during work hours, delaying grievance adjustments.

Some union commenters acknowledged that individuals who are union stewards may be required to report ''in the unusual circumstances'' when the steward is a constitutional officer position, is a paid position in the union, or is an employee of the union under circumstances distinct from his or her status as steward.

Further, a law firm also agreed with the Department's view as stated in the NPRM that, if Congress had intended that stewards would be subject to the reporting requirements of section 202, it would have indicated that intention in fashioning the terms of section 202 as it did under section 203. In contrast to section 202, employers are required by the express terms of section 203 to report payments made to stewards.

b. Comments in Opposition to NPRM

In response to the NPRM, OLMS received a form letter signed by 225 individuals in opposition to the Department's proposal. The letter stated that stewards are an ''essential part of union representation,'' elected by coworkers, to ''responsible positions,'' and have the status of a ''union official.'' The letter also noted that because most stewards receive no compensation for performing their duties, they may be more sensitive to other forms of reward, suggesting to these individuals the need for conflict-of-interest reporting by stewards.

A few public policy groups also opposed the Department's proposal to rescind the general reporting requirement for stewards. One public policy organization agreed with the Department insofar as union leave and no-docking payments are concerned, but it argued that the NPRM went too far in exempting stewards and similar representatives from all reporting. This commenter stated that these union representatives should report all income received directly or indirectly from employers that is not related to their representation role, such as payments received for mowing the lawn of a management representative or painting the representative's house.

Finally, a public policy group claimed, without elaborating, that most stewards perform functions of union officers and therefore are ''officers'' within the meaning of the LMRDA required to report pursuant to LMRDA section 202.[19] Moreover, the commenter contended that the Department has no authority to exempt from coverage of the Act as many as 80,000 individuals who, in its view, are covered by the reporting provisions of section 202; this commenter also concurred with the view that stewards are union employees.

2. Response to Comments

The Department concurs with the comments affirming the central and important role that stewards and similar union representatives play in the labor-management context. As stated by many of the commenters, stewards and similar union representatives differ from union officers and employees in that they are union members who volunteer portions of their time to union representation without additional compensation. Additionally, unlike officers, stewards are often appointed; in many construction unions, they are appointed (or removed) by the Business Manager of the local union. Stewards, safety and health, and bargaining committee members are typically created and empowered by the collective bargaining agreement, not by the union's constitution and by-laws. Additionally, the Department concurs with the numerous commenters who confirmed the Department's position in the NPRM that imposing obligations on union stewards and other volunteers may also significantly intrude in internal union affairs and labor-management relations.

The Department also concurs with the unions that stated that the 2007 rule increased burden on stewards, in part, through the confusion surrounding their coverage, thus also significantly intruding in internal union affairs and labor-management relations. Although the 2007 rule denied such a chilling effect would be created, the Department has reconsidered this position. The Department has concluded that the impact on those who would have to file, coupled with the confusion and uncertainty created by extending all of the Form LM–30 reporting obligations to stewards and similar union representatives—even for those that actually had no payments or interests to report—invariably would dissuade some individuals from continuing in, or later volunteering for, those positions. Moreover, independent of the reporting required by the 2007 rule, 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 to serve in such positions—a loss to the union, the employer, and these individuals' fellow employees, as well as to the effective conduct of labor-management relations.

Section 202 does not refer to stewards as union officers or employees. Because other sections of the LMRDA expressly apply to stewards, the Department views their omission from section 202 as an intention to exclude them from its application. As noted in the NPRM, 75 FR 48424, employers must report payments to stewards pursuant to section 203; and stewards are explicitly covered by the fiduciary responsibilities provision of section 501 and the bonding provisions of section 502. The Department acknowledges the central role that stewards play and responsibilities that they exhibit within labor organizations, as demonstrated by the provisions of the LMRDA that apply to them. However, as stated, the statutory structure indicates that Congress deliberately did not apply the section 202 requirements to stewards, presumably because it did not want to unduly interfere with legitimate labor-management relations.

Furthermore, the statute provides for disclosure of payments to stewards without imposing reporting obligations on the stewards themselves. Section 203 of the statute requires employers to disclose any payment, subject to certain exemptions, to any ''officer, agent, shop steward, or other representative of a labor organization.'' Thus, the concerns

[19] The commenter further argued that if the Department classifies stewards as ''essentially employees of an employer,'' then agency fee payers would have no union fees to pay. The commenter offers no further explanation for its conclusion, which is not self-evident. However, as the Department has noted in a previous rule, the Department does not regulate payments by agency fee payers or reports prepared by unions showing how they compute costs that are allocated to agency fee payers. See 68 FR 58395.

of the commenter that was troubled by the prospect that payments to stewards other than those for no docking or union leave would be undisclosed are unwarranted.

The Department disagrees with the comment that most union stewards necessarily must be considered union officers and, as such, required to file reports pursuant to section 202. The Act defines union officers as ''any constitutional officer * * * and any member of [the union's executive board or similar governing body.'' LMRDA, section 3(n). As noted earlier, a steward generally is responsible for informing employees of their rights under a collective bargaining agreement, investigating and presenting grievances, and otherwise enforcing the collective bargaining agreement. These are not executive responsibilities normally associated with union officer positions, as described in union constitutions and bylaws; rather, they draw their essence from the collective bargaining agreement. In unusual situations, the position of steward is a constitutional office in the union (or is authorized to perform the functions of an officer). In other instances, an individual, although serving as a steward, is an employee of the union under circumstances distinct from his or her status as steward. In those circumstances, such individuals, both historically and under this rule, are subject to the reporting requirements of the Form LM–30, as union officers or union employees. The Department notes that several union commenters concurred with this position as well.

Finally, the Department disagrees with the suggestion that the Secretary's proposal is inconsistent with the Act and that the Department, in effect, lacks discretion to disregard what the commenter views as the clear command that stewards are employees of the union when they act on the union's behalf. Until the 2007 rule, stewards had not been required to file reports under section 202, and the 2007 rule was based on an interpretation of the ambiguous statutory term ''labor organization employee.'' 72 FR 36144. The rule did not claim that coverage of stewards was required by the terms of the statute, and indeed it did not place coverage of stewards in the category of revoked ''administrative exceptions.'' 72 FR 36156.

The structure of section 202, itself, demonstrates that Congress did not intend that stewards be considered to be union employees by virtue of service in such capacity. Again, the position of 'steward' is not enumerated in section 202 as it is in other provisions of the statute. No commenter challenged this view of the statutory language, and several comments supported it. Rather, under section 202, only union employees and officers are required to submit reports. In sum, for the reasons stated in the NPRM and earlier in this preamble, stewards and other volunteers, as a general rule, are neither officers nor employees of a union. The commenters offer no persuasive argument that the Department has departed from the Act's reporting mandates.

C. Reporting of Loans and Other Transactions With Credit Institutions

This rule effectuates the Department's proposal to amend the Form LM–30 to exempt from reporting marketplace transactions with bona fide credit institutions, including loans, interest, dividends, and payments and credit extended through credit card transactions, provided that they are arm's length transactions in accordance with usual business practice. In so doing, the Department establishes the appropriate balance between privacy and disclosure intended under the LMRDA—to disclose only a union official's actual or potential conflicts of interests, while keeping private bona fide investments ''because they are not matters of public concern.'' Senate Report, at 15, reprinted in 1 Leg. History, at 411. See 75 FR 48425.

The 2007 rule established the general requirement that union officials report the details of any loan received from any business that deals with the official's union, the union's trust, or represented employer (in substantial part). 72 FR at 36133–38. This aspect of the rule engendered strong protests from union officials and some segments of the financial services industry as intrusive and unduly complex. Thus, shortly after the rule's publication, the Department issued guidance to reduce the complexity in the rule and the confusion about its requirements. The Department issued this guidance through a series of Form LM–30 Frequently Asked Questions (FAQs), posted on the Department's Web site,[20] which identified several kinds of payments from credit institutions that did not require reporting so long as they were arm's length transactions in accordance with usual business practice. These payments included interest and dividends involving savings and checking accounts and certificates of deposit and credit card arrangements.

In the 2010 NPRM, the Department explained that the 2007 rule reflected a policy choice in favor of the disclosure of information, even without a showing of a likely conflict of interest, and even with the risks concerning burden upon and intrusion into the private affairs of union officials. 75 FR 48425. In the 2010 NPRM, the Department further explained that it may not have given sufficient weight in fashioning the 2007 rule to Congress's concern that the LMRDA should not unnecessarily regulate unions and their officials, and that the burden of reporting such routine transactions would outweigh the value of any additional information disclosed. *Id.*

The Department explained that loans and other transactions made on market terms are usual, regular transactions, unrelated to the officials' status in the union, and are therefore unlikely to pose a conflict of interest with the officials' duties to the union. 75 FR 48426. In contrast to these loans and transactions, a loan, gift, or other benefit obtained from a transaction other than at arm's length provides the union official with a net monetary gain, and consequently a potential motive to deal with a business in a way contrary to the interests of the union. Thus, the Department concluded that the better policy is to require the reporting of loans and other bona fide financial transactions from a credit institution only where the transaction is on other than market terms. *Id.*

Furthermore, as discussed in the NPRM, the proposed bona fide financial transaction reporting exemption under sections 202(a)(3) and (4) would prevent the submission of superfluous reports that would overwhelm the public with unnecessary information, thus impeding the discovery of true conflict-of-interest payments. 75 FR 48425. The proposal also would prevent unnecessary burdens on union officers and employees and avoid interference with the privacy of such officials. *Id.*

[20] *http://www.dol.gov/olms/regs/compliance/RevisedLM30_FAQ.htm.* FAQs 70–73 deal with issues surrounding payments from credit institutions. 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.

Additionally, the Department there explained, at 75 FR 48426, that in the 2007 rule the Department excepted from reporting under section 202(a)(6) such bona fide financial transactions with a credit institution because of the burden associated with reporting what ''are among the most common financial transactions undertaken by individuals.'' 72 FR 36118. The NPRM stated the Department's belief that this reasoning also must apply to the reporting of marketplace loan transactions under sections 202(a)(3) and (4). 75 FR 48426.

The NPRM explained that the proposed revision was limited to bona fide loans from legitimate credit institutions. 75 FR 48426. The Department has not changed other longstanding interpretations of section 202 that require union officers and employees to report other payments from vendors, service providers, credit 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 or loans received from employers or businesses that are not credit institutions.[21] *Id.* As explained below, the Department has determined to adopt, without change, the position set forth in the NPRM regarding bona fide financial transactions with credit institutions on Part B of the revised Form 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.

1. Review of Comments Submitted Concerning the Proposed Changes to the Reporting of Loans Under LMRDA Sections 202(a)(3) and (4)

The Department received 14 comments about the proposed exemption regarding the reporting of loans. Of these 14 comments, two were from public policy organizations, 11 were from national/international unions, and one comment was from a federation of international labor unions.

a. Comments in Support of the Proposed Exemption Regarding Reporting of Loans

Comments submitted by all eleven national/international unions and the federation of international labor unions supported the Department's proposal to exempt the reporting of bona fide market rate loans from credit institutions. There comments expressed many common themes, including union officials' right to privacy in personal, routine financial matters unrelated to their union role, the undue burden associated with reporting bona fide arm's length transactions, and the absence of any link between these transactions and conflict-of-interest concerns.

Three commenters agreed that the Department's proposal achieves a correct balance between the privacy of union officers and employees and the Act's goal of disclosing actual or potential conflicts of interest. Another commenter stated that the requirements established by the 2007 rule (apparently as distinct from the interpretation in the FAQs) ''intru[des] into [union officials'] private affairs, and would produce information which is irrelevant to their union duties and the purposes of the LMRDA.'' As expressed by another commenter, the 2007 rule's ''broad requirement does not comport with the Act's intent to require only the disclosure of transactions in which there is actual or potential conflict of interest with an official's duties to his/her union and delves into personal matters that are of absolutely no public concern.''

Another commenter noted a parallel between the Department's proposal and the approach used in other ''ethics regimes,'' such as the financial disclosure rules established by each body of Congress. It explained that Congress does not require its members to report on loans that are made on terms generally available to the public, and that it made sense to treat similarly loans made to union officials on such terms.

b. Comments Opposing the Proposed Section 202(a)(3) and (4) Exemption Regarding Reporting of Loans From Bona Fide Credit Institutions

The two public policy organizations disagreed with the Department's proposal, arguing that such loans should be disclosed by union officials on the Form LM–30. One of these organizations stated that ''the fear that seemingly private mortgage information will somehow become public due to the reporting requirements of the Form LM–30 is misplaced,'' in that mortgages are public documents that can be obtained from a state recorder's office or, in some cases, accessed online. The same commenter addressed the Department's statement in its proposal, 75 FR 48425, that its revised interpretation ''would prevent the submission of superfluous reports that would overwhelm the public with unnecessary information,'' expressing its view that this concern is misplaced due to the technological developments of the 21st century. It characterized the Department's view as meaning that ''more information actually means less useful information.'' The commenter added that OLMS computer systems could easily handle all Form LM–30 reports, and allow cross-checking other forms, and stated that the public can view Form LM–30 data on *http://www.unionreports.gov* to ''find whatever information they seek.''

Another public policy organization commented that the Department's proposed administrative exemption for bona fide loans with terms no more favorable than those available to the public ''misses the point of disclosure and the need for it.'' The commenter added that, while the loan terms may not be more favorable than those available to the public, there is no ''guarantee that the loan was given to a qualified individual union official (*e.g.,* the union official may have a very low credit score or income insufficient to make the payments).'' The commenter also stated that ''union officers have been known to have their loans completely forgiven or paid off by another source,'' and added, ''* * * if there is no disclosure of the loan, then no one will know that a loan should perhaps not have been given or even that a possibly questionable loan exists.'' Additionally, this commenter referenced a media report concerning a public official's ''special loan'' arrangements with a particular mortgage company, asserting that just as voters benefit from such disclosure, union

[21] As stated in the 2010 NPRM:

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, where for example a union official receives a loan because of the official's status despite a credit history that would normally prevent an individual from receiving credit, or payments on the loan are extended or forgiven because of preferential treatment as a union official.

75 FR 48426, n. 11.

members would benefit from the disclosure of such loans.

c. Other Comments

Although the Department did not propose to eliminate the requirement that a union official must report loans from a represented employer that is a credit institution, such as a bank whose employees are represented by the official's union, some commenters submitted comments requesting the elimination of this requirement. Such a request is beyond the scope of this rule, but the Department, for completeness, discusses these comments below.

A federation of international labor unions urged the Department to create a reporting exemption, under section 202(a)(5) of the LMRDA, for bona fide loans and other bona fide financial transactions between a union official and a credit institution employer whose employees the official's union represents or is actively seeking to represent. An international union concurred with this request. These unions argued that by not applying the same arm's length exemption, as proposed generally in the 2010 NPRM,[22] to transactions involving credit institutions whose employees are represented by an official's union, the Department would be ignoring the regular course of business exemption in section 202(a)(5), which they assert relieves any reporting on any ''regular course of business'' transactions.[23]

The commenter asserted that the section 202(a)(5) marketplace transactions exemption should be applied to bona fide financial transactions with credit institutions. The commenter argued that the Department should give effect to what it sees as the same statutory interests involving routine transactions that would otherwise be reportable under other provisions of section 202. The commenter relied, in part, on its general reading of the Act's legislative history, which it reads to express an intention by Congress to not discourage any arm's length business transactions, which are not ''questionable in nature,'' illegal, or pose actual or potential conflicts of interests. This, according to the commenter, would also impose a significant burden on union officials whose unions represent or seek to represent employees of credit institutions. The commenter also stated that bona fide loans and other bona fide financial transactions between a credit institution employer and a union official are not reportable by the credit institution employer under section 203, citing the LMRA section 302(c)(3) exemption, 29 U.S.C. 186(c)(3). The commenter argues that, since credit institution employers are not required to report such loans and transactions on the Form LM–10 (Employer Report), then union officials should not be required to report such loans and transactions on Form LM–30.

1. Response to Comments

Upon consideration of the comments received on this issue, the Department has determined to revise the reporting obligation for union officials by adopting an exemption to the reporting of bona fide loans and other financial transactions made on market terms with credit institutions. In the Department's view, 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.[24] But for the Department's guidance and the position adopted in today's rule, a union official would have to report each mortgage or other bank loan received from any credit institution that deals with his union, a section 3(l) trust, or, in substantial part, with the represented employer. In the Department's view, the burden associated with such requirement would far outweigh the value of any information disclosed. In the 2007 rule, the Department excepted from reporting under section 202(a)(6) arm's length loans, interest, and dividends earned during the regular course of business with a 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 also must apply to the reporting of marketplace loan transactions under sections 202(a)(3) and (4).

The Department notes that union commenters agreed with the approach proposed in the 2010 NPRM, as well as the supporting rationale the Department offered. These commenters agreed that any benefit associated with disclosing arm's length transactions was heavily outweighed by the burden, loss of privacy, and limited utility that such disclosure would entail.

Only two policy organizations submitted comments in opposition to the proposal. One asserted that the Department had overstated the impact that the rule would have on an official's privacy. In this regard, it asserted that some of the same personal financial data that would be reported under the terms of the 2007 rule, such as mortgage information, may already be accessible to the public. However, the Department notes in response to this comment that such information is not made public in a reporting regime intended to disclose actual or potential conflicts of interest, as would be the case with the Form LM–30. That some mortgage information may be available publicly by people with easy access to that data does not excuse the intrusion that results from making public what most people still consider to be private financial information. Requiring a union official to collect and, in effect, publish all such information in the Form LM–30 certainly magnifies the intrusion. Further, that certain financial information can already be accessed by the public does not justify requiring that such information be reported on Form LM–30. Moreover, as discussed, the reporting of routine bona fide loans and similar transactions does not advance the disclosure purposes served by section 202 and therefore the burden associated with such reporting is not warranted.

One commenter stated that the Department was mistaken in its view that requiring bona fide loan-type information to be reported on the Form LM–30 could impede the utility of the form to union members and the public. The commenter pointed out that the Department's Form LM–30 Web site employs technology allowing data to be effectively managed and searched. The Department does not disagree with this

[22] Union officials must report, pursuant to section 202(a)(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.''

[23] The commenter notes correctly that the Department did not address its section 202(a)(5) argument in the 2010 NPRM. The Department there noted that any loans from an employer represented by the official's union (or whose employees it actively seeks to represent) must be reported pursuant to section 202(a)(2) of the LMRDA—including bona fide loans from a credit institution employer. See 75 FR 48426., n. 11.

[24] As discussed in the text, 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, where for example a union official receives a loan because of the official's status despite a credit history that would normally prevent an individual from receiving credit, or payments on the loan are extended or forgiven because of preferential treatment as a union official. Moreover, 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.

characterization of the efficiency of the OLMS Web site, but this observation is not relevant to the issue presented in the NPRM, as the Form LM–30 does not require general financial disclosure. Rather, its purpose is to highlight actual or potential conflicts of interest involving union officials. Thus, collecting large amounts of information with little or no utility can obscure other information concerning possible or actual conflicts of interest, as each report submitted must be searched separately in order to find information relevant to actual or potential conflicts of interest. Intermixing meaningful reports with thousands of innocuous reports impedes easy review of the reports that disclose actual or potential conflicts. Eliminating superfluous information removes an unnecessary burden on union officials and promotes the objective of section 202 to disclose actual and potential conflicts of interests.

The commenters expressed understandable concern that any loans or other transactions with terms preferential to union officials be reported. The Department's proposal, however, ensures that any such loans will be disclosed. Only loans and other transactions that reflect market rates are excepted from reporting. These transactions do not carry with them any indicia of a conflict, actual or apparent, between the union official and his or her duty to the union. As discussed in the 2010 NPRM and expressly stated in the Form LM–30 instructions, transactions not ''based upon the credit institution's own criteria,'' according to ''usual business practice,'' or ''made on terms related to the official's status in the labor organization'' must be reported on the revised Form LM–30. For example, if a loan is given to a union official with a low credit score, if a loan is extended or forgiven, if the loan does not reflect market terms, including usual fees, or if it otherwise evinces preferential treatment based upon the officials' union status, it must be reported. Any relaxation of the loan's terms, repayment requirements, or forgiveness must also be reported if based on preferential treatment because of the official's union status. Furthermore, loans received from employers or businesses that are not credit institutions must be reported. The same considerations apply to other transactions with credit institutions, including credit cards and interest-bearing accounts.

Finally, as noted, two commenters requested the Department to exempt from reporting loans and related transactions from credit institutions that are represented employers. Because the Department did not propose to eliminate this requirement, no extensive discussion is required. As noted in the NPRM, the Department acknowledged that it was not changing this aspect of the 2007 rule. Further, the Department notes that, historically, the Department has held that any loan to an official from an employer whose employees are represented by the official's union are reportable pursuant to 202(a)(2), without any statutory or other exceptions (other than the de minimis threshold). See IM sections 244.100 and 244.120; see also the pre-2007 Form LM–30 Instructions, Part A, exemption (iii).[25] The 2007 rule upheld this principle, and the Department stated in the preamble to the 2010 NPRM that a union official would need to report any loans from an employer represented by the official's union (or whose employees it actively seeks to represent).'' See 75 FR at 48426 n. 11. Additionally, the Department notes that the appearance of a conflict of interest and any temptation to curry favor by offering what appears to be an arm's length loan or related transaction on favored terms is much greater where the official's union represents (or seeks to represent) the institution's employees than where a loan is made by an institution that has a more attenuated relationship with the official's union.

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

In the NPRM, the Department proposed 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 actively seeks to represent; (2) payments received from trusts; and (3) payments from unions. In this final rule, the Department has adopted its proposals on these points.

As explained in the NPRM, 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 between an official's union and the entity from which the official receives a payment or in which the official holds an interest.

By contrast, section 202(a)(6) does not specify any relationship between an entity and an official's union, nor does it express 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 Labor Management Relations Act of 1947, as amended (LMRA)). As noted in the NPRM and discussed in the 2007 rule, the Department has long interpreted section 202(a)(6) as a ''catch-all'' that captures conflict-of-interest payments from employers not otherwise reportable in the previous five subsections of 202. Thus, 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) can be read to encompass disclosure of any employer payment that could present a financial conflict of interest for the union official. *Id.* The Department did not propose to change this requirement.

After a review of the comments received, the Department retains the general requirement, as earlier proposed, 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 the filer's duties to the labor organization). As proposed, the Department included a non-exhaustive list in the instructions for the revised Form LM–30 of examples of such actual or potential conflicts of interest. These examples included payments from business competitors of the employer whose employees the union official's union represents or whose employees the union is actively seeking to represent. Further, to ensure that only actual or potential conflict-of-interest payments are reported, the Department has qualified this requirement so that a union official, as a general rule, must report such financial interests only if the official is

[25] The exemption (iii) of Part A of the pre-2007 Form LM–30 Instructions exempts 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 transactions involving stocks, bonds, securities, or loans, for example.''

involved with the union's organizing, collective bargaining, or contract administration activities or possesses significant authority or influence over such activities. As explained in the NPRM, an official will be required to report such payments where he or she possesses such authority or influence by virtue of his or her position, even if such authority has not been exercised. This rule also effectuates the proposal to retain the requirement that union officials must report payments received 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.

The Department is revising, as proposed, the reporting requirements insofar as payments from certain trusts and labor unions pursuant to section 202(a)(6) are concerned. In contrast to the 2007 rule, which required payments from trusts to be reported, the Department proposed to return to its historical position that such payments are not reportable because they do not pose an apparent or actual conflict of interest between the official's personal financial interests and his duty to the union and its members. As explained in the 2010 NPRM and based upon the considered analysis in the Department's 1967 opinion on this issue, the Department believed that these payments pose ''no conflict with which Congress was concerned.'' 75 FR 48428. Further, the Department believes, as stated in the NPRM, that the better reading of section 202(a)(6) of the LMRDA is that labor unions and trusts are not within the universe of ''employers'' from which union officials should report payments, as both entities are treated separately from other ''employers'' under the Act. In drafting the LMRDA reporting and disclosure requirements, Congress delineated separate requirements for these discrete statutory actors (unions and trusts), and reporting of labor organization disbursements is set forth in section 201 of the statute, not section 202. Moreover, the Department maintains that this reading of the statute better implements the labor union and labor-management reporting requirements of the LMRDA.

Finally, the Department also retains, as proposed, the requirement that union officials must report five types of payments received from an employer, regardless of the relationship the employer has with the filer's union. These reportable payments to a union official (or the official's spouse or minor child) from any employer or labor relations consultant to an employer are payments 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 the filer's union represents or whose employees the union is actively seeking to represent; and (5) to influence the outcome of an internal union election. 72 FR at 36128, 36173. These payments, per se, create an actual or potential conflict between the filer's financial interests and his or her duties to the labor organization.

The Department received 15 comments on the scope of section 202(a)(6), with 12 supporting all of the changes,[26] one supporting the changes in part and opposing in part, and two comments opposing all of the proposed modifications to this aspect of the NPRM. The comments on specific aspects of the rule are addressed below.[27] As a preliminary matter, however, the Department believes it important to address the view expressed by two commenters that none of the proposed changes to reporting under section 202(a)(6) are justified.

In essence, these commenters read section 202(a)(6) as a mandate to require a union official to report on his or her financial interests with virtually all employers. The Department disagrees. It remains of the view that its interpretation is sound as a matter of law and policy. Granted, the terms of section 202(a)(6) are expansive, requiring a union official to report ''any payment of money or other thing of value * * * which he or his spouse or minor child received directly or indirectly from any employer.'' In contrast to the breadth of section 202(a)(6), however, each of the other paragraphs of section 202(a) addresses payments by particular employers or businesses that have dealings with the official's labor organization (202(a)(4)) or an employer whose employees are represented by the official's union or the union actively seeks to represent, (202(a)(1), (2), (3), (5)). The actual or potential conflict of interest for payments from and interests in such entities is evident.

The literal language of section 202(a)(6), if applied as the commenters advocate, would render superfluous the limiting language in the other subsections, as it would potentially require reporting from any entity that is an employer, regardless of whether or not the entity had any connection with the union and its represented employers. Given the absurdity of such construction, the Department, mindful of the statute's language and legislative history, has interpreted section 202(a)(6) as a ''catch-all'' provision, intended by Congress to capture various payments that would pose apparent conflicts of interest, even though outside the literal terms of subsections (a)(1)–(5). The Department has never interpreted this section in the way these two commenters apparently would prefer—as a mandate to require a union official to report on his or her financial interests from virtually all employers. The 2007 rule outlines this longstanding approach by the Department, 72 FR at 36128–30, and the Department has continued the same basic approach in this rulemaking, see 75 FR48426–29, 48434–35. As recognized in the 2007 rule and the 2010 NPRM, the Secretary must interpret the statute to clarify the intended reach of section 202(a)(6). 72 FR 36139–41; 75 FR 48429–30. Here, in contrast to the 2007 rule, the Secretary, in exercising her discretion to interpret that section, has concluded that it does not require union officials to report on certain payments received from employers that compete with represented employers, section 3(l) trusts, and labor organizations.

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

As explained in the 2010 NPRM and reiterated here, the Department has historically viewed subsection 202(a)(6) differently than the other subsections of section 202(a). The relationships addressed in 202(a)(6), such as that between a union official and a competitor employer to a represented employer, are further removed from the

[26] Seven of these commenters supported the proposed changes to the 2007 rule but also opposed other portions and thus suggested additional modifications to the form.

[27] Two commenters suggested that the Department should further revise the section 202(a)(6) requirements to limit reportable interests solely to those payments made by employers that would impact the labor-management relationship between a union and a represented employer. Thus, for example, they would exempt from reporting payments to a union official from a charity to which the official's union contributes. Because the Department did not propose such change, the comments are outside the scope of the rule. The Department briefly notes, however, that the suggestion is at odds with the general ''catch-all'' purpose of section 202(a)(6), would leave undisclosed conflicts of interest, and is not compelled by the language of section 202(a)(6) or the Act's structure.

activities of the union than those involving the represented employer and the other business relationships addressed in the first five subsections of section 202. In particular, the competitor employer does not have a current and ongoing relationship with the union; indeed, neither is actively seeking such a relationship (if it did, sections 202(a)(1), (2), and (5) would likely apply). Further, any payment made by a competitor or other employer to not organize or otherwise affect the union official's responsibilities with the union is per se reportable under Part C of the instructions. Moreover, the Department believes that in the outside chance that there could be a conflict concerning a union official and a competitor employer, the Department's ''significant authority or influence'' test, as shown in italics and discussed below, would ensure its reporting.

The instructions to the Form LM–30, as revised in this rule, provide:

> 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 these [28] 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.*

An example illustrates the difference between the 2007 Form LM–30 and the narrower reporting requirement implemented here. First, assume that an individual employed by a union to handle computer problems also works for a technology company that is a competitor of 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 gifts, gratuities, or other non-exempt payments he or she receives from the technology company.[29] Under this rule, the individual would not have to report these payments. In contrast, assume that an individual employed by a union as an organizer also works for a technology company that is a competitor of a company whose employees are represented by the union. Under both this rule and the 2007 rule, the individual would have to file a Form LM–30 to report gifts, gratuities, or other non-exempt payments he or she receives from the technology company.

Multiple commenters offered support for the proposal. One national/international union supports the change as it reduces burden on officials and focuses reporting on actual or potential conflict-of-interest scenarios. With respect to burden, the commenter stressed the ''layers'' of subsidiaries and affiliates that must be researched to identify the represented employer's competitors in order to determine if reporting is required. Moreover, the commenter contended that this information may not be publicly available.[30]

One international union supported the change, but also suggested that it should be narrowed further to require reporting of a ''gift'' only when an official has ''actual knowledge'' of an employer being a competitor to a represented employer. It explained that such a change would reduce a filer's burden because it would be unnecessary to ''research potentially complex chains of business ownerships through webs of subsidiaries and affiliates.'' The Department does not concur with this suggestion, as determining if an official had actual knowledge would hinge reporting on a subjective assessment. Rather, a reporting obligation is triggered by objective circumstances that create an actual or potential conflict, or an appearance of one, and then, upon its disclosure, allows members and the public to assess the implications. As discussed in section V.C. of the preamble, the asserted burden associated with this aspect of the rule is overstated. As the Department explains in that section, the rule allows most filers to compile the necessary information through a relatively easy three-step process.

Two public interest organizations opposed the change. The first stated that restricting reporting to officials involved in organizing, collective bargaining, or contract administration is contrary to the statutory text and the views Congress expressed in the legislative history. The commenter maintained that this change would remove a ''significant amount of disclosure by employers and union officials'' who do not engage in these activities. Another public interest organization similarly questioned why the Department would limit reporting to situations ''where an official is involved with organizing, collective bargaining,'' or so forth, as proposed. The commenter argued that this limitation would run counter to the purposes of the Form LM–30, which is to disclose conflicts of interest, and it does not accurately reflect the administration of most unions, in which any payments to any official, regardless of the formal title, could ''easily'' influence all the others. The commenter stated that, ''any representative in any capacity should be required to report relevant payments from any employer.''

The Department disagrees with the contention that this change to section 202(a)(6) reporting is not based in the statute or is contrary to the legislative history. To the contrary, the Department has consistently held that section 202(a)(6) is a ''catch-all'' for conflicts of interests not otherwise captured in the previous subsections of section 202. The Department's interpretation is consistent with section 202(a)(6), its legislative history, and the purposes served by the Act's disclosure requirements. The Department's proposal, as adopted in the final rule, provides clear examples to the public as to what circumstances trigger reporting, without overburdening union officers and employees. It triggers reporting on the core, essential functions of a labor organization: organizing, collective bargaining, and contract administration. In this regard, the Department notes, contrary to the commenters' apparent suggestion, that the Congressional goal in enacting section 202 was not to require wholesale ''disclosure by

[28] The NPRM stated, ''between *your* financial interests * * *'' The Department modified this phrase to read ''between *these* financial interests,'' so filers are aware that they must look at the payments and interests of their spouse and minor children as well as their own.

[29] It should be noted that such employee would not be required to report his regular wages from the employer. LMRDA, section 202(a)(6), which exempts payments of the kinds referred to in LMRA section 302(c)(1), excepts these payments from reporting. A public policy organization, which offered general opposition to the proposed changes to the reporting of payments from competitor employers, noted that the NPRM indicated that the wages paid by the technology company would be reportable under the 2007 rule, and that this mistake cast doubt on the entire NPRM. The text has been clarified to make plain that regular wage payments are not to be reported.

[30] The concerns of the commenters pertaining to the level of ''research'' that must be conducted in order to determine what payments are reportable are unsubstantiated and exaggerated. As discussed in greater detail in the top-down reporting section of this preamble, III.E., the scope of the official's inquiry is limited to considering non-exempt, atypical payments received from an employer and only *then* must the official look at the relationship that the employer has with the official's union. Nevertheless, by limiting this aspect of reporting to officials that possess actual authority or influence over subordinate affiliates, the rule should ameliorate concerns among some filers.

employers and union officials,'' but, rather, *conflict-of-interest* disclosure; the revisions contained in this rule effectuate this purpose.

The restriction of reporting to those with influence over organizing and similar areas applies only to the broad ''catch-all'' provision of section 202(a)(6), and not to the other provisions of section 202. Indeed, pursuant to these other provisions, the Department will continue to require reporting by union officers and non-exempt employees of payments from represented employers and the enumerated businesses with close relationships with the officials' union.[31] However, the Department does not interpret section 202(a)(6) in the same manner, as a competitor employer is further removed in relationship to the union. The Department notes, though, that Part C of Form LM–30 still requires the reporting of *any* payment to *any* covered union officer or employee, *if* the payment constitutes a per se reportable activity, pursuant to the Revised Form LM–30 Instructions, Part C: Other Employer or Labor Relations Consultant (reportable per se activities). This position is consistent with the Department's longstanding approach treating the broad section 202(a)(6) language as a ''catch-all'' to capture *likely* conflict-of-interest payments not otherwise captured by sections 202(a)(1)–(5).

The Department also notes that a national union objected to the Department's general ''catch-all'' requirement, retained in the NPRM, that a union official must report any payment from an employer that creates an actual or potential conflict of interest. The commenter described the requirement as confusing and too broad. The commenter objected that the Department's proposal would require reporting of transactions that will have no effect on labor relations or union administration. In response to this comment, the Department cannot delineate every conceivable conflict-of-interest scenario, nor could Congress, which is why it established section 202(a)(6). Generally, entities from which payments are reportable are described in the instructions, and the Department will provide compliance assistance to filers with questions about specific circumstances.

2. Obligation To Report Payments Received From Trusts

In the 2010 NPRM, the Department proposed to return to its longstanding interpretation that union officials are not required to report payments received from trusts in which their unions have an interest. These trusts are defined by section 3(l) of the LMRDA as a ''trust or other fund or organization (1) That 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.

As explained in the NPRM, this interpretation is reflected in a 1967 opinion signed by the head of OLMS's predecessor agency and the Department's Solicitor. 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. 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.

A federation of unions, eight national/international unions, and one law firm offered support for the Department's proposal regarding payments from trusts and its stated rationale in the NPRM. In particular, these commenters stressed that payments from section 3(l) trusts to union officials do not pose an actual or potential conflict of interest. One international union emphasized that such trusts are created to benefit the members and their beneficiaries, so a payment from the trust would not pose a conflict of interest for a union official. Another international union added that Congress did not intend union trusts to be treated as employers and other businesses under section 202(a)(6). An international union commented that reporting of expense reimbursements for serving as a trustee of a union benefit fund had never been required, expressing support for the Department's proposal to return to the former practice.

Further, one international union stated that the removal of such reporting would eliminate an inconsistency between what union trustees would report and management trustees were not required to report. An international union stressed that reimbursements to union trustees should not be reportable. Another international union offered two technical corrections to the revised Form LM–30 Instructions, in Part C, to make explicit that payments from trusts are not reportable. The Department will address these suggestions later in the preamble section on the revised form and instructions. See Part IV.

Two commenters opposed the Department's proposal to eliminate the reporting of payments made by section 3(l) trusts to union officials.[32] A public interest organization asserted that the Department offered ''no good reason'' for the return to its ''historical position''; that the Department had ''found no problem that will be solved'' by the modification; and that the proposal was ''primarily based on a very old internal'' opinion. This commenter, however, provided no basis for rejecting the Department's rationale, nor did it offer any rationale as support for the position taken in the 2007 rule. In the 2010 NPRM, the Department cited the Kleiler-Donahue letter to emphasize the longstanding nature of the position, as well as to explain the letter's reasoning. 75 FR 48428. To reiterate the point made in the NPRM, the preamble to the 2007 rule merely cited the letter without refuting it, and the Department now returns to the position and rationale stated in the letter. 72 FR 36154. Payments received from a section 3(l) trust do not establish a conflict of interest, as the interests of the trust and union, or an official's duties to the union, do not diverge. Indeed, a section 3(l) trust must exist for the primary

[31] The Department notes that, in interpreting the scope of ''top-down'' reporting, the Department is only requiring reporting by employees of intermediate and national/international unions of payments from and interests in entities with requisite relationships with lower-level unions, when such employees have significant authority or influence over such lower-level unions. See Part III.E. herein. The Department's approach here with respect to reporting interests in and payments from a competitor of a company whose employees are represented by the union is similar.

[32] These organizations also asserted that the Department's proposal as it applies to the reportability of payments to trusts and unions is inconsistent with the Act's language, its structure, and relevant case law. One of the commenters also asserted that the proposal was contrary to the position that the Department has taken in enforcement litigation under section 203 of the Act. Because these assertions are focused primarily on the Department's proposal to revise the reportability of certain payments from unions, these arguments are discussed in the section that follows in the text.

purpose of providing benefits to the union members and their beneficiaries. Moreover, requiring Form LM–30 reporting in situations that do not pose a conflict of interest would be inconsistent with the balanced reporting regimen intended by Congress.

Another public interest organization opposed the proposed change contending that a conflict of interest arises and public disclosure is required when an entity spends lavishly on union officials. The comment cited examples of payments from several entities to union officials, including two from filed LM–30 reports that, it asserted, would not be disclosed under the Department's proposal.

In response to this comment, the Department again emphasizes that section 202, and the Act as a whole, do not provide for general reporting of any payment by an employer, business, or trust to a union official that may have an undefined, arguable, or even subjective ''disclosure value.'' To be reportable, a payment must create a divergence between the financial interest of the official and the interests of the official's labor organization. See Revised Form LM–30 Instructions, Part C. Such circumstances do not generally arise regarding a section 3(l) trust, as the union and the trust have a common interest in ensuring that the trust operated for the benefit of their common beneficiaries, the union's members. With regard to the commenter's characterization of certain payments, this rulemaking is not the appropriate place for issuing determinations regarding disclosure in specific factual situations. However, as discussed below, there are reporting requirements that apply in situations such as those described by the commenter.[33]

First, full disclosure is required concerning the financial operations of certain entities previously considered to be section 3(l) trusts that are wholly owned, controlled, and financed by a single labor organization. These are ''subsidiary organizations'' of a labor organization, and the financial transactions of such subsidiaries would generally need to be reported on the labor organization's annual financial disclosure report, thus providing disclosure. See the Labor Organization Annual Report Form LM–2 Instructions, Section X [34] and the Labor Organization Annual Report Form LM–3 Instructions, Section X. Second, although not covered by LMRDA section 202, many section 3(l) trusts, such as pension and welfare plans, including many Taft-Hartley plans, are covered by the Employee Retirement Income Security Act (ERISA), which provides reporting and disclosure requirements as well as other financial safeguards for employee benefit funds. Third, pursuant to a longstanding interpretation retained in the 2007 rule and this rule, while payments from a trust are not reportable by a union official on the revised Form LM–30, payments from and interests in any business that deals with the official's section 3(l) trust are reportable.

3. Obligation To Report Payments From Unions

In the 2010 NPRM, the Department proposed to modify specific aspects of the general requirement that union officials report payments they received from labor organizations. 75 FR 48428. In support of the proposal, the Department relied on its statutory analysis of the Act's reporting provisions, concluding that section 202(a)(6) is better read as limited to payments by employers—distinct from labor unions—notwithstanding the acknowledgment, in discussing the reporting obligations of an official of a staff union, that a union may be an employer. 75 FR 48428–29. Further, as explained in the NPRM, the Department's proposal would 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 or actively seeks to represent.

The Department, in reconsidering the position taken on this question in the 2007 rule, has concluded that a better reading of the LMRDA is that a ''labor organization'' is distinct from an ''employer,'' as that term is used in section 202(a)(6). As stated in the NPRM:

> 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.

In the Department's view, 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, on the other hand, 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 established certain relationships with the official's ''labor organization.'' The statute's reporting provisions thus establish ''employers'' and ''labor organizations'' as distinct and separate entities. There is nothing in the statute that indicates that Congress intended, for reporting purposes, that the category of employers also would include labor organizations, or that Congress meant for officers and employees to report transactions with labor organizations acting as such. If Congress had intended that result, it seems apparent that in drafting section 202 it would have explicitly identified payments from labor organizations as reportable.[35]

The Department holds the view that this reading of the statute better implements the labor union and labor-management reporting requirements of the LMRDA. First, as stated above, conflict-of-interest payments from labor organization-employers represented by staff unions are reportable under sections 202(a)(1), (2), and (5). Second, the various reports required under section 201—Form LM–2, LM–3, and LM–4 Labor Organization Annual

[33] Although the commenter has identified information that may be of interest to union members, it has provided no information that indicates that those payments, in fact, pose a real or apparent conflict with the official's duty to his union. The information that the union reported just as readily evinces the symbiotic relationship that exists between the official's union and the trust and a unity of interest, rather than divided loyalty. Furthermore, the commenter provides no information to indicate that the reported information would be unavailable to members of the public through public documents required of the trust by other regulatory authorities such as the IRS or banking authorities. Moreover, compliance assistance, not this rulemaking, is the appropriate mechanism to address specific factual circumstances.

[34] The Department notes that reporting for subsidiary organizations on the Form LM–2, the annual financial disclosure form for the largest labor unions, was removed from the reporting requirements for that form as a result of revisions made in 2003. See 68 FR 58374 (Oct. 9, 2003). Subsequently, in 2010, the Department returned subsidiary reporting to the Form LM–2 reporting requirements for fiscal years beginning on or after January 1, 2011. See 75 FR 74936 (Dec. 1, 2010).

[35] 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.

Reports—require all covered labor organizations to disclose any disbursements, including those to officers and employees of other unions. Such disbursements include those addressed in Part B, Schedule 3, Employer's Relationship 5(b)–(e), of the 2007 Form LM–30 that required filers to report payments from certain unions. See 72 FR 36163. All of these disbursements constitute payments from labor organizations in their capacity as the representative of employees, not as an employer of employees. A union member or a member of the public would naturally look to the labor organization's annual financial disclosure report, and not the Form LM–30 reports, to view disbursements from a particular union. 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.

Multiple commenters offered support for the proposal regarding payments from unions and the stated rationale in the NPRM. In particular, multiple national/international union commenters stated that the statute does not allow the reading of ''employers'' to include ''labor organizations,'' outside of the staff union context. One international union stressed that section 201 provides for reporting from unions, and that a ''plain reading'' of the Act clearly distinguishes between ''labor organizations'' and ''employers'' for purposes of financial reporting and, with the exception of payments to staff union officials, does not require union officials to report payments received from a union. This union points out that payments by a union are captured on the union's own reports, as prescribed by section 201 of the Act. Two unions emphasized the Act's legislative history as well as the statutory language. One international union also offered support for IM section 260.005. None of these commenters disagreed with the Department's analysis that union-employer payments to staff union officials should be reportable.

One commenter based its opposition to the Department's proposal on the LMRDA's definitions of ''employer'' and ''employee.'' The commenter contends that these ''clearly defined terms'' apply to the whole of the Act, and they must include labor organizations and labor organization employees, as one cannot be an ''employee'' under the Act unless one works for an ''employer.'' According to the commenter, the 2007 Form LM–30 defined these terms pursuant to the statutory definitions without removing a ''subset'' of employers from the definition, namely ''labor organizations'' and section 3(l) trusts. The commenter also asserted that the Department's interpretation in the NPRM causes ''structural'' problems, as the Department ''ignored'' that unions are ''employers'' in areas other than section 202. The commenter cited rules of statutory construction and case law articulating these rules to argue that terms within a statute must be applied consistently throughout the statute. To do otherwise, it asserted would create a ''Pandora's Box'' of problems, as unions must report payments to their ''employees'' pursuant to section 201 and union ''employees'' must comply with the section 202 reporting requirements.

Further, the commenter stated that Congress would have excluded ''labor organizations'' from the definition of ''employer'' in the LMRDA if it intended for unions to not be covered by section 202(a)(6). The commenter also contended that the Department's ''discrete statutory actors'' argument was inconsistent with the Department's litigation position in *Warshauer* v. *Solis,* 577 F.3d 1330 (11th Cir. 2009) and the court's holding in that case.[36] In the commenter's view, the Department there argued that ''employer'' is not just the represented employer, but any private sector employer. The commenter concluded that the Department cannot have it ''both ways,'' that ''employers,'' ''labor organizations,'' and ''labor relations consultants'' cannot be discrete actors under the Department's theory in *Warshauer.* The commenter also states its view that under the Department's analysis a union-employer and its consultants could be required to file reports under the persuader activity language of section 203.

Another public interest organization criticized the position taken by the Department in the NPRM, stating that there is ''little basis'' for excluding unions from the ''employers'' of section 202(a)(6). The commenter rejected the idea that ''employers'' and ''labor organizations'' are discrete statutory actors, arguing instead that the definition of ''employer'' is ''broad and inclusive'' and does not exclude labor organizations. The commenter also rejected the notion that Congress would have included the term ''labor organization'' in section 202 if it intended for payments from them to be reported by union officials. In its view, such intention is negated because the Act ''neither narrowly defines'' when a union is an employer, nor ''specifically excludes'' unions from the definition of the term, thus indicating that the ''plain reading'' of the statute is that labor organizations can be employers. Further, the commenter cites the National Labor Relations Act (NLRA) definition of employer, which excludes labor organizations (except when acting as an employer). The commenter also asserts that the Department ''argues against'' itself by asserting that labor organizations can be employers in the context of staff unions. Finally, the commenter referred to the removal of unions and trusts from the scope of ''employer'' under section 202, as an effort to eliminate ''unions and labor union-controlled trusts'' from the section LMRDA section 203 reporting requirements concerning employer and labor relations consultants.

With regard to the particular contentions by the two commenters, the Department concurs with the observation that ''labor organizations'' and ''employers'' are not mutually exclusive. Indeed, labor organizations often act in a dual capacity, as both labor organizations and as employers. Further, the statute does not define ''employer'' in a manner that excludes ''labor organizations'' from its definition, which facilitates coverage of staff unions under the Act and labor organization ''employees'' in various parts of the statute, several of which the commenters cited, including section 202. The Department also acknowledges that the LMRDA defines the term ''labor organization'' differently than does the NLRA.

The Department disagrees with the assertion that it utilizes ''employer'' inconsistently throughout the Act. As stated in the NPRM, the Department considers that the better application of section 202(a)(6) is to exclude payments from ''labor organizations,'' as the LMRDA establishes separate reporting requirements for ''labor organizations'' and ''employers,'' a statutory construction that reduces redundancy in the reporting requirements and burden on unions and their officials. Indeed, payments from labor organizations are reportable pursuant to section 201, while union officials must report conflicts of interest pursuant to section 202, and employers and labor relations consultants must report under certain circumstances pursuant to section 203. Thus, the ''plain reading'' of the term ''employer'' within section 202 does not include labor organizations acting as labor organizations. If Congress

[36] In that case, the court held that an attorney who was designated legal counsel (DLC) (designated by the union to provide legal services to its members for claims relating to workplace injuries) is subject to the LMRDA's section 203 reporting requirements as an ''employer'' if it has employees and makes reportable payments to unions or union officials.

intended for payments from labor organizations to be reported pursuant to sections 202(a)(6) or 203(a)(1), then it would have included the term ''labor organization'' along with ''employer.''

Contrary to the commenters' view, the Department's position is consistent with the structure of the Act. For example, section 201 establishes initial and annual reporting requirements for entities that meet the statutory definition of ''labor organization,'' and when section 201 refers to an ''employee'' of a labor organization, then it clearly is referring to the subset of labor organizations that also qualify as an ''employer,'' as this is the only reading of the statute in which labor organizations can have employees. Further, in section 504(a), the statute uses the terms ''employer'' and ''labor organization'' separately and explicitly, to enumerate each situation in which a person is barred from serving a union or employer, or as a labor relations consultant for either entity. In section 504(a)(3), the statute bars an individual from serving as a labor relations consultant or adviser to a ''person engaged in an industry or activity affecting commerce,'' a term that is broader than both ''employer'' and ''labor organization.'' See LMRDA section 3(d). Thus, the approach articulated in this rule does not establish any ''structural'' problems identified by the commenters, nor does it open any ''Pandora's Box,'' as one commenter suggested.

The commenter is mistaken in its understanding of the Department's position in *Warshauer* v. *Solis.* In that case, the court held that the Department did not act arbitrarily and capriciously in determining that the term ''employer'' in section 203(a)(1) included employers who did not participate in persuader or other labor relations activities. In *Warshauer,* the plaintiff, an attorney providing legal services to members of a union, conceded that he was an ''employer'' but argued that only employers who persuade employees about their right to organize and bargain collectively must file reports, and that he did not engage in this activity. The pertinent statute, section 203, contained five reporting provisions, four of which were triggered by persuader activity. The remaining provision was not so limited, requiring reporting based solely on certain financial payments, and the Department contended that its plain language required the plaintiff to file a report without regard to whether he engaged in persuader activity. In *Warshauer,* like here, the Department interpreted the language in light of the other requirements imposed on filers by the statute (there on ''employers,'' here on labor union officials), the Department's longstanding interpretation, and, secondarily, on the Act's legislative history. See Brief for Appellee, 2008 WL 526954, Argument at I.A.1. & 2., B. 3.a. & b., C. 1. (brief is without pagination on Westlaw); 577 F.3d 1330, 1335–36 (upholding Secretary's interpretation after considering the language of section 203(a)(1) and its context among the five subsections of section 203).

In *Warshauer,* the Department did not assert that the term ''employer'' must be read in a way that would require a labor union with employees to be treated as an employer for all purposes under the Act. Both the Department's brief and the court's opinion focus on the particular language of section 203((a)(1)), there at issue. While the Department argued in that case that section 3(e) of the Act ''defines the universe of employers'' encompassed by section 203(a)(1)'s employer reporting requirements, neither the Department's brief nor the court's opinion is in any way inconsistent with the Department's interpretation of section 202(a)(6). Further, while the Department argued that ''employer'' encompassed the universe of employers encompassed in section 3(e) of the Act, it did not assert that every *payment* from all such employers was reportable. Rather, in additional guidance, the Department delineated the kinds of relationships that employers must have with unions to trigger reporting for payments to such unions and their officials. See Form LM–10 FAQ 10. The Department's position here is consistent with *Warshauer.* The court did not address the issue whether the term ''employer'' included ''labor organizations,'' either in section 202 or 203, but instead recognized that Congress specifically limited the ''employers'' in other subsections of 203, but chose not to in section 203(a)(1). See *Warshauer* v. *Solis,* 577 F.3d at 1335. While *Warshauer* stands for the principle that ''employer'' in section 203(a)(1) is broader than merely employers who participate in persuader or other labor relations activities, it does not address the different question as to whether ''labor organizations'' acting as such are included within this term, given that the statute delineates separate reporting provisions for ''labor organizations'' and ''employers.'' The reasoning in *Warshauer* supports the Department's determination here that if Congress intended to include payments from ''labor organizations'' acting as such in section 202(a)(6), then it would have included the term ''labor organization'' alongside ''employer.''

Further, the Department's analysis on this point is also consistent with the one case that addressed the scope of the section 202 reporting requirements. In *U.S. v. McCarthy,* 300 F. Supp. 716, 720–21 (S.D.N.Y. 1969), the court held that a union officer must report a salary received from a labor relations consultant to an employer, pursuant to section 202(a)(6). The union officer argued that such payments were exempt under LMRA section 302(c)(1) (the section 302 exemptions are relevant because section 202(a)(6) refers to section 302(c)), but the court held that a ''labor relations consultant'' is not a statutory ''employer'' under the LMRDA. Otherwise, the court recognized, the intent of section 202, to disclose conflict-of-interest payments, would be circumvented. Hence, the court held that the provision exempting regular wage payments from an employer was not applicable to regular wage payments from the labor relations consultant.

There is no merit to the contention that the Department's proposal unreasonably distinguishes between staff unions and other unions that also have employees. The distinction is based on the fact that the payments (such as gratuities) must be reported under sections 202(a)(1)(2), and (5)—as payments by a represented employer to a union official—while in the other circumstances enumerated in the 2007 rule, the union is not making the payments as an employer. This treatment ensures that the Form LM–30 reporting requirements apply to staff union officials as they would to officials of other LMRDA-covered unions.

Regarding the commenter's concern that the changes proposed would deny union members any information about payments made by a union to union officials, the Department reiterates the point made in the NPRM that any such payments would be included in the payor-union's annual financial disclosure report, either in the aggregate or, in specified circumstances, itemized when they reach $5,000. See 75 FR 48428–29. If payments in question are exclusively benefits, then they would be included in Schedule 20 of the Form LM–2. Members of the local could also examine the underlying documents related to the reporting, for just cause, pursuant to section 201(c). As stated, the reporting and disclosure of labor organization expenditures are pursuant to LMRDA section 201, not section 202.

As to the comment that alleged the Department lacks understanding of the Act, the Department first reiterates that

''labor organizations'' can be employers when acting as employers. Thus, payments from a union-employer to a staff union official are reportable on the Form LM–30 pursuant to section 202(a)(1). The result is the same, even if the union-employer is a non-LMRDA covered union, evidencing the consistency in the Department's approach. Moreover, the commenter's argument does not flow logically, as, under the 2007 rule, not all non-exempt payments from LMRDA covered ''labor organizations'' to union officials were reportable pursuant to section 202(a)(6); just those from ''labor organizations'' with employees were reportable.

Finally, regarding the contention that the Department's interpretation will affect reporting under the persuader activity provisions of section 203, this area is outside the scope of this rule. The Department notes that the suggested problems are not self-evident. See LMRDA Interpretative Manual section 260.005 (discussed earlier in this section) for guidance on the application of section 203 in this respect.

4. Obligation To Report Payments From Charities and Other Not-for-Profit Organizations

In the NPRM, the Department proposed no changes concerning the reporting of payments received by union officials from not-for-profit organizations. Nonetheless, the Department received four comments from unions, asserting that such payments should not be reportable because they do not arise out of labor-management relations. The commenters contend, in essence, that section 202(a)(6), should not be applied to payments that do not take place within this context. Such a request is beyond the scope of this rule, but the Department, for completeness, discusses these comments below.

One federation of unions praised the Department's narrowing of reporting on payments received by union officials from trusts and unions. It agreed with the Department's assessment that each entity is a discrete actor not named in section 202. It also contended, however, that the text and legislative history and purpose of section 202 require that ''employer'' in section 202(a)(6) be read to include only labor relations conflicts of interest not covered in sections 202(a)(1), (2), and (5). The federation asserted that the ''employer'' in section 202(a)(6) included employers in the same ''labor market'' or ''likely organizing targets.'' The comment presented three arguments supporting this view: section 202(a)(6) uses the term ''an employer,'' like sections 202(a)(1) and (5); the section also uses ''labor relations consultant'' to an employer, rather than more broadly ''any person who acts as a labor relations consultant to an employer''; and the subsection cites the LMRA section 302(c) exceptions, which apply in a labor-management context. An international union stated that extensive reporting concerning charities and other not-for-profit organizations exists elsewhere, citing the Form 990 filed with the IRS and the reporting of payments to such entities from unions on the Form LM–2. Thus, Form LM–30 reporting of payments from such entities to unions, in its view, would be redundant, burdensome, and without a statutory basis.

The Department addresses these concerns only briefly. As noted, the Department proposed only limited changes to reporting under section 202(a)(6). Similar arguments directed at restricting the reach of that section were considered and rejected by the Department in the 2007 rule. 72 FR 36130. The Department has not reconsidered this position, but notes that the interpretation suggested by the commenters is not compelled by the language of section 202(a)(6) or the legislative history relied upon by the commenters. Furthermore, the Department notes that payments from a charitable organization to a union official, including director's fees and reimbursed expenses, are potential conflicts of interest, as the union official could be influencing the union to donate to the charity in order to maintain the position and income associated with his or her position on the charity's board, and not based upon the union's best interests. The commenters have offered no persuasive reason why union members should be denied information that allows them to make a determination about a potential conflict of interest. Additionally, while some reporting may be duplicated by other reporting frameworks, the Form LM–30 enables members and the public to view potential conflict-of-interest payments to union officials in one location, which justifies any marginal, additional burden on the union official.

Another commenter, a law firm, offered recommendations on reporting regarding payments from charities and other not-for-profit organizations. The commenter argued that requiring reporting of reimbursed expenses would discourage union officials from providing volunteer services to such organizations. The Department considers that any payment, including a payment for expenses incurred in voluntary service, must be reported to serve the conflict-of-interest reporting obligation intended in the Form LM–30 rule. The requirement to report does not apply universally to payments from all charities and non-profits, but only to payments from a charity or other non-profit that ''receives or is actively and directly soliciting (other than by mass mailing, telephone bank, or mass media) money, donations, or contributions from the official's labor organization.'' In such circumstances, the need for conflict-of-interest reporting is apparent.

The commenter also urged the Department to state that a non-profit organization is not actively seeking contributions from a union in receiving a membership dues payment from the union or a payment for advertising in the non-profit's publication. The effect of such a construction would be to exempt union officials from reporting payments from a non-profit under these circumstances, thereby defeating the intended conflict-of-interest disclosure purposes. It should be noted that the issue of what constitutes solicitation of donations is not relevant in the situation posed by the commenter. As presented by the commenter, the non-profit organization actually receives money or contributions from the union. The Form LM–30 rule provides that a union official must report payments received from a charity or non-profit organization if that organization receives money or contributions from the official's union or is actively and directly soliciting donations. Thus, the issue of what constitutes solicitation of donations for purposes of applying the Form LM–30 rule is not relevant. Further, it is beyond the scope of this rulemaking to make a determination concerning what activity constitutes solicitation of donations of union funds.

E. Scope of ''Top-Down'' Form LM–30 Reporting by National, International, and Intermediate Body Labor Organization Officers and Employees

In the NPRM, the Department proposed to extend the top-down reporting requirements, expressly established for *officers* of international, national, and intermediate unions by the 2007 rule, to *employees* of such organizations, who had been excepted from reporting under the 2007 rule. Under the proposal, employees of parent and intermediate unions, like the officers of such unions, would be required to report on financial interests in, and payments from, companies that have dealings with their union's subordinate affiliates and their trusts, as well as certain companies doing business with a represented employer. The NPRM also proposed to eliminate

two limited exceptions established by the 2007 rule (sometimes referred to as ''carve-outs'') whereby union officers, when applying the top-down reporting requirements, were not required to report on: (1) Payments received by the officer's spouse or minor children as bona fide employees; and (2) financial interests held in companies that did business with an employer whose employees were represented by subordinate affiliates. 72 FR 36122. Apart from eliminating these exemptions, the Department proposed no changes to top-down reporting by officers of parent and intermediate unions.

Based on a review of the comments, the Department has modified its proposal insofar as it affects reporting by employees of parent and intermediate unions. In the final rule, the Department requires these employees to report on ''top-down'' financial interests and payments where they hold positions of significant authority or influence over the subordinate affiliates. The ''significant authority or influence'' trigger is similar but not identical to the Department's proposal in the 2010 NPRM to reduce the burden associated with the reporting of payments from companies that are in competition with a represented employer.[37] Comments on the NPRM suggested that a similar approach would eliminate some of the uncertainty and burden surrounding top-down reporting. As discussed in greater detail below, the Department concurs with the suggested approach. It ensures that employees of parent and intermediate unions generally will report any financial interests that could pose a conflict of interest, while eliminating the uncertainty regarding reporting on matters that pose little or no risk of a conflict of interest.

Additionally, the Department has adopted the proposed elimination of the carve-outs. The Department has accordingly modified the scope of top-down reporting for union officers and employees to read:

> When applying the Form LM–30 reporting requirements, you are required to look at employers and businesses that have specified relationships with the level of the union in which you serve as an officer or employee. However, if you are an officer of a national, international, or intermediate union, you must also look at employers and businesses that have specified relationships with subordinate affiliates (*e.g.,* a local union or other subordinate body), as well as your own level of the union. These relationships are identified below in the instructions for completing Parts A, B, and C of the form. If you are an employee of a national, international, or intermediate union and possess significant authority or influence (whether or not exercised) over a subordinate affiliate's activities (*e.g.,* its organizing, collective bargaining, contract enforcement, spending or investment decisions, or union administration), you are also required to look at employers and businesses that have specified relationships with such affiliate, as well as your own level of the union. See instructions below.

1. Background

Many labor organizations consist of a three-tier hierarchy: local labor organizations, intermediate bodies, and a ''parent'' national or international labor organization. This section of the rule concerns the obligation of a union officer or employee of a higher-level union (intermediate or national/international) to report his or her interests in and payments (and those of the filer's spouse and minor children) from employers and businesses that have a relationship with subordinate affiliates of the employee's union.

Under sections 202, union officers and employees must report payments from, holdings in, or transactions with:

- An employer whose employees the filer's labor organization represents or is actively seeking to represent;
- A business a substantial part of which consists of dealing with an employer whose employees the filer's labor organization represents or is actively seeking to represent; or
- A business that deals with the filer's labor organization or, as interpreted by the Department, a trust in which the filer's labor organization is interested.

The scope of the reporting obligation thus depends on which organizations constitute the filer's ''labor organization.'' The issue here is the disclosure obligation of potential conflicts of interests that arise between a union official and his or her responsibility to his or her immediate organization as well to any subordinate labor organization(s) within the union's structure.

In the rulemaking that culminated in the 2007 final rule, the Department interpreted the language of section 202 to require top-down reporting. In reaching this conclusion, the Department relied on the structure of the statute, the findings by the McClellan Committee concerning conflicts of interest between higher-level officers and subordinate unions, the stated purpose of the LMRDA to redress the problems identified in the McClellan hearings, and the Department's longstanding interpretation in the LMRDA Interpretative Manual that certain top-down reporting was required. 72 FR 36121–24.

Although the instructions to the Form LM–30 had historically been silent on this point, there has been longstanding administrative precedent applying the section 202 requirements to higher-level union officials. 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.

2. Overview of Comments Received and Department's Response

Twelve comments, all from unions, including one federation of unions, specifically discussed the top-down reporting requirement. An additional three union commenters expressed overall support for comments submitted by the federation of unions, which included recommendations on top-down reporting. One international union supported the Department's proposed top-down reporting requirement as articulated in the NPRM. All others expressed opposition, asserting that the Department's proposed top-down approach creates undue burden, and represents a considerable expansion of the scope of top-down reporting requirements set forth in the 2007 rule.

Comments To Eliminate the Top-Down Reporting Requirement and Department's Response

Six of the commenters who opposed the proposed top-down reporting requirement asserted that this reporting requirement should be eliminated altogether in light of the burden that it imposes. One international union asserted that it not only opposed the

[37] In the NPRM, the Department proposed to limit reporting interests in, and payments from, competitors to represented employers. Under the proposal, officers and employees—without regard to their place in the overall hierarchy of their unions—would only have to report on interests and payments from such employers if they hold a position with significant authority or influence over organizing, collective bargaining, or contract administration activities. The Department has adopted this proposal in the final rule. This issue is more fully discussed above in section III. D.1.

NPRM's proposed expansion to the top-down reporting requirement, but also believes that the 2007 rule's top-down reporting requirement is unnecessary and ''of little value in disclosing real conflicts of interest.'' Another commenter asserted that both labor organization officers and employees should have to report only in relation to matters involving the level of the union hierarchy that they serve and not any subordinate affiliate.

The Department disagrees with this view and does not support the elimination of a top-down reporting obligation. As explained below, the reporting burden associated with top-down reporting has been overstated and is insufficiently supported by the commenters. Further, such a restricted rule on top-down reporting would eliminate all disclosure of any potential conflicts of interests of higher-level union officers and employees concerning subordinate organizations, a position never previously taken by the Department. For example, similar to the situation presented in IM section 241.100, international union officers and employees may encourage subordinate unions to purchase goods or services from a business in which they have an interest, or a business from which they received a gratuity, such as a printing company or travel agency. The subordinate affiliate, fearing repercussions if it does not do business with this vendor, may engage its services, even though other vendors may offer better rates, services, or products.

As a further example, a national union officer or employee whose spouse is an employee of a service provider may influence lower-level unions to do business with this provider. Top-down reporting, as well as the other aspects of section 202 of the LMRDA, is intended to obtain disclosure of this kind of conflict-of-interest situation, and such reporting is of value to members and the public. Several commenters acknowledged that higher-level union officers and employees may engage in conduct raising actual or potential conflicts of interest with lower levels of their unions. Eliminating the top-down reporting obligation in its entirety would circumvent the intent of the LMRDA to provide disclosure of actual or potential conflicts of interest.

Comments To Limit Top-Down Reporting to Trusteeship Situations and Department's Response

Two international unions commented that they favored the elimination of the top-down reporting requirement, but suggested alternatively that the requirement should be limited to situations in which a parent union has placed a subordinate union under trusteeship. They argued that a trusteeship represents the only situation in which parent body officers and employees have financial and managerial control over subordinate affiliates. The Department disagrees with this approach because it would be unduly restrictive in its exclusion of other scenarios—beyond trusteeships—that could present a conflict between union officials' personal financial interests and their duty to the labor union and its members.

Comments on Burden and Department's Response

Several commenters stated that top-down reporting requires union officers and employees to conduct research, often extensive, to identify employers or businesses with which lower-level affiliates bargain or otherwise deal. One commenter described the proposed top-down reporting requirement as ''unreasonable and overly burdensome'' and expressed concern that inadvertent failure to file Form LM–30 reports could represent a possible Federal law violation. Another commenter expressed concern about the inability of international union officers and employees to obtain information necessary to comply with the reporting obligation, and predicted that, by being overly inclusive, ''the result will likely be widespread, though unwitting and unintentional, noncompliance, with no useful information for the public.''

Additionally, some commenters stated that the expansion of top-down reporting imposes a far greater burden than the reductions otherwise associated with the proposed rule. Although acknowledging the possibility of potential conflicts of interest between higher-level union officers and employees and business conducted with subordinate affiliates, another commenter stated that such potential conflict does not justify the reporting burden, especially in the absence of a central repository of businesses whose relationships with subordinates could trigger reporting. This commenter noted that compiling and updating such a list would be costly and burdensome.

Seven international unions opposed the Department's proposal to eliminate certain top-down reporting exclusions that were established in the 2007 rule. One commenter asserted that ''while 'top-down' reporting by officers is unnecessary and overly burdensome, expanding such reporting to now include employees is even further removed from capturing the types of conflict-of-interest payments envisioned by the LMRDA.'' The commenter added that the requirement places LM–30 filers in a ''severely compromising and legally tenuous position,'' and expressed concern about the additional reporting and recordkeeping burden associated with the elimination of the ''carve-outs'' from the 2007 rule.

Another commenter expressed concern that the proposal expands the top-down reporting obligation beyond even what the 2007 rule deemed feasible and necessary,'' and disagrees with the proposed elimination of the 2007 rule's ''three critical narrowing principles'' associated with top-down reporting. With respect to the proposal to eliminate the reporting exemption in the 2007 rule for bona fide employee payments to spouses and minor children an international union stated, ''It is unreasonable to require that all such things of value, legitimately received by the spouse in the course of his or her own employment, be subject to scrutiny and reporting solely because of some inadvertent common connection to a separate local union or related trust fund, at least where the international officer or employee in question has no authority or ability to influence the local union or trust fund decision-making process.'' [38]

The Department disagrees with these commenters that the burden imposed by full top-down reporting is not justified by the actual or potential conflicts of interest that will be reported. Initially, the Department emphasizes, as articulated above, that top-down reporting is necessary to disclose certain actual or potential conflict-of-interest situations. Further, to illustrate the

[38] Three international unions stated that the burden associated with the top-down reporting requirements was greatly compounded by the Department's decision to retain the 2007 definitions of ''substantial part'' and ''actively seeking to represent,'' by requiring greater research by union officers and employees to determine how the definitions of the terms would apply to lower levels of the officer or employee's union.

Section 202(a)(3) requires a union official to report income and benefits from and interests in businesses that deal in ''substantial part'' with an employer whose employees the official represents or is ''actively seeking'' to represent. Sections 202(a)(1), (2), and (5) require the reporting of payments from, interests in, and transactions with employers whose employees the official's union represents or is ''actively seeking to represent.''

The 2007 rule defines ''substantial part'' as 10% of the entity's business, and provides that the labor union must take concrete steps that demonstrate that it is ''actively seeking'' to represent employees of an employer. This rule does not substantively alter these definitions, which affect numerous aspects of reporting pursuant to sections 202(a)(1)–(5), independent of the top-down reporting issue. These issues are also discussed above at section III.F.1. (''substantial part'') and III.F.2 (''actively seeking to represent'').

Department's contention that the commenters' view of top-down burden is overstated, it is helpful to look at the methodology involved in determining whether a top-down report is owed. The first step is for a union officer or employee to look at the types of interests in, income and benefits received, and transactions engaged in during his or her fiscal year. The second step is to eliminate from this list those that are exempted by the general exclusions, if applicable, such as publicly held stock, income received by the union officer or employee as a bona fide employee of a represented employer, and the de minimis threshold. This step likely will reduce the number of potential reportable transactions. The third step is to then determine whether any of the remaining financial transactions were derived from represented employers, as well as service providers and vendors of the represented employer, the union, and the union's trusts.[39] The commenters appear to be suggesting that the inquiry would skip the first two steps and go directly to the third.

Indeed, officers and employees of parent and intermediate unions will not be required to look at every relationship that lower-level entities have, but, rather, only those that relate to the few, if any, employers and businesses identified in step three of the process. The Form LM–30 report is to be completed by union officers and employees only when reportable transactions occur during a reporting period, usually a calendar year. Reporting is self-initiated. Reportable transactions are generally not the norm. In determining whether a report is owed, an officer or employee of a parent or intermediate union would consider the nature of a transaction or interest of which he or she has knowledge, rather than consider information about the operations of every subordinate affiliate. Moreover, with regard to an officer or employee's dealings with vendors and service providers, not all transactions with such entities must be reported. Instead, only those matters involving financial situations in which one has an interest or derives income or other benefits with monetary value, as required by sections 202(a)(3) and (4), must be reported. Reportable benefits would include gratuities, such as complimentary hotel rooms, but not regular business or commercial transactions in which no such gratuity is conferred. See IM section 246.400. Thus, an officer or employee would not be required to report the value of the hotel room for which he or she paid market value on terms available to the public.

Union officers and employees, like most individuals, do not generally receive large gifts and gratuities in connection with their business dealings, and therefore are unlikely to have any reporting obligations. Further, those who do receive such gifts and gratuities are likely to have received them as a result of a vendor or service provider's intent to influence the union officer or employee. In any event, if gifts or other benefits are conveyed or received, a union officer or employee would be in position to seek further information concerning the entity providing the gift or other benefit, and, if the requisite relationships exist, the reporting requirements dictate disclosure so members and the public can determine whether or not a potential conflict of interest exists. Additionally, a union officer or employee with a significant interest in a business, like any similar individual with such an interest, is likely in a position to know the entities with which the business deals. The same risk of conflict exists where a spouse or minor child of an officer or employee with significant authority or influence over a subordinate affiliate works for a company that has business dealings with those affiliates or business with or involving an employer whose employees are represented by the affiliates. Under the 2007 rule, an international officer whose spouse works on commission for a business supply/printing company that sells personal computers, office furniture, and printing services throughout the country to locals affiliated with the international union would not report the spouse's income, even though the potential conflict of interest that such a relationship poses is apparent. Under the revised rule, such income is reportable.

Thus, potential filers are not required to engage in extensive research or create a ''central repository'' to determine the applicability of the Form LM–30 reporting requirements in top-down situations. In instances where the union officer or employee or his or her spouse or minor child is an employee of a vendor or service provider, receives an occasional payment, such as a gift or gratuity or a discount on a purchase, or otherwise has difficulty determining the applicability of the top-down or other reporting requirements, the Department is available to provide compliance assistance. In this regard, the Department advises that any officer or employee who encounters such difficulty should request necessary information in writing from the union, vendor, service provider, or employer. If the entity refuses to provide the information, the officer or employee should contact the Department for assistance in obtaining the information. In the meantime, the union officer or employee should make a good faith determination, based on the information reasonably available, whether reporting is required for the matter involved. If the union officer or employee determines that no report is required, the officer or employee should retain the written request for information that he or she presented to the business, employer, or union and any related documentation.

If an investigation is conducted, there is no risk of prosecution absent unusual circumstances calling into doubt the legitimacy of the good faith determination. See 72 FR at 36133. The Department emphasizes that criminal liability only results from a willful action or from knowingly making a false statement or representation of a material fact or knowingly failing to disclose a material fact. See LMRDA Section 209, 29 U.S.C. 439.

The Department disagrees with the concern expressed by some commenters that top-down reporting, as prescribed in the 2007 rule, would result in ''widespread * * * non-compliance.'' The Department expects that union officers and employees will undertake the task responsibly and without undue burden, as the rule reasonably achieves conflict-of-interest reporting without undue burden on filers. In particular, the Department anticipates that the ''significant authority or influence'' modification it has adopted in the rule will reduce the general level of concern that the proposal may have created among employees of parent and intermediate unions. The Department expects that only a small fraction of such individuals will have any top-down reporting obligations.

[39] A fourth step could involve the ''catch-all'' Part C of the revised Form LM–30, pursuant to section 202(a)(6), which would require reporting of any payments from any other employer (other than one already identified in sections 202(a)(1)–(5)) from whom the receipt of the payment by an official would create an actual or potential conflict of interest. But OLMS proposed restricting the reporting of payments from employers in competition with represented employers to union officers and employees with significant influence over organizing, collective bargaining, or contract administration activities related to a particular represented employer, see 75 FR 48427, and this rule adopts that limitation for employees. See discussion above in section III.D.1. This eliminates the top-down issue for most employees of parent and intermediate unions. For those that must report, it is only because they possess the significant authority or influence out of which a conflict may arise.

Comments To Narrow the Scope of Top-Down Reporting to Individuals Having ''Significant Authority or Influence'' and Department's Response

A federation of national and international labor unions proposed narrowing the scope of top-down reporting by limiting reporting to situations in which the filer has ''significant authority or influence'' over the subordinate labor union. The commenter noted that the Department had proposed under Part C of the instructions to limit reporting payments from employers in competition with represented employers to situations in which an employee possessed significant authority or influence over certain union functions, such as negotiations, contract administration, or organizing. The federation noted that the Department justified this Part C limitation by stating that it relieves ''the undue burden'' of requiring the filer ''to undertake research in order to discover'' who are ''competitors to their union's represented employers.'' 75 FR 48427.[40] The commenter asserted that requiring all national or international union officers and employees to conduct research to identify employers or businesses with which lower-level affiliates bargain or otherwise deal would impose a similar ''undue burden.''

Three national/international unions specifically concurred with the federation's proposal to narrow top-down reporting to those officers and employees with ''significant authority or influence.'' Advocating for limiting the top-down requirement to a ''more rational level,'' one commenter stated that narrowing the requirement by the ''significant authority or influence'' variable would ''help to lessen the considerable burden of requiring officers or staff to know all the business relationships involving * * * more than a hundred subsidiary entities.'' Another commenter stated that a vast majority of its international union officers and employees have no responsibilities or authority with respect to the union's numerous local unions and intermediate bodies, and described the idea of limiting reporting to officers and employees with ''significant authority or influence'' as ''far more practicable, yet still burdensome, and more in tune with the Act's ultimate objective of limiting reporting to areas where there exists an actual or potential conflict of interest.''[41]

Upon consideration of these comments and a further consideration of how best to achieve the Act's intended disclosure without imposing unreasonable burden, the Department has concluded that the federation's suggestion is a better approach than the approaches taken in the 2007 rule and the 2010 NPRM. While the Department disagrees with the view of certain commenters that top-down reporting is not justified—however limited—because of the burden associated with it, the Department concurs that most union employees do not have significant authority or influence over matters related to lower-level unions and therefore would not present the kind of conflict between their personal interests and their responsibilities to the union that the LMRDA intended to disclose. The Department also acknowledges that such employees are likely to be less familiar with the Form LM–30 requirements than officers and employees with significant authority or influence over these affiliates.[42]

Additionally, those employees who exercise significant authority or influence over subordinates, unlike most employees, are positioned to affect relationships involving subordinate affiliates and to be influenced by a represented employer or a potential or current vendor or service provider of a lower-level union. Thus, the Department is interpreting section 202 in a manner that targets Form LM–30 top-down reporting to those employees with significant authority or influence over lower-level unions, as a reasonable way to capture conflict-of-interest situations while avoiding possible confusion for those employees who are unlikely to have conflicts of interest involving lower-level bodies. This approach ensures that the Form LM–30 reporting requirements do not unnecessarily intrude upon the legitimate internal operations of unions, and thus better implements the Congressional purpose behind section 202. In the Department's view, this approach effectuates the statute's disclosure purpose while limiting unnecessary intrusion on unions and their employees. Further, because of other aspects of this final rule that exempt from reporting such transactions as mortgages, car loans, and similar transactions—so long as they are based on market rates and prices—the burden associated with top-down reporting, as have all aspects of Form LM–30 reporting, has been substantially reduced from the requirements established in the 2007 rule.

By requiring employees who exercise authority or influence over subordinate affiliates to report on interests and payments in companies that do business with these affiliates or with represented employers, the Department brings top-down reporting into greater congruence with the language of section 202, which requires conflict-of-interest reporting by both officers and employees. Although there is an inferential basis for the distinction made in the 2007 rule between union officers and union employees, *i.e.,* that only relatively few employees (compared to union officers) wield the influence that would give rise to potential conflicts of interest, neither the statute nor the 2007 rule distinguishes between the two categories in any other respect for reporting purposes. Moreover, there is little basis for a blanket exclusion of higher-level union employees, because such individuals (*e.g.,* union organizers) could exercise significant authority or influence over matters relating to subordinate affiliates.

Furthermore, regarding the other 2007 carve-outs to top-down reporting

[40] The commenter is referring to the following statement (implementing section 202(a)(6) of the Act):

[An officer or employee must report a payment received from certain employers, including] an employer in competition with an employer whose employees your organization represents or whose employees your labor organization 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 of you possess authority by virtue of your position, even if you did not become involved in these activities.

75 FR 48450. See 75 FR 48420, 48427, 48434 (discussing this part of the instructions). The 2007 rule required that officers and employees report such payments even if they had no involvement with the activities identified above or possessed no significant authority or influence over such activities.

[41] This commenter proposed using criteria set forth under the Fair Labor Standards Act (FLSA) to determine, on a case-by-case basis, if an individual has ''significant authority or influence'' over the subordinate entity. The commenter, apparently, is referring to the test used for the FLSA's administrative exemption. See 29 CFR 541.201–.203. The Department disagrees with this suggestion regarding the application of the FLSA factors, as these factors will not easily correspond to the activities of union officers and employees and the purpose of the determination regarding such significant authority or influence.

[42] The Department recognizes that some might see a unified approach for officers and employees as preferable to the approach adopted in the final rule. The Department notes, however, that it did not propose any change to the basic approach established for officers in the 2007 rule and supplanting this approach now could be perceived as unfair to commenters. Furthermore, on a practical level, the Department believes that disclosure is equally well served by the approach adopted in the final rule. Generally, an officer of a parent or intermediate union, by virtue of his or her office, exercises significant authority or influence over subordinate affiliates. While the same is not true of most employees of parent and intermediate unions, in those instances where an employee possesses such authority, he or she has the same reporting obligation as an officer.

(payments received by the officer's spouse or minor children as bona fide employees and financial interests held in companies that did business with an employer whose employees are represented by a subordinate affiliate), the statute also does not distinguish between, on one hand, financial interests held by officers and employees, and, on the other hand, financial interests held by their spouses and minor children. Additionally, there is little basis for excluding interests in and income and benefits derived from a business that deals with the employer but not the union and its trusts, and the 2007 rule did not explain any perceived distinction. In the Department's view, this exclusion creates confusion regarding the scope of top-down reporting, as indicated in the comments to the NPRM, which reflected a misunderstanding by the commenters about this aspect of the 2007 rule. It also illustrated potential under-inclusiveness of the ''bona fide employee'' exception to top-down reporting in the 2007 rule, such as the example of the higher-level union officer who influences affiliates to do business with the company that employs the spouse of the officer or employee. Finally, section 241.100 of the LMRDA Interpretative Manual, upon which reporting by higher level officers was based, involved a conflict-of-interest scenario that would not have been reported under the rule.[43] Reporting will now be required for that scenario.

The Department is also not applying the identical standard utilized in Part C of the revised instructions for payments received under section 202(a)(6), regarding payments received from an employer in competition with a represented employer. There, an officer or employee must report a payment from such a competitor employer, if the individual is involved with the organizing, collective bargaining, or contract administration activities or possesses significant authority or influence over such activities. This standard is appropriate under such circumstances, as section 202(a)(6) employers (and particularly the competitor employer example) are further removed from the union than the closer relationships described in section 202(a)(1)–(5).

In the top-down reporting scenario, the potential conflicts of interest of union officers and employees with significant authority or influence extend to *any* area of union activity engaged in by subordinate affiliates.[44] These higher-level union employees may exercise control over the actions and decisions of lower-level unions in any area of union activities, including not only organizing, collective bargaining, and contract enforcement, but also including spending or investment decisions and union administration. Further, such higher-level employees may have substantial communication or interaction with officers and employees of subordinate bodies whereby they ''significantly influence'' the actions by such lower-level bodies. Moreover, union officers of a higher-level body possess significant authority and influence by virtue of their position, and they are covered under this rule's top-down reporting requirements without exception. Such higher-level officers are elected directly by members at lower levels of the union, or indirectly through representatives chosen by such lower-level unions, and thus are accountable to those members and can influence the officers and employees of the lower-level unions.

Finally, the Department does not adopt a limitation of the ''significant authority or influence'' requirement to ''a matter potentially implicated by the transaction in question,'' as recommended by one commenter, because the potential conflict of interest for an officer (or an employee with significant authority or influence over a subordinate affiliate) is clearly implicated without any further clarification.

F. Other Issues Concerning the Form LM–30 Reporting Requirements

While the Department proposed changes to only five substantive areas of the 2007 rule's reporting requirements, the comments to the NPRM addressed other areas related to Form LM–30 reporting. These issues include: the definitions of ''substantial part'' and ''actively seeking to represent'' in LMRDA section 202 (a)(3); the definition of ''labor organization officer'' in section 202; the reporting of director's fees; the de minimis reporting exemptions; value range reporting; and alternative statutory constructions of section 202. For completeness, the comments on these areas are addressed below. While these comments are helpful to the Department in identifying concerns among the various regulated communities and directing compliance resources, the comments address matters that are beyond the scope of this rule.

1. The Definition of ''Substantial Part'' in Section 202(a)(3)

LMRDA section 202(a)(3) requires union officials to report any interests in and payments from, ''any business a *substantial part* of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent'' (emphasis added). In the 2007 rule, the Department determined that 10% or more of a business's annual receipts will be considered ''a substantial part'' of its business. See Definition 15, ''substantial part,'' in the 2007 Form LM–30 Instructions; 72 FR 36133. In the 2010 NPRM, the Department stated it was retaining the 2007 definition of ''substantial part.'' See 75 FR 48434.

Three national/international union commenters asserted that the definition of ''substantial part'' in the 2007 rule unnecessarily complicates compliance with the Form LM–30. One commenter, noting the difficulty it poses for top-down reporting by officials of parent and intermediate unions, stated that it unfairly requires a union official to ''take affirmative steps to investigate.'' Another national/international union commenter argued that defining ''substantial part'' as 10% or more creates too low a threshold for reporting. The commenter instead suggested that a larger percentage (it did not suggest a particular percentage) would be a more appropriate threshold, citing to section 245.200 in the LMRDA Interpretative Manual, which addresses whether a company's dealings with an employer

[43] In short, this section, which had been issued in 1962, provided that an international union officer must report interests that the officer and his spouse had in a company that dealt in substantial part with a represented employer of a subordinate body, despite the officer's lack of specific authority for representation activities. While the interpretation was specific to income received for an entity that had dealings with a subordinate affiliate, neither the interpretation nor the language of the statute supports an argument that limits reporting to these specific factors. The IM section is also consistent with the purpose of the statute, which requires officers and employees to publicly disclose possible conflicts between their personal financial interests and their duty to the labor union and its members.

[44] Section 202 assumes that all union officers and employees (other than exclusively clerical or custodial employees) possess sufficient authority and influence, at their level of the union, without reference to specific duties and responsibilities, to warrant conflict of interest reporting if the official receives a payment from or has an interest in the statutorily-enumerated entities. However, the statute is not explicit, in the case of higher-level union officials, as to whether reporting is required with respect to potential conflicts of interest in relation to subordinate affiliates within the union's hierarchy. Nevertheless, it is the Department's view that top-down reporting is necessary to ensure that conflict of interest payments are captured, as illustrated above. Some union commenters, as identified above, explicitly acknowledged that conflict of interest scenarios are possible with transactions involving lower levels of the union.

that amounted to some 80% of its business was ''substantial'' within the meaning of section 202(a)(3).[45] In the commenter's view, setting the threshold at 10% requires reporting about payments received from companies only doing a modest amount of business with a covered employer, requiring, in its view, ''an inordinate amount of time to survey and evaluate every single business,'' which an official, his or her spouse, or minor child have transactions with or holdings in during the fiscal year. The commenter cited the unfairness in not limiting reporting to situations in which the filer has ''actual knowledge.'' The commenter added that the filer is at the ''mercy of the business'' where the information is not publicly available, and that businesses do not have a legal obligation to provide the data and may even be legally obligated to not disclose such information. The two other commenters generally agreed with this commenter's observations.[46]

The Department does not agree that the definition of ''substantial'' adds any additional burden, or requires an ''inordinate'' amount of time to apply, separately from the top-down reporting obligation. The statute establishes reporting in certain enumerated situations involving interests or income or benefits from vendors or service providers, such as where the vendors or service providers deal in substantial part with a represented employer. The purposes served by section 202(a)(3) require a reporting threshold that balances the burden associated with reporting insubstantial matters and the benefit served by the disclosure of any potential conflicts, no matter how small. In this regard, a quantitative approach is appropriate in analyzing the level of business engaged in for a vendor or service provider, and it is relatively easy for a filer to apply, thus reducing burden.

A filer does not need to investigate the relationship of every vendor or service provider to each represented employer of his or her union; the filer only needs to look at those in which he or she has an interest or from which he or she has received income or other benefit. Further, the commenter presented no evidence that the 10% threshold constitutes only a ''modest'' rather than ''substantial'' percentage of business for most entities, and is therefore unlikely to target likely conflict-of-interest scenarios.

As discussed in the preamble to the 2007 rule, 72 FR 36133–34, section 245.200 of the LMRDA Interpretative Manual (set forth in the margin), does not define a reporting threshold. It does not specify or imply that reports would not be required of union officials if the corporation derived less than 80% of its business from the employer. The example's inclusion of the 80% figure illustrates only one ''substantial business'' relationship that would require a report—not a threshold to use in determining whether a reporting obligation is triggered. Furthermore, no commenter suggested an alternative percentage threshold to 10%.

There is no merit to the suggestion that a reporting obligation attaches only where a union official possesses actual knowledge that the vendor's volume of business with a relevant employer was greater than the reporting threshold. This approach would provide an incentive for a union official to remain willfully ignorant of the business relationship between a vendor in which he or she holds an interest or from which he or she receives a payment and a represented employer. A subjective standard in which actual knowledge of the amount of business triggers reporting would also be difficult to implement.

The Department recognizes that some union officials may encounter difficulty in learning the amount of business a vendor conducts with the represented employer. The Department, however, believes that the likelihood of such difficulty is overstated, and the filer is not at the ''mercy'' of a business to determine whether or not the substantiality threshold has been met. This is especially true where the union official holds an ownership or operating interest in the vendor. In those instances, there should be little trouble in obtaining the needed information.

There may be some instances where the union official encounters some difficulty in obtaining information, such as where the official is an employee of the vendor or receives a gift or gratuity from, or a discount on a purchase provided by, the vendor. In such instances, the union official should request information in writing from the vendor. If the vendor refuses to provide the information, the official should contact the Department for assistance in obtaining the information. In the meantime, the union official should make a good faith estimate, based on the information reasonably available, of whether the 10% threshold has been met. If such estimate exceeds the 10% threshold, then the union official should file the report and explain that the vendor failed to provide requested information. If the estimate yields a figure less than 10%, no report is required, but the union official should retain the written request for information he or she presented to the vendor and any work sheet used to arrive at the less than 10% figure. See 72 FR at 36133.

With regard to the concerns expressed about potential criminal liability from a filer's failure to identify all companies that have conducted substantive business with a represented employer, the Department emphasizes that criminal liability only results from a willful action or from knowingly making a false statement or representation of a material fact or knowingly failing to disclose a material fact. See LMRDA Section 209, 29 U.S.C. 439. Thus, a filer who makes a good faith, conscientious effort to comply with the reporting requirements should have no concern about criminal liability.

2. Definition of ''Actively Seeking To Represent'' in Section 202

LMRDA sections 202(a)(1), (2), and (5) require union officials to report certain payments, interests, transactions, and arrangements from an employer whose employees its union represents or is *actively seeking to represent.* Additionally, LMRDA section 202(a)(3) requires union officials to report any interests in, and payments from, ''any business a substantial part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is *actively seeking to represent''* (emphasis added). The 2007 rule created a definition for ''actively seeking to represent,'' a term not previously defined in the Form LM–30 and its instructions as follows:

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

[45] 245.200 Substantiality of Dealing Union Officers *A* and *B* of a local union are co-owners of a building corporation. The corporation, through intermediaries who are regular meat wholesalers, sold meat to employers who bargain with the local union. In 1962, some 80% of the corporation's business of approximately $100,000 was with such employers. Both *A* and *B* owe reports for the year 1962 with regard to their interest in and their income from the building corporation pursuant to section 202(a)(3), since both the interest and the income are ''derived from, any business a *substantial* part of which consists of buying from, selling or leasing to, or otherwise dealing with, the business of an employer whose employees such labor organization represents or is actively seeking to represent.''

[46] The same theme is repeated in the comments submitted on the Form LM–30 definition of ''actively seeking to represent,'' as discussed in the next section of the text.

• Sending organizers to an employer's facility;

• Placing an individual in a position as an employee of an employer that is the subject of an organizing drive and paying that individual subsidies to assist in the union's organizing activities;

• Circulating a petition for representation among employees;

• Soliciting employees to sign membership cards;

• Handing out leaflets;

• Picketing; or

• Demanding recognition or bargaining rights or obtaining or requesting an employer to enter into a neutrality agreement (whereby the employer agrees not to take a position for or against union representation of its employees), or otherwise committing labor or financial resources to seek representation of employees working for the employer. Where a filer's union has taken any of the foregoing steps, the filer is required to report a payment or interest received, or transaction conducted, during that reporting period.

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

The 2007 Form LM–30 Instructions, Definition 1. In the 2010 NPRM, the Department stated that it was leaving unchanged the 2007 definition of ''actively seeking to represent.'' See 75 FR 48434.

The Department received five comments on the Department's 2007 definition of ''actively seeking to represent.'' One public policy organization supported the definition. Three national/international labor unions criticized the definition, and a federation of international labor unions offered a clarification of the definition.

Three national/international union commenters urged the Department to reevaluate the ''actively seeking to represent'' definition, arguing that the proposed rule's expanded top-down reporting obligation, coupled with this definition, significantly adds to the overall burden on filers. One of these commenters called the 2007 rule's definition ''absurdly broad.''

One commenter argued that ''[i]t is unfair to subject union officers and employees to prosecution for failing to track vaguely-defined activities at every subordinate level of their union.'' The commenter urged the Department to adopt a revised definition that is ''narrower'' and ''more objective,'' and that is ''limited to discrete and enumerated activities that clearly constitute organizing employees, such as a labor organization demanding recognition from an employer or filing an NLRB petition during the reporting period.'' Another commenter echoed the concern about the definition's ''vague triggers,'' and ''urge[d] the [Department] to remember that the LMRDA and the LM–30 reporting obligation are subject to criminal penalties.'' This commenter suggested that revising the definition to include ''unequivocal conduct, such as filing a petition with the NLRB or demanding representation or bargaining rights'' would avoid creating a chilling effect for ''workers seeking to associate to protect and advance their economic interests.'' Further, the commenter noted that the absence of a ''durational limit on conduct'' will make it even more difficult to determine the reporting obligation, and suggested that ''any conduct that constitutes actively seeking to represent should be limited to actions undertaken during the reporting period about which a union official is filing and not extend to conduct completed in prior reporting years.''

The Department disagrees with these commenters' criticism of the definition of ''actively seeking to represent.'' First, the matters related to top-down reporting have been addressed in the previous section on that topic, and the Department reiterates that the limiting of such reporting to union officials with significant authority or influence over lower level unions (all officers and those employees with such influence or authority) will alleviate much of the commenters' concern. Second, the criticism of the definition as overbroad, with ''vague triggers,'' and without ''objective'' criteria, is unpersuasive. The definition is narrowly tailored to acts that constitute concrete steps towards organizing, as opposed to merely having an interest in organizing. See the 2007 rule at 72 FR 36131. The enumerated acts are objective in nature, as they are activities that unions as a whole generally take to seek recognition, and they illustrate ''concrete steps'' toward acquiring exclusive bargaining representative status. Pursuant to the terms of the definition, the activities, as well as the payments to be reported, must occur during the particular fiscal year in question. Limiting ''actively seeking to represent'' to ''demanding recognition or filing an NLRB petition'' does not constitute the entire universe of ''concrete steps'' that a union can take to *actively* seek representation. Thus, creating such a limitation would unduly limit reporting.

Moreover, while the activities listed are specific, the ''otherwise committing labor or financial resources to seek representation of employees working for the employer'' language is necessary, as the Department cannot enumerate every conceivable scenario that constitutes a situation in which a union is ''actively seeking to represent'' employees. In this regard, the term ''actively seeking to represent'' derives from the statute, and the definition is a reasonable attempt to give meaning to the term. The definition of ''actively seeking to represent'' will aid filers in complying with the reporting requirements, and, as with the definition of ''substantial part,'' a filer can request assistance from the Department if he or she is having difficulty determining if reporting is required. Again, pursuant to the statute, criminal liability is triggered only upon a showing of willfulness.

A federation of international labor unions urged the Department to make two changes to the definition of ''actively seeking to represent.'' First, the commenter suggested that the word ''concrete'' be added before the word ''steps,'' so that the first sentence of the definition would begin,

''*Actively Seeking to Represent*—means that a labor organization has taken *Concrete* steps during your fiscal year to become the bargaining representative of the employees of an employer, including but not limited to * * *'' (emphasis added).

The commenter noted that adding the word ''concrete'' would make the definition consistent with the Department's rationale for the definition as stated in the 2007 rule,[47] and would ''advance both the public interest in clarifying the Department's intent and the legitimate interests of union officials subject to the rule.''

Second, the commenter stated that two examples of union ''steps'' that would constitute ''actively seeking to represent'' are in conflict with the Department's stated rationale for the definition in the 2007 rule. The commenter urged the Department to revise the examples as follows (note that the commenter's suggested additions are

[47] In the 2007 rule, the Department explained ''that the term 'actively seeking to represent' is intended to distinguish between situations where a union has taken *concrete steps to organize* and those where the union *merely has an interest in organizing* employees of the employer in question.'' 72 FR 36131 (emphasis added).

in italics): (1) Sending organizers to an employer's facility *to solicit employee support for the union;* and (2) Handing out leaflets *seeking or urging employee support for the union.''*

The Department believes that the federation's first suggestion, to insert the term ''concrete'' into the definition of ''actively seeking to represent,'' would provide filers with additional clarity. The Department considers such addition to be consistent with the stated purpose of the definition, which is to view only *concrete* steps as constituting ''actively'' seeking to represent. The Department does not view this change as a material revision to the current rule and is making the change.

The second suggestion would require the rule to be modified in a substantial way and therefore is beyond the scope of this rule. The Department, however, notes its disagreement with the commenter's suggestions, as there are concrete steps that a union can take in actively seeking to represent employees other than sending organizers to an employer's facility expressly soliciting employee support for the union or handing out leaflets expressly seeking or urging employee support for the union.

3. Definition of ''Labor Organization Officer'' in Section 202

The LMRDA defines ''labor organization officer'' in section 3(n).[48] The 2007 Form LM–30 Instructions further clarifies this definition as set out in the margin.[49]

One national/international union commenter requested that the Department amend the definition of ''labor organization officer'' so that it is limited to ''individuals who are named officers holding positions given policy-making authority pursuant to the union constitution and bylaws.'' The commenter stated that the Department's definition is overbroad and could result in the Form LM–30 reporting requirements extending to a union member who was unaware that he would be subject to Form LM–30 reporting requirements, including the top-down reporting obligation. The commenter views the current definition as reaching individuals the statute did not intend to reach, such as ''unsuspecting rank-and-file members.''

The Department disagrees with the commenter's views on this issue. The rule's definition of ''labor organization officer'' is derived directly from section 3(n) of the statute, and merely provides further clarification of the term and, as an example, states under what circumstances a trustee may be a union officer. The Department does not view the definition as exceeding the scope or intent of section 3(n). Moreover, the Department notes that pursuant to section 3(n) and the ''retained'' Form LM–30 definition, rank-and-file union members and other volunteers, such as stewards, would not ordinarily be covered union officers.

4. Reporting of Director's Fees

The 2007 rule requires that a union official who receives ''director's fees'' from an employer generally must report these payments. The Department did not propose to eliminate this requirement. A law firm opposed the requirement to director's fees to be reported on Form LM–30. The Department rejects the suggestion to remove this requirement, as this was not a change proposed in the NPRM, and, furthermore, a union official's service on a board of directors, and the accompanying fee, may influence the official's duties to the union.

5. De Minimis Exemptions

The 2007 rule adopted several de minimis exemptions, including: A $250 reporting threshold; a $20 recordkeeping threshold; and a ''widely-attended gathering'' standard. The widely-attended gathering provision exempts reporting of payments or gifts received while in attendance at up to two of such gatherings per fiscal year for which an employer or business has spent $125 or less per employee per gathering. See the 2007 Form LM–30 Instructions, page 2. The Department has long had a de minimis exemption for Form LM–30 reporting, which derives from LMRDA Interpretative Manual sections 241.700 and 241.710, although historically the exemption there applied to payments of ''insubstantial value,'' without providing a quantitative threshold.[50] The 2007 rule retained a prior $100 exemption for unregistered securities, which existed in the pre-2007 Form LM–30 Instructions. The Department proposed no change to this exemption or the de minimis thresholds.

Three commenters were pleased that the Department had not proposed to eliminate the de minimis exemption, but suggested that the Department consider revising the dollar thresholds for reporting and linking them to a cost-of-living or other automatic adjustment mechanism. A law firm expressed support for the 2007 rule's de minimis exemptions,[51] but suggested that the de minimis thresholds be revised. The commenter urged the Department to increase the $20 and $250 de minimis thresholds to $50 and $500, respectively, and to increase the widely-attended gathering exclusion from $125 to $150.

Although the suggestions are beyond the scope of this rule, the Department is not persuaded that a $50 recordkeeping threshold, a $500 reporting threshold, and a $150 widely-attended gathering threshold are more appropriate than the current $20, $250, and $125 thresholds, respectively. The Department views the current levels, based on dollar values, as providing a reasonable distinction, applied nationally, between gifts that may create a conflict of interest and those that do not. The commenter did not provide any persuasive justification for why the increased amounts would better distinguish between gifts that may ''conflict'' and those that do not.

[48] ''Officer'' means any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer, or other executive functions of a labor organization, and any member of its executive board or similar governing body. LMRDA section 3(n).

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

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

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

See Definition 12, 2007 Form LM–30 Instructions.

[50] In 2005, a reporting exemption of $25 was established, which the 2007 rule subsequently raised to $250. Additionally, IM section 241.700 requires that the payments of insubstantial value be ''given under circumstances unrelated to the recipient's status in a labor organization.'' Neither the 2007 rule nor the revised rule have this requirement.

[51] This commenter also urged the Department to implement the same de minimis thresholds for Form LM–10 reporting. Since this issue is beyond the scope of this rule, the Department acknowledges this suggestion, but will not address it in this rule.

A national/international union commenter urged the Department to revise the de minimis thresholds, arguing that they are too low given the steep costs of meals and entertainment charged by hotels located in large metropolitan areas. The commenter provided examples of conference rates at hotels where meetings are held, and listed examples of the lowest cost food items available, many of which exceed the $20 de minimis threshold.

The commenter also expressed concern that reporting such conference and meal rates on Form LM–30 ''would very likely mislead union members and provide fodder for anti-union consultants.'' The commenter added, ''To many union members, disclosing such large sums received for meals might well call to mind lavish entertainment and cause concern about possible susceptibility to improper influence * * * However, the reality would [be] quite different—literally nothing more than a few bagels and sandwiches, which the membership would not care about if they knew the true facts. But under current rules, those members would see a formal Government filing, presumably to deal with something significant, and get exactly the wrong impression about their representatives.''

The commenter noted that inflation will decrease the value of all de minimis thresholds contained in the proposed Form LM–30, and cautioned that the de minimis threshold problem will become more significant with time. Finally, the commenter urged the Department to adopt a method for establishing de minimis thresholds that reflect the realities of union officials' circumstances, and cited the per diem rates paid by government agencies as an example.

The Department disagrees with this commenter's suggestion to use different de minimis thresholds, varying by locality or setting them to a level based on the charges assessed for ''meals and entertainment * * * by hotels located in large metropolitan areas.'' In the Department's view, it would be impractical to establish varying rates by locality, and pegging them to the most expensive charges for modest meals and other gratuities would create too high of a dollar threshold, thus potentially excluding from reporting actual or potential conflicts of interest. Moreover, ''steep costs'' and ''large sums'' provided by a represented employer and certain key businesses to union officials are precisely the types of payments that should be reported on the Form LM–30, to enable the members and the public to determine the impact, if any, on the officials' duties.

The members should have information concerning these payments in order to evaluate for themselves the effect on the officials' duties to the union, such as whether or not they constitute ''lavish entertainment'' and create possible ''susceptibility to improper influence.'' An official concerned with the appearance of a particular charge or charges could also provide further information on the Form LM–30 to provide increased context to the payments, which would diminish or eliminate the problem of members being misled or confused by the payments.

The Department does not concur with the suggestions to index the de minimis exemption thresholds with inflation or other quantitative or qualitative mechanisms. The exemption is provided to ensure that individuals are not required to report, and in some cases even track, payments that are of insubstantial value and not likely to constitute an actual or potential conflict of interest. Further, establishing a quantitative assessment for determining de minimis amounts is superior to a qualitative approach, as filers will easily know whether or not a payment is exempt, without asking the Department to apply a set of factors and determine whether or not the exemption is appropriate. Indexing the thresholds and establishing a fluctuating standard would jeopardize the convenience of the quantitative assessment and unnecessarily risk increasing the burden on union officials—with no apparent benefit in terms of transparency.

A law firm suggested that the Department clarify the exemption for attendance at widely-attended gatherings. In its view, the Department should revise the exemption so that ''individuals associated with service providers to multiemployer plans, employers who contribute to such plans, and employer-appointed trustees of plans that are unrelated to the Form LM–30 filer's union may all be considered to be among the 'substantial number of individuals with no relationship to a union or a trust in which a labor organization is interested.' '' The commenter argues that, without such clarification, the widely-attended gathering exception would be overly narrow, and union officials would need to ''identify by sight the service providers to plans and employer-appointed trustees of plans with no relationship to their union or its affiliated plans in order to ascertain whether an event qualifies as a widely attended gathering.'' The Department acknowledges the commenter's concern, but this rulemaking does not lend itself to addressing a particular activity that does not involve a change proposed by the Department. Without expressing a view on this matter, the Department notes that it is available to provide compliance assistance and guidance to filers on a case-by-case basis.

Additionally, a federation of international labor unions suggested that the exclusion of income from unregistered securities (on page 5, exclusion (ii)) be raised from $100 to $250 to achieve consistency with the General Exclusion for payments of $250 or less (page 4) of the instructions. A national/international labor union concurred with this suggestion. The Department disagrees with this proposal. In the Department's view, the $100 exemption for unregistered securities is reasonable and consistent with past exclusions provided by the Department. Further, there is no basis for concluding that the de minimis threshold for unregistered securities must be identical to the threshold for payments, such as gifts and gratuities, received.

6. Value Range Reporting of Financial Arrangements and Interests

A national union commenter suggested that item 7(b) in Part A of the revised form, and item 12(b) in Part B, be modified to include valuation categories (covering different ranges of dollar values, such as between $5,000 and $10,000 or $10,000 to $15,000) that filers would use to disclose the estimated value of financial arrangements and interests. The commenter stated that ''the applicable statutory language in the LMRDA is completely silent regarding whether union officials have to report the exact value of a financial interest, or whether an approximate range is sufficient.'' The commenter stated that, for example, requiring the reporting of a ''value range'' of a particular stock would adjust for possible fluctuation in the stock's value, and noted the difficulty of determining ''a good faith estimate'' due to the potential for significant fluctuation in the value of a financial transaction or asset. The commenter also indicated that Congress and the Office of Government Ethics apply these types of valuation categories to the disclosure requirements concerning presidential appointees' financial interests.

The Department disagrees that this approach to reporting would increase the utility of the form. Introducing a complex requirement actually may increase the reporting burden on filers. Additionally, the commenter presented

no information or analysis as to how this would increase transparency regarding actual or potential conflicts of interest.

7. Alternative Views of Reporting Required by Section 202

An international union representing professional athletes, supported by a federation of unions, provided statutory analysis in support of an argument that an endorsement arrangement is not reportable on Form LM–30. The commenter asserted that sections 202(a)(3) and (4) should be interpreted to apply only to businesses in which the union official has an ownership interest. The commenter's position, at bottom, reduces to a claim that the use by Congress of the word ''derives,'' rather than ''received'' in these sections evinces a plain intention that the interests to be reported are solely ''ownership interests.''

As a general matter, the language of sections 202(a)(3) and (4) does not provide for this limitation. First, a union officer must file ''a signed report listing * * * any * * * interest * * * and any income or other benefit with monetary value (including reimbursed expenses) * * * derived from, *any* business.'' 29 U.S.C. 432(a)(3), (4) (emphasis added). The term ''any business'' cannot easily be read to mean ''any business in which the union officer or employee owns an interest.'' Second, the commenter asserts that in normal usage the word ''derives'' is used ''in lieu of * * * received from'' and indicates that the payment is from a business to an individual who holds an ownership interest. But the statute uses the term ''derived'' to describe a category of income that includes ''payments and other benefits received as a bona fide employee.'' 29 U.S.C. 432(a)(1), (2). As income ''derived'' includes ''payments received,'' Congress was not using ''derived'' in the limited sense suggested by the commenter. Additionally, the Department notes that the crucial distinction between ''derives'' and ''receives'' that the commenter attributes to these terms is not borne out by their common understanding as synonyms. See, *e.g.,* ''Derive'' ''to take, receive, or obtain, esp. from a specified source.'' Merriam-Webster's Collegiate Dictionary (10th ed. 2002); ''Receive'' ''to come into possession of: ACQUIRE < ~ a gift >''. *Id.* There is simply no persuasive argument that the plain language of these sections evinces the ''ownership'' delimited meaning the commenter would attribute to the use of ''derived.''

Further, the interpretation would exclude from reporting payments and gratuities provided by a vendor or service provider to a union official seeking to generate business with the official's union. This plain potential conflict of interest would go unreported, unless the union official held an ownership interest in the business.

The Department has also considered the additional arguments advanced by the commenter, including its assertion that the legislative history supports its narrow view of what must be reported under these sections. Upon review, the legislative history relied upon by the commenter cannot be fairly read to reflect the narrow construction it would force upon these sections. The commenter also suggests that its preferred reading of sections 202(a)(3) and (4) and the legislative history is embodied in the Department's own early interpretation of these provisions. The commenter relies on a general discussion in the Department's 1961 annual report about its then recent filing experience under the Act. In context, however, it is clear that the Department, in making these statements, was not offering an interpretation of sections 202(a)(3) and (4). Instead, the Department was merely reporting on its early experience with reports under sections 202 and 203 of the Act. Further, in any event, these statements do not evince an interpretation that limits an official's reporting obligation under section 202 to ''ownership interests.''

The commenter candidly acknowledges that the meaning it attributes to the ''1961 interpretation'' is at odds with the Department's published interpretation that states: ''Union officers who receive complimentary hotel rooms and other gratuities of substantial value from the hotel at which the union holds its convention are required to report pursuant to section 202(a)(4).'' Interpretative Manual, section 246.400. Although the commenter indicates that this interpretation was issued by the Department sometime after 1984, the interpretation, in fact, was issued in 1964.[52] Thus, the position set forth in the LMRDA Interpretative Manual demonstrates that the position taken by the Department in the 2007 rule was not a new one.

The Department believes that its interpretation that requires union officials to report gifts, gratuities, and other payments received by union officials from companies that do business with the official's union or represented employees is faithful to congressional intent. For the same reasons, the Department rejects the commenter's alternative request that even if the Department disagrees with its statutory arguments, the Department should create an exception for its members due to what it considers an unnecessary and undue burden on its officials.[53] Another commenter representing employees working in the entertainment industry requested that its officials be exempted from reporting certain gratuities, which it claimed were unique to the union and its members' industry. This exemption request is outside of the scope of the rule, would seemingly require a fact-based analysis, and could not in any event be resolved on this limited record.

IV. Revisions to the Regulations, Form, and Instructions[54]

This final rule revises the Form LM–30 in order to simplify its use by filers 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 reporting requirements. The Department identifies below the various changes effectuated by the final rule to the Department's regulations implementing section 202, 29 CFR 404.4, the Form LM–30, and its accompanying instructions, which are incorporated into the regulations by reference. 29 CFR 404.3.

A. Regulations

Only one change has been made to the regulatory text. 29 CFR 404.1(f). In section 404.1(f), the Department removes 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

[52] The LMRDA was enforced by various offices within the Department prior to 1984, when OLMS was established. The commenter inferred that since the interpretation was contained in a publication issued by OLMS, it could not have predated 1984. The Department's internal files show that the interpretation is dated July 1964.

[53] The commenter states that ''out of an excess of caution'' the union's officials have been reporting these payments because of the difficulty they have in determining whether the companies they receive payments from conduct substantial business (10% or greater) with the league. The Department emphasizes that payments from a company doing business with a represented employer are reportable only if the business is greater than 10% or more of the company's annual receipts. The Department notes that the commenter does not state whether filers have made any inquiries regarding the extent of business conducted between the companies making payments and the league. As stated in the preamble to the 2007 rule, the Department is available to assist filers in obtaining such information if their own efforts are unsuccessful. See 72 FR 36134.

[54] For the convenience of LM–30 filers and the public, this section restates most of the information contained in the comparable section of the NPRM, revised as necessary to reflect differences between the proposed and final rules. See 74 FR 48430–35.

section 404.1 also will be re-designated as (f) through (i), respectively. 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 revised instructions.

B. Revised Form

The revised Form LM–30 utilizes a simplified format that will better facilitate filers' compliance with Form LM–30 reporting requirements and increase the form's utility to the public. Unless otherwise noted, the revised form and instructions adopted by this rule are the same as those proposed in the NPRM. Further, the Department will address below comments received on the layout of the form and instructions.

With respect to layout, the revised form more closely resembles the pre-2007 form than the lengthier 2007 form. The revised form, which is two pages in length, contains four sections: a section that contains basic identifying information on the filer and his or her labor organization, and Parts A through C. Part A is designed to capture reportable transactions between union officials and represented employers. Part B captures reportable transactions with businesses that deal with the official's union or a trust in which the union has an interest, or that have substantial dealings with a represented employer. Part C covers transactions with other employers or labor relations consultants. 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 revised form does not contain the summary schedule that was on the first page (item 5) of the 2007 form. The Department does not believe that requiring a summary schedule to report ''total reported income or other payments'' and ''total reported assets'' is useful information, by itself, and may be misleading. Without knowing the context of 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 information. A sum of money or other payment or asset, in and 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 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 revised 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 listing various reportable relationships has also been eliminated.

The revised 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 revised form does 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.* The Department received no comments on this proposed change. The revised 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 revised instructions simply provide guidance on how to provide additional information. Filers who choose to complete the Form LM–30 in paper format are instructed to attach a separate letter-size page, with identifying information. Filers who complete the Form LM–30 electronically will be able to add additional information as needed.

In response to the NPRM, ten labor organizations—one federation of labor organizations and nine international unions—submitted comments on the content and layout of the LM–30 form and instructions. All ten commenters expressed support of the Department's proposed revisions and endorsed the decision to adopt a form similar to the pre-2007 form. Multiple commenters described this earlier form as ''simpler'' and ''more straight-forward'' than the 2007 form. The commenters that generally opposed any changes to the 2007 rule did not comment on the content and layout of the form and instructions.

The federation of labor organizations expressed support for the Department's proposed revisions to the form and instructions, with noted exceptions. The commenter stated that its experience providing training to union officials on their reporting obligations ''indicates that the vastly more complicated form and instructions adopted by the 2007 rule would have been very difficult for union officials to understand and complete,'' and would likely have resulted in a lower level of compliance than under a simpler report. This commenter also suggested several changes to the proposed form and instructions. These suggested modifications will be discussed below, in the specific form/instructions sections to which they pertain. Two international union commenters concurred with the comments submitted by the federation of labor organizations, including suggested changes to the form and instructions.

Three international union commenters expressed support for the Department's proposal, but suggested some additional modifications to the form and instructions. These suggestions will be discussed in the relevant form/instructions sections below.

Multiple commenters asserted that the 2007 Form LM–30 reporting requirements were overly burdensome, confusing, and complicated, and questioned the purpose of the increased disclosure obligation. An international union commenter stated that ''[t]he 2007 form was extremely burdensome to filers, and confusing and misleading to the public.'' Another international union commenter described the 2007 form as ''virtually indecipherable.'' Another international union commenter stated that the trainings for union officers and employees would have been ''unnecessarily complicated—to no useful purpose—had the Department determined to use the new form and instructions proposed in 2007.''

An additional international union stated that ''[t]he Department's proposal correctly recognizes the unnecessary over-complication, confusion, and burden caused by its 2007 rule. The new form and instructions strike the correct balance between the Act's twin goals of requiring disclosure of conflict transactions and not creating unnecessary reporting burdens for union officials.''

Another international union commenter stated that ''the changes to the form[ ] and instructions improve clarity, eliminate redundancy, and reduce the amount of unnecessary information currently required to be filed.'' The commenter added that the changes ''permit the DOL to more effectively fulfill the goals of the LMRDA reporting requirements in disclosing conflicts of interest.'' This commenter also stated its view that the changes will help filers comply with the LM–30 reporting obligation more ''efficiently'' and ''cost effectively'' than under the 2007 rule.

Section-by-Section Discussion of Revised Form

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

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

The first section of the revised form gathers basic information about the filer and his or her labor organization. Item 1 requests the Form LM–30 file number, and item 2 calls for the fiscal year covered in the report. Item 3 provides a box to identify whether the form is being filed as an amended report. The filer must provide his or her contact information in item 4, which includes lines for his or her name and street address (both required), and an email address (optional). In item 5, the filer provides identifying information about his or her labor organization, indicates whether he or she is an officer or employee, and notes his or her 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 revised 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 revised form, ''Represented Employer'' is defined as ''an employer whose employees your labor organization represents or 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 provides the nature of the interest, transaction, benefit, arrangement, income, or loan; in item 7b, the filer enters its 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 Revised Instructions section below, the filer must complete a separate Part A for each 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 revised form requires the filer to 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 describe the nature of the dealings in item 11a, and report the value of the dealings in item 11b. Additionally, the filer must describe in item 12a the nature of the interest, benefit, arrangement, or income and report in item 12b 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 Revised Instructions section below, the filer must complete a separate Part B for each 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 revised form requires the filer to 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 describe the nature of the payment in item 14a, and report 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 Revised Instructions section below, the filer must complete a separate Part C for each transaction. A Continuation Button is located below Part C if the filer needs to complete one or more additional Part Cs.

In its comments submitted in response to the NPRM, a federation of labor organizations suggested that ''Contact name'' and ''Telephone'' be removed from Part A (item 6), Part B (items 8 and 10), and Part C (item 13a). The commenter stated that filers are not in the position to designate a contact person for employers and businesses. The commenter added that ''inviting inquiries to the employer or business from members of the general public seems inadvisable,'' especially since the Department could make such inquiries. The Department disagrees. In its view, filers should be able to easily ascertain the contact information for an employer or business from which they have received income, a gift, or another benefit, or in which the filer has an interest, or otherwise has engaged in a business transaction or arrangement. Further, the reporting of this contact information will assist union members and the public to cross-check information reported on Forms LM–10 and Forms LM–30, and assist the Department in determining reporting compliance.

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 revised form is identical to that on the 2007 form, except that the revised form assigns the heading ''Signature and Verification'' to item 15. The signature line on the 2007 form did not include a heading.

C. Revised Form LM–30 Instructions

1. General

The revised instructions reflect significant changes in both layout and content from the 2007 form. The content has been changed to reflect the specific changes adopted by this rule, as discussed earlier in this preamble. Other changes have been made to add clarity and eliminate unnecessary repetition. The discussion immediately below highlights significant changes between the revised and 2007 instructions.

As noted above, the revised form and instructions reinstate the general ''Parts A, B, and C'' format featured in the pre-2007 form and instructions, replacing the multiple-schedule format introduced by the 2007 rule. The revised 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 revised instructions do not include a separate ''Definitions'' section, which was included in the 2007 instructions. The revised instructions instead present definitions and clarifications of key terms in the context of the sections in which they first 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. 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 has removed the examples that are dispersed throughout the 2007 instructions. These examples, 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 has substantively modified the definitions of some key terms that are found in the 2007 Form LM–30 Instructions. First, the Department has removed the definition of ''bona fide employee'' as used in the 2007 rule and added the bona fide employee exemption found in the instructions for the pre-2007 form, with minor edits for clarity, as explained below. The language that was 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 with respect to employment in the establishment which the employer has adopted without regard to such employee's position with a labor organization.[55] (emphasis added).

Second, the Department has modified the definition of ''labor organization employee.'' As a result, the Department has inserted the following language 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 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, *by virtue of service in such capacity*.'' (emphasis added). Note that the definition has been slightly modified from the NPRM for clarity purposes, as explained in Part III, Section B, with the addition in italics and removal of the word ''exclusively'' before the phrase ''as a union steward.''

Third, the Department has removed the definition of ''labor organization'' (Part III, D10), which had been added to the 2007 rule in order to describe the top-down reporting obligation of national, international, and intermediate body officers under section 202 of the LMRDA. As explained earlier in this preamble, the term ''labor organization'' is separately defined in the LMRDA.

Fourth, the instructions have been revised to reflect that, under this rule, employees of parent and intermediate unions have top-down reporting obligations if they have significant authority or influence over subordinate affiliates. Two exemptions for top-down reporting, established by the 2007 rule, have been eliminated. The Department had proposed that the top-down reporting obligation would apply to all employees of parent and intermediate unions, as had been established for all officers of such unions by the 2007 rule. In response to comments submitted on the proposal, the final rule has modified this requirement. Under the rule, only employees who possess significant authority or influence over subordinate affiliates must report on financial interests in, and payments from, companies that deal with the subordinate affiliates or companies that deal with or involve employers whose employees are represented by the affiliates.

The reasons for these changes are discussed in detail in section III of this rule.

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 revised 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 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'' is defined as ''any individual (other than an individual performing exclusively clerical or custodial services) employed by a labor

[55] The final part of the instructions read, in the pre-2007 Form LM–30 Instructions and in the NPRM, as: ''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.'' The Department made changes in the final rule to this language to ensure clarity.

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 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 by virtue of service in such capacity.'' 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 revised 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 revised Form LM–30 may be submitted in paper format or electronically. Filers will be able to choose between the two options. 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 has significantly improved the electronic process for submitting the various LMRDA-required reports, including the Form LM–30, which simplifies the electronic signature procedure and eliminates the associated costs to filers. Specifically, the Department has implemented a simplified electronic signature that only requires the filer to acquire a Personal Identification Number (PIN) and password, which the Department provides at no cost to the filer. The Department believes that electronic reporting generally is 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 revised 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 revised instructions represents a significant improvement over the 2007 instructions, which did not provide this information until page 14.

This section begins by providing information on electronically completing the form and explains that the Department will provide compliance assistance support for both paper format and electronic filing. The 2007 instructions did not provide this information. This section also 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 revised instructions feature the heading, ''Information Items—Parts A, B, and C.'' The revised form features the simpler ''Parts A through C'' approach, as opposed to the multiple-schedule format introduced in the 2007 form.

First, the subsection ''General Instructions for Reportable Transactions and Interests'' begins with: ''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 arrangement (including loans); or (3) received income, payment or other 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) requires some union employees (where they have significant authority or influence over subordinate affiliates) 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 immediately after this introductory language. This definition, including its two examples, is unchanged from the 2007 rule.

The revised 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. In response to a suggestion submitted by a federation of labor organizations, the Department has moved the definition of ''trust in which a labor organization is interested'' from the General Instructions section (page 4) to the definition section in Part B (page 7) because the trust definition is relevant only to Part B. An international labor union also commented that the placement of the 3(l) trust definition in the General Exclusions section is confusing. The Department has made this change to eliminate any possible confusion about this point. This commenter also suggested that the instructions would benefit from adding a general exclusion to page 4 to indicate that filers do not have to report benefits received from a trust in which their labor organization is interested. The Department has also made this change, in order to clarify the removal of reporting of payments from trusts pursuant to section 202(a)(6).

A federation of labor organizations also suggested that the sentence referring to ''director's fees, including reimbursed expenses'' should be removed as ''redundant and confusing'' from the General Exclusions section of the General Instructions section on page 4, because it also appears in the instructions for Parts A and B. The Department disagrees because the instruction on reporting ''director's fees'' is a general requirement that applies to all three sections of the revised form. An international union commenter also stated that the sentence about ''director's fees, including reimbursed expenses'' that immediately follows the section 3(l) trust definition in the proposed instructions gives the erroneous impression that reporting such benefits from such trusts is required. The Department disagrees, noting that any such concern has been alleviated by moving the section 3(l) trust definition to the instructions for Part B.

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 the filer is using a paper format.

A federation of labor organizations suggested that this section, beginning with ''Complete a separate Part A, B, and/or C'' (page 4, left column), should be placed immediately before the ''General Exclusions'' instruction (page 4, left column). The commenter stated that the typeface and position of the headings make the ''Complete a separate Part A, B, and/or C'' section erroneously appear to be an exclusion. The Department agrees that this change would add clarity, and it has thus moved the ''Complete a separate Part A, B, and/or C'' title and instructions to before the ''General Exclusions'' section.

The commenter suggested that the ''loan'' example be removed from the instruction regarding completing separate Parts A, B or C (page 4, right column), because its inclusion here may cause confusion for filers because of the final rule's general exclusion for reporting bona fide loans. Instead, the commenter suggested using another reportable receipt, such as a ''gift,'' in the example. The Department has made this change in order to improve clarity.

PART A (ITEMS 6 AND 7): REPRESENTED EMPLOYER

The revised 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 or arrangements (including loans) 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 has been slightly revised in response to a comment by a federation of labor unions. As explained earlier in this preamble, the change adds clarity to the definition, which requires concrete steps towards organizing. The Department has not made any substantive changes to the definition as some commenters had suggested.

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 holdings, transactions, and income from bona fide investments in securities traded on a national securities exchange; holdings, transactions, and income from other designated securities—of $1,000 or less; and transactions involving the purchases and sale of goods and services in the regular course of business at prices generally available to any employee of the employer (excluding loans or transactions involving interests in the employer).[56] 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, practice under such agreements, or policy, custom, or practice adopted by an employer without regard to an employee's position with a union.

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 include bank account numbers, policy numbers, social security numbers, or similar identifying information in completing the form.

In the revised 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. A clarifying note relating to the definition of ''arrangement'' has been revised to eliminate an example that is irrelevant to the definition.

A commenter suggested that the definition of ''income'' in the Part A, item 7 instruction (page 6) be modified to reference the exclusion of payments and benefits received as a ''bona fide employee'' (page 5). The commenter explained its view that defining ''income'' as ''all income from whatever source derived, including but not limited to, compensation for services'' could be confusing for filers as it appears to contradict the ''bona fide employee'' exclusion. The Department disagrees. Because the exclusions, including those paid to filers as bona fide employees, are first discussed in the instructions, it will be clear to filers that such payments are not reportable. Additionally, specific instructions are provided on how to complete items 6 and 7, which are described in the above subsection, Section-by Section Discussion of Revised Form.

This commenter suggested that the two examples preceding the ''Other transactions or arrangements'' heading in Part A (pages 6–7) be moved to Part B since they concern businesses that deal with the labor organization, not employers. The Department disagrees with the comment, as the examples, which derive from the 2007 instructions, are provided as part of the definition, and are intended to illustrate the application of the term ''legal or equitable interest.'' Moving the examples could create confusion because the term first appears in Part A of the form. While they contain examples of Part B businesses, the term ''legal or equitable interest'' appears also in Part A, and the Department believes that definitions should be placed in the part of the instructions where the term first appears.

PART B (ITEMS 8–12): BUSINESS

In the revised 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.

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 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, this rule excepts from reporting marketplace transactions from

[56] The exclusions, as published in the instructions to the 2010 NPRM are identical to those in the instant rule. See 75 FR 48450. The description of the exclusions in the preamble to the NPRM, however, did not accurately summarize the instructions. See 75 FR 48434.

bona fide credit institutions, as explained in greater detail in section III, part C, of this notice. Specifically, the revised 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 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.

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

PART C (ITEMS 13 AND 14): OTHER EMPLOYER OR LABOR RELATIONS CONSULTANT

In the revised 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 these 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.[57]

The italicized language represents a change from the 2007 instructions, as explained in section III, part D, of this rule.[58] The Department removed ''labor organizations'' and ''trusts in which your labor organization is interested'' from the scope of Part C, as explained in section III, part D, of this preamble.

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 LMRA section 302(c)—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 revised 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, this 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.

A federation of unions suggested that ''payments from trusts or other labor organizations'' should be included as a fourth express exclusion from Part C, and argued that including this express exclusion will eliminate confusion created by the Department's 2007 Frequently Asked Questions (FAQs 45, 46, 48, 51–53 and 55), which indicated that such payments may be reportable. The Department is persuaded by this suggestion, as it adds clarity to the potential filer on this issue. Thus, the Department has added a fourth exclusion to Part C, specifying that payments received from a section 3(l) trust or labor organization are not reportable. Also, in response to the comment, the Department clarifies that this rule rescinds any example in the 2007 instructions or FAQs that indicated that payments from trusts are reportable.[59]

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

The instructions retain the following 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,

[57] As stated earlier in the preamble to this rule, the NPRM stated, ''between *your* financial interests * * *.'' The Department has modified this phrase to ''between *these* financial interests,'' so filers are aware that they must look at the payments and interests of their spouse and minor children as well as their own.

[58] The Department notes that this quoted language is identical to the language in the proposed instructions see 75 FR 48450. The language was incorrectly set forth in the discussion of this point in the NPRM. See 75 FR 48434.

[59] See n. 12 herein, which discusses the impact of the final rule on FAQs issues in connection with the 2007 rule and examples in the instructions to the 2007 form.

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 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 electronic 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 revised 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 Orders 12866 and 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

In the Paperwork Reduction Act (PRA) analysis below, the Department estimates that the rule will result in a total reporting and recordkeeping burden on filing labor organization officers and employees of 2,898 hours and a monetary burden on labor organization officers and employees of approximately $138,621, based on the value of a filer's time. This represents a 10,934 hour reduction from the 13,832 hours estimated in the 2007 rule for filing labor organization officers and employees, and a $170,386 reduction in monetary burden from the estimated $309,007 in the 2007 rule. See 72 FR 36157. This analysis is intended to address the analysis requirements of both the PRA and the Executive Orders.

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

The LMRDA was enacted to protect the rights and interests of employees, labor organizations, and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and labor organization officers, employees, and representatives. The LMRDA includes 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 rule modifies the Form LM–30, as last revised in 2007. See 72 FR 36106 (July 2, 2007). As discussed above, the revised form 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 rule is part of the Department's efforts to meet 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 Form LM–30 provides transparency for those financial interests of union officers and employees that may pose conflicts between their own financial interests and their duty to their union and its members. The Act requires the reports to be made available to the public. The reports 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 revised 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 rule are the revised Form LM–30 and instructions. The revised Form LM–30 and instructions also will be made available via the Internet. The information collection requirements contained in this rule have been submitted to OMB for approval.

Unfunded Mandates Reform

This 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 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 rule in accordance with Executive Order 13132 regarding federalism and has determined that the 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.'' This 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 rule establishes a new LM–30 reporting form which constitutes a ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520]. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number assigned by the Office of Management and Budget (OMB). In accordance with the PRA, the Department submitted an information collection request (ICR) to OMB. On September 29, 2011, OMB approved the ICR through September 30, 2014, and assigned OMB Control Number 1245–0005 to this version of the LM–30 reporting form.

A. Review of the Comments Received in Response to the NPRM Regarding the Burden Estimate

In accordance with the requirements of the PRA, the Department solicited public comments on the information collection included in the NPRM. Since this rule exclusively amends an information collection, all of the comments received by the Department in response to the NPRM addressed the collection. A discussion of the comments that addressed all aspects of the collection other than the Department's burden estimate is provided above. Here the Department provides a discussion of the comments that addressed the Department's burden estimate.

In response to the NPRM, the Department received three comments that addressed the Department's burden analysis in the NPRM. All three comments were limited to the burden associated with top-down reporting. Additionally, as noted in the preamble, several commenters expressed support for the Department's proposals that, if adopted, would reduce the burden of compliance with the Form LM–30 requirements. These proposals included, in part, the return to the historical position that union leave and no docking payments were not reportable and that stewards and other representatives are not covered by the Form LM–30 reporting requirements by virtue of their positions; and the reporting exception for bona fide loans and other credit arrangements with most credit institutions. Further, two commenters who generally are opposed to the Department's proposals expressed the view that the 2007 rule did not impose any undue burden on union officers and employees.

As discussed in the NPRM and in earlier sections of this preamble, top-down reporting concerns conflicts of interest that may arise between the financial interests of officers and employees of parent and intermediate unions and business dealings involving their union's subordinate affiliates or employers whose employees are represented by the affiliates. In the NPRM, the Department proposed to require employees of parent and intermediate unions to report such interests; the 2007 rule excepted them from this requirement.

Two commenters expressed the view that the increased burden associated with top-down reporting exceeded any burden savings associated with the other changes proposed in the NPRM. One national union took issue with the burden estimates in both the NPRM and the 2007 rule, explaining that its own experience with the pre-2007 Form LM–30 revealed that 12 hours were needed to complete that much simpler form. It estimated that it can take one hour per week for ''organizing and categorizing receipts'' and another hour per week to confer with a spouse or minor child about links between their employer or other entities and the union. This tracking alone, the commenter states, would exceed the Department's total burden estimate in the 2007 rule and the 2010 NPRM. The commenter also estimates that top-down reporting itself could require 25 hours per year. Other commenters urged the Department to modify or eliminate top-down reporting, which they identified as the most burdensome aspect of LM–30 reporting. The Department has discussed and responded to these comments at length earlier in the preamble and does not restate them here.

The Department believes that the NPRM reflects the best estimate of the burdens associated with completing the Form LM–30, as revised by this rule. The Department notes that none of the commenters provided a detailed explanation as to how their estimates were derived, and notes that the time estimates provided for the pre-2007 form and the 25-hour estimate for top-down reporting seem very high, even for the most atypical situations and could not reflect the average burden. The Department's estimate is for an average filer.

Further, the Department does not believe that many union officials will be required to file under the top-down reporting framework, and those who do file are already included within the NPRM's estimate for the number of filers. (The Department notes that the estimate for the number of filers does not include a breakdown of the type of transaction being reported, such as a gift or a security or other interest, nor does it indicate whether or not the report is required pursuant to top-down reporting.) Further, none of the commenters challenged the estimated number of filers.

Moreover, the burden hour estimates are averages for those who file. Some filers may take more or less time than the estimated 90 minutes, and the Department considers the officials who file as a result of top-down reporting to be already included within the average burden hour estimate. More specifically, the Department does not believe that many, if any, of those who file will take more than 90 minutes to complete the form as a result of the top-down requirements, nor does the Department consider the top-down reporting requirements as altering the 90-minute average. The commenters did not provide any specific information challenging this conclusion.

The Department believes that the concerns regarding the burden associated with top-down reporting reflect, to a large extent, a

misunderstanding about what types of payments, interests, and transactions must be reported on the Form LM–30, and how a union official would determine reportability. Moreover, as explained earlier in the preamble, many of the concerns about top-down reporting have been alleviated by specifying that top-down reporting is required only of officers and those employees with ''significant authority or influence'' over lower-level unions. As stated in the preamble, it is helpful to look at the steps involved in determining whether a top-down report, or any report, is owed. The first step is for a union officer or employee to look at the types of interests held, income and benefits received, and transactions engaged in during the fiscal year. The second step is to eliminate those that are exempted by the general exclusions, such as publicly held stock, income received by the union official as a bona fide employee, and the de minimis threshold. This step will generally greatly reduce potential reportable transactions. The third step is to determine whether any remaining financial transactions were derived from represented employers, as well as service providers and vendors of the union, their trusts, and represented employers. As a part of this step, officers and certain employees of parent and intermediate unions will also have to consider holdings in and payments from entities that have relationships with subordinate affiliates.[60] Thus, union officials, higher-level or not, have no obligation to research each and every relationship that a union has, at any level, but, rather, only those that relate to the few, if any, employers and businesses identified in step three of the process.

The Department is unpersuaded by the unsubstantiated assertion by one commenter that the top-down burden imposed on union employees exceeds any reduced burden associated with other changes proposed by the NPRM. The Department also disagrees with the assertion that filers are required to track routine financial transactions. Rather, the Form LM–30 only requires tracking and reporting of financial transactions that are actual or potential conflicts of interest, and most union officials will have few, if any, such transactions.

Regarding the comment that suggested that the filers should be required to report only top-down interests or payments for which they have ''actual, subjective'' knowledge, the Department believes that top-down filers (parent and intermediate body union officers and those union employees with significant authority or influence over lower-level unions) will generally have actual, subjective knowledge of the entity's relationship with the union or represented employer, or will be in a position to ascertain this information. Thus, filers will not generally need to contact lower levels of the union to determine reportability, or, if they do need to contact other levels of the union, they will be in position to effectively obtain any needed information.

Regarding the comment that suggested that union officials have an ''affirmative obligation'' to contact subordinate bodies of their union that do not have ''systematic records,'' the Form LM–30 reporting requirements do not generally require union officials to contact lower level entities of the union. Further, all affiliated unions subject to section 206 of the LMRDA must have adequate records to ''provide in sufficient detail'' the ''necessary basic information and data'' from which the annual financial disclosure forms (such as the Form LM–2, Form LM–3, and Form LM–4) submitted to the Department can be verified.

Other commenters expressed concern about the burden that an officer or employee of an international, national, or intermediate union would face in determining whether he or she has received a payment from a business a substantial part of which consists of dealing with an employer whose employees the filer's union represents or is actively seeking to represent. Regarding the application of the ''substantial part'' provision to top-down reporting, the Department notes that this provision actually operates as a general limitation on reporting that applies independently from top-down requirements, as does the ''actively seeking to represent'' condition for reporting interests in and payments from represented employers. Again, union officials are not generally required to engage in research to identify potential conflict-of-interest relationships. Further, as explained earlier in the preamble, filers should request guidance from the Department if they are unable to determine the application of the reporting requirements, such as the ''substantial part'' and ''actively seeking to represent'' provisions.

D. Methodology for the Burden Estimates

The Department first estimated the number of Form LM–30 filers that will submit the revised form. Then, it estimated the number of minutes that each filer will need to meet the reporting and recordkeeping burden imposed by the revised form, as well as the total burden hours. The Department next estimated the cost to each filer for meeting those burden hours, as well as the total cost to filers. The Federal costs associated with the revised rule were also estimated. Please note that some of the burden numbers included in this PRA analysis will not add up due to rounding. Except as noted, the burden analysis in the final rule is substantively identical to that set forth in the NPRM.

1. Number of Revised Form LM–30 Filers

The Department estimates that 1,932 union officers and employees will submit the revised Form LM–30. This figure represents the total pre-2007 and 2007 Form LM–30 reports submitted during Fiscal Year 2009. In that fiscal year, 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 Revised 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 revised 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 revised form and instructions, where the particular information is to be reported, if applicable, and the amount of time estimated for completion of each item of information. The revised reporting regime more closely resembles the pre-2007 Form LM–30, in both form and content, than the 2007 form.

Not all union officers and employees will be required to file the Form LM–30, nor will all of those who file need to complete each Part of the form. However, for purposes of assessing an average burden per filer, the Department

[60] A fourth step could involve review of activities to be reported pursuant to section 202(a)(6) in the ''catch-all'' Part C of the revised Form LM–30, but OLMS has limited the requirement to report in Part C payments from employers in competition with represented employers to only those union officials with significant influence over organizing. This eliminates the top-down issue involving such employers for most union officials. Further, regarding payments from charities pursuant to section 202(a)(6) and Part C of the proposed form, any payments received as a bona fide employee and as regular marketplace transactions would be excluded, pursuant to the statute.

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 this approach. Union officers may serve for relatively short periods of time and reportable transactions may not be reported in subsequent years for a variety of reasons. Where the Department has reduced burden estimates for subsequent year filings of LMRDA reports, it generally did so with regard to required 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 familiarity with reporting as other LM filers. See 72 FR 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 from reporting for 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 reduce 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 total reporting burden of 75 minutes per respondent 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. Of that total amount, it should be noted the Department estimates that the average filer will need 30 minutes to read the instructions, which is substantially less than the 55 minutes estimated for the 2007 Form LM–30. 72 FR 36157.[61] This reduction is due in part to the reduced scope of required reporting. In particular, the Department has eliminated 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.

In developing the 75-minute estimate, the Department also believes that the simple data entry required by items 1–3 will only require 30 seconds each. 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. 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, 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. The Department also believes each filer will spend an average of 5 minutes to check the answers. 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. For Form LM–2 Labor Organization Annual Report filers, the Department last year introduced a cost-free and simple electronic filing and signing protocol. The Department intends to provide this feature to Form LM–30 filers in 2012. 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 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.	Report 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.

[61] 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.

TABLE 1—REPORTING AND RECORDKEEPING BURDEN—Continued

[In minutes]

Burden description	Section of proposed form	Recurring burden hours
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 minutes.
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 Estimate Per Filer		15 minutes.
Total Reporting Burden Estimate Per Filer		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 × 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 × 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

Total Recordkeeping Burden.	483 hours.
Total Reporting Burden	2,415 hours.
Total Burden	2,898 hours.

3. Calculation of Total Monetized Burden Hours Costs for Labor Organization Officers and Employees to Complete the Revised 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. This contrasts with a Form LM–2 filer, where it can be assumed that the annual salaries for officers are primarily for full-time duties, 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 representative 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 Department then eliminated blank salary entries (either nothing was listed in the Form LM–2 or a zero was listed) because there are a variety of reasons why the salary can be blank or zero and their inclusion in the calculation of the average would skew the average calculation. Finally, the Department calculated the average hourly wage by dividing the average annual salary by 2,080 hours (40 hours per week times 52 weeks per year). Next, the Department increased these figures by 43.00% to account for total compensation.[62]

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 these larger than average Form LM–

[62] 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.

2 filers are more likely to have presidents and secretary-treasurers who file the 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 = $138,621; $138,621/1932 = $71.75).

4. Other Costs (Start-up, Capital, Maintenance, and Operations)

The Department associates no costs with this information collection, beyond the value of a filer's time.

5. Federal Costs

Finally, in its recent submission for revision of OMB #1245–0003 (formerly OMB #1215–0188), which contains all LMRDA forms (except the pre-2007 Form LM–30, 1245–0002, which was approved under OMB #1215–0205, and the 2011 Form LM–30), the Department estimated 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.

List of Subjects in 29 CFR Part 404

Labor union officers and employees; reporting and recordkeeping requirements.

Text of Rule

Accordingly, the Department amends 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).

§ 404.1 [Amended]

■ 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 6th day of October, 2011.

John Lund,

Director, Office of Labor-Management Standards.

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

Appendix: Revised 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. 1245-0005
Expires 09-30-2014

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
Email 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

15. Signature and Verification

[Continuation button]

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 an 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 an 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 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 ☐ a 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 (1245-0005, with an expiration date of 09-30-2014). 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.

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

Instructions for Form LM-30
Labor Organization Officer and Employee Report

(10/2011)

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 Web site: **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 and these instructions, 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 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 by virtue of service in such capacity.

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 Web site 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-5616
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 Web site at **www.unionreports.gov**. Copies of reports and union constitutions and bylaws can also be ordered on the same Web site. 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. Type or 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.

If you need further guidance for completing the Form LM-30, please contact the OLMS National Office at 202-693-0123 or the nearest OLMS field office listed at the end of these instructions.

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 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 email address in the space provided. If you do not have an email 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 to locate it 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, you are required to look at employers and businesses that have specified relationships with the level of the union in which you serve as an officer or employee. However, if you are an officer of a national, international, or intermediate union, you must also look at employers and businesses that have specified relationships with subordinate affiliates (e.g., a local union or other subordinate body), as well as your own level of the union. These relationships are identified below in the instructions for completing Parts A, B, and C of the form. If you are an employee of a national, international, or intermediate union and possess significant authority or influence (whether or not exercised) over a subordinate affiliate's activities (e.g., its organizing, collective bargaining, contract enforcement, spending or investment decisions, or union administration), you are also required to look at employers and businesses that have specified relationships with such affiliate, as well as your own level of the union. See instructions below.

DIRECTLY OR INDIRECTLY – means by any course, avenue, or method. *Directly* encompasses holdings and transactions in which you, your spouse, or minor child receive 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*.

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 gift 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.

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.

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

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 concrete 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 such employee's position within 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 *legal or equitable 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 you, your 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, at 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.

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.

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 an employer covered under Part A or a business covered under Part B above) from whom a payment would create an actual or potential conflict between these 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 Part C employer, or from a labor relations consultant to a Part A 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 Act (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.

iv. Payments from trusts or other labor organizations.

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 AND VERIFICATION (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 a PIN password combination. The date of signature will automatically be entered. Information about the electronic 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.**

[FR Doc. 2011–26816 Filed 10–25–11; 8:45 am]
BILLING CODE 4510–CP–C