

DOL Form LM-30
OMB Passback Questions & Comments
December 13, 2007

1. Labor Organization Employees (page 1)

- a. If the total universe of employees is 44,371 and the filing rate was 0.03% before the NPRM was published, there were 13 filers for that year. Is that correct?**

As discussed in the Final Rule at 72 FR 36156, DOL had noted in the NPRM that an average of 61 Form LM-30 reports were received for 2001 to 2004 from the total universe of 204,634 officers and employees for a filing rate of 0.03%. Since DOL reported the number of officers (160,253) and the number of employees (44,371) separately on the spreadsheet at OMB's request, it is necessary to total the two figures (204,634) and multiply by 0.03% to reach the figure of 61 Form LM-30 reports filed. DOL data does not distinguish between reports filed by officers and those filed by employees.

- b. The following year, after DOL published the NPRM, the rate of filers increased to 1.69%, or roughly 750 filers. This was an increase in rate of close to 50 times the original filing rate at a time when OLMS was refraining from enforcing the NPRM's filing requirements. We would assume that new filers during that time period were more proactive, complying despite the absence of enforcement. Why does the agency anticipate that the rate will only double to 3.38%? Wouldn't there be a greater incentive for filers to submit these forms to OLMS in 2008, when the final rule is enacted and OLMS renews enforcement of the rule? Doesn't enforcement lead to a higher response rate?**

As noted in the Final Rule, DOL increased its compliance assistance and enforcement with the result that the number of valid Form LM-30 reports received in fiscal year 2006 was 3,466. This represents 1.69% of the total number of union officers and employees (204,634). DOL has not halted enforcement of Form LM-30. DOL continues to conduct investigations involving alleged failure to file a required Form LM-30. DOL also crosschecks Form LM-30 reports and Form LM-10 (Employer Reports) and seeks reports when, for example, an employer reports a payment to a union officer, but the officer has not filed a Form LM-30. Given these circumstances, it is reasonable to estimate a doubling of the filing rate. If the experience for 2008 indicates a higher filing rate, DOL will, of course, adjust the estimated filing rate for the 2009 PRA package.

2. Relationship between Stewards and Labor Organization Employees

- a. On page 1 of the spreadsheet, DOL estimates that there are 18,460 stewards and 204,624 labor organization officers and employees (160,253 + 44,371). Does the number of labor organizations employees include the number of stewards?**

No, the number of employees does not include stewards.

- i. If yes, please explain how the number of potential employee filers can be 1500 while the number of potential steward filers is 1846. (page 1 & 2)**

As explained above, the number of potential employee filers does not include the number of potential steward filers.

- ii. If no, please explain why the stewards are excluded from page 4's Number of Respondents figure (204,634).**

As noted in the NPRM and the Final Rule, DOL used the number of officers and employees reported by labor organizations in their annual financial reports filed with DOL as the total universe of potential filers of Form LM-30. DOL realized that most stewards were not listed on labor organization annual financial reports. Since there was no available information on the number of stewards who would be considered employees based on the compensation they received from the employer for union work, in the Final Rule DOL tripled the percentage of officers and employees estimated to be required to file a Form LM-30 (see 72 FR 36156). As explained on pages 3 through 8 of the statement accompanying DOL's previously submitted spreadsheet, the Department is unable to accept Professor Lund's study as a basis for accurate burden estimates for stewards. However, DOL engaged in an exercise set forth on pages 8 through 14 of the statement to estimate the burden on stewards in the spreadsheet as requested, and determined that the burden estimate would change only immaterially (adding 5,802 burden hours to the prior 112,691 total burden estimate). Also, adding stewards would have resulted in double-counting them as the original (and unchanged) 112,691 total burden hours had already been inflated to account for steward filings.

3. Steward Recordkeeping

- a. On page 7, DOL estimates that 90% of non-filing union stewards who received some payment from an employer for non-union [sic] work will not have any recordkeeping requirement. How did DOL arrive at 90%?**

The Department believes that no more than 10% of this population receives more than 250 hours of pay from an employer for union work. The 1980 BLS study cited in the Final Rule (72 FR 36155) shows that the amount of paid union work is often limited, and the expense involved in paying a union steward for more than six weeks a year away from the job for which he was hired militates against a higher number.

- b. **Also on page 7, we would like to clarify this statement: “it is DOL’s judgment that employers do not ordinarily permit union stewards to perform union work on employer time without any accounting.” Does this imply that the employers are keeping the records, or the stewards? If the employers, wouldn’t employees track their own time for accuracy?**

If an employer is paying an employee for work done for the union during the workday rather than for work done for the employer, it is reasonable to assume that the employer will be interested in keeping track of the unproductive time for which it is paying, both to ensure that such time is kept within agreed-upon limits and to ensure that the privilege is not being abused. While the easiest way to track this time would be to require the employee to record it, an employer may be able to track the time without action by the employee. Under these circumstances, however, DOL agrees with the suggestion that union stewards would also track their own time to ensure that the employer’s records are accurate.

4. Burden upon Non-Filers (pages 3-18)

We see that DOL changed column 3 of the spreadsheet from “Percent of the Total Number of Potential Filers / Impacted by LM-30 Rule” to “Number of Respondents.” We recognize that the initial column header was not clear. What we intended to have in column 3 was the total number of those potentially subject to LM-30.

The rationale for this is that there are people who may not have to file the LM-30 but who need to 1) understand whether they are subject to LM-30, 2) understand its record-keeping requirements, and 3) keep records/logs and call financial institutions to determine whether they are responsible for filing an LM-30.

DOL’s use of column 3 as the total number of expected respondents/filers does not account for the burden imposed by LM-30 upon officers, employees, and stewards who determine that they do not need to file. DOL should provide an accounting for the burden upon this category of people.

DOL switched the headings of columns 3 and 4 because the original headings were not consistent with the examples entered in the next line. The original column 3 heading was “Percent of the Total Number of Potential Filers Impacted by the LM-30 Rule” but the example was a number (100,000), not a percentage, while the original column 4 heading was “Number of Respondents,” but the example was a percentage (90.0%), not a number, and Excel would only permit the entry of a percentage in the column. DOL, however, kept the wording “Number of Respondents” and “Number of Responses” for the column headings. Because this part of the spreadsheet relates to “Preparations for Potentially Needing to File Form LM-30,” which affects many more individuals than those who actually file a report, DOL did not limit the “Number of Respondents” column to only filers. As you indicate, doing so would have omitted the burden on non-filers.

The spreadsheet as prepared includes the burden for non-filers. The first entry in this part of the spreadsheet, “Understanding the types of documents needed prior to filing the LM-30,” includes the total Final Rule universe of 204,634. The estimate of an average of 15 minutes for each filer and non-filer to read relevant documents results in a total of 51,159 hours. As noted in the comments column, the combined burden for filing and non-filing stewards was estimated to be 2,939 hours (170 hours for filers + 2,769 hours for non-filers), which is approximately 6% of the estimate in the Final Rule for all officers and employees. This would not have a material effect on that estimate, so it was not revised.

The second entry is for “Gathering receipts and records during the fiscal year prior to filing the Form LM-30.” The figures entered here are for the 197,718 non-filers. DOL estimates that 8 minutes of the 15 minutes that the Final Rule estimated non-filers would spend on maintaining and gathering records should be reported here while the remaining 7 minutes are attributed to contacting financial institutions as described below. Contacting financial institutions was a separate item on the spreadsheet, but in the Final Rule was part of the general maintaining and gathering records item.

The third entry is for recordkeeping by stewards. As noted on the spreadsheet and explained in the comments column, DOL made separate estimates for 16,614 non-filing stewards and 1,842 filing stewards.

The fourth entry is for contacting financial institutions and the estimate uses the total non-filing universe of 197,771.

5. Number of Respondents/Responses

If DOL used column 3 as the “Number of Respondents,” why are the numbers in column 5 “Number of Responses” different? Shouldn’t they be the same under those headings? See the “Spouses and Children” row for an example of taking the number of respondents multiplied by 1.5% to get the number of responses.

The “Number of Responses” number is different from the “Number of Respondents” number only where the percentage in column 2 (Percent of the total number of potential filers impacted by the LM-30 rule) is less than 100%. In the “Spouses and Children” entry, the “Number of Respondents” is the DOL estimate of the total number of filers, while the “Number of Responses” is 103 because DOL estimated that only 1.5% of the total number of reports would be triggered by the spouses and minor children aspect of the LMRDA section 202 reporting requirement for union officers and employees.

6. Spouses and Children

- a. **DOL notes that the 1.5% estimate is based on DOL’s past experience with LM-30. As the universe of people potentially subject to LM-30 expands under this rule (because of the 3 types of burdens discussed above that are imposed by LM-30 upon officers, employees and stewards who do not eventually need to file), won’t the**

percentage of spouses and children potentially subject to LM-30 expand at the same rate, meaning an increase over past experience?

DOL believes that the number of Form LM-30 reports triggered by a payment to a spouse or minor child will increase proportionally as the total number of filers increases. However, the overall percentage should remain the same. DOL is not aware of any circumstances in which the new filers would be more likely than current filers to have spouses or minor children or in which the spouses or children of the new filers would be more likely to be engaged in activities that would trigger filing a Form LM-30.

- b. Although DOL’s experience is that activities of a spouse or child are the sole trigger for 1.5% of LM-30 filings, this figure does not include situations in which activities of a spouse or child contribute to the need to file an LM-30. This should be included because of the associated burden.**

DOL was responding to OMB’s question: “What percent of union officers/employees does DOL expect this requirement to trigger the need to file the Form LM-30? Please clarify in this box.” The burden estimates in other boxes already include the burden for filers whose spouse or minor child also contributes to the reporting burden.

7. Burden on Spouses and Children

Are spouses and children subject to record-keeping requirements under LM-30? If not, and the burden falls to the officers, employees, or stewards to keep the records about their spouses and children, this burden should be broken out in the sections for officers, employees, and stewards.

The LMRDA imposes recordkeeping requirements only on the individuals required to file a report (see 29 U.S.C. 436). As explained above, the burden estimates in other boxes already include the burden for filers whose spouse or minor child also contributes to the reporting burden. It would be an artificial exercise without a reliable basis to attempt to break out the portion of the burden attributable to activities of spouses and minor children.

8. Good Faith Effort & Contacting Financial Institutions

What is a “reasonable – good faith effort” with regard to contacting financial institutions? Does this mean individuals should contact the financial institution several times and then follow-up with DOL?

Individuals typically would need to contact a financial institution only once before coming to DOL. This would represent a “reasonable – good faith effort” in almost all circumstances.

9. Recordkeeping

DOL estimates 15 minutes of burden required of individuals to complete all of the recordkeeping activities necessary to determine whether it's necessary to file Form LM-30. This burden impacts 100% of the universe whether an individual files or not.

OMB considers the FAQ document one aspect of the burden associated with understanding the requirements associated with the rule and instructions. Please include this burden in the estimate.

As noted in the initial spreadsheet response, in all but a few instances the Form LM-30 FAQs were created by restating portions of the instructions into a question and answer format and provide no information that is not already contained in the primary information source for filers—the form and instructions. DOL is, therefore, not prepared to include the FAQs as part of the burden estimate. However, DOL will remove the FAQs from the website if they are seen as a burden rather than an aid.

Also, we request DOL include the burden on financial institutions when union officials or employees request financial records.

A union officer or employee would only have to contact a financial institution when he or she is unsure whether the financial institution does 10% or more of its business with an employer whose employees the official's labor organization represents or is actively seeking to represent. In these situations, the union official would not be seeking financial records from the institution, but merely a statement from the institution as to whether the 10% standard is met. As noted in the previously submitted spreadsheet, in many cases it will be obvious, without further inquiry, that a large financial institution does not receive 10% of its annual receipts from an employer of the union members. Also, a union official will normally not have to make inquiries of a financial institution unless he or she has a loan from that institution. In the previous spreadsheet DOL estimated that 10% of all non-filers (19,771) would need to query a financial institution. DOL estimates that each institution would take on average an hour to respond for a total of 19,771 hours which equals an average of 6 minutes per non-filer. DOL estimates that 10% of all filers (692) will also need to query a financial institution for a total of 692 hours which equals an average of 6 minutes per filer. Therefore, financial institutions will spend a total of 20,463 hours responding to all Form LM-30 requests.

DOL's assessment of 15 minutes to complete the recordkeeping tasks listed below breaks down to an average of 2 minutes for each activity. We request that DOL reconsider the burden estimate and provide a realistic burden estimate for each activity. For example, DOL states on page 5 of the written response in the spreadsheet that "the reading time for the 185 stewards who will file is 55 minutes to review the form and instruction in their entirety."

DOL's estimate for completing the tasks in the following chart for filers is 75 minutes, not 15. DOL's estimate is a realistic assessment of the burden associated with the Form LM-30.

Per the burden description table in the Final Rule at 72 FR 36157, the following chart includes for filers:

Maintaining and gathering records	20 minutes
Reading the instructions to determine whether to complete the form	15 minutes
Reading the instructions more thoroughly for how to complete the form	40 minutes
	75 minutes

DOL’s estimate for completing the tasks in the following chart for non-filers is 30 minutes, not 15. Per the Final Rule at 72 FR 36157, the following chart includes for non-filers:

Reviewing applicable receipts and other records	15 minutes
Reading the instructions to determine whether must complete the form	15 minutes
	30 minutes

Recordkeeping Activity	Burden Estimate	
Read instructions and Form LM-30 (32 pages)	Filers – 55 min.	Non-Filers – 15 min.
Read FAQ document (88 FAQs, 18 pages)	not applicable	
Gathering receipts and records throughout the fiscal year (retain business and personal documents, including dates and value of payments, relating to dealings or arrangements with an employer)	*Filers – 13 min.	**Non-Filers – 8 min.
Keep a written log throughout the fiscal year to determine whether the 250-hour threshold is exceeded.	*** Filers - .8 min.	Non-Filers - .8 min.
Union officers and employees contact financial institutions.	*Filers - 7 min	**Non-Filers – 7 min.
Financial institutions (e.g. banks) gather records for union offices and employees	Filers – 6 min. Non-Filers – 6 min.	
Follow-up if necessary for further clarification between union officers/employees and financial institutions	***** not applicable	

* The 20 minutes the Final Rule estimated that filers, on average, spend maintaining and gathering records that would not be maintained in the regular course of business is divided between gathering receipts and records throughout the fiscal year and contacting financial institutions.

** The 15 minutes the Final Rule estimated that non-filers, on average, spend maintaining and gathering records that would not be maintained in the regular course of business is divided

between gathering receipts and records throughout the fiscal year and contacting financial institutions.

*** The 250-hour threshold only relates to stewards. As noted in DOL's previous submission, the Agency reviewed Professor Lund's study and determined that if it had been received as a timely comment, the Agency's estimation would have been that 18,460 stewards will receive some employer pay for union work. As noted in DOL's previously submitted spreadsheet:

With respect to recordkeeping by stewards, it is DOL's judgment that employers do not ordinarily permit union stewards to perform union work on employer time without any accounting. Assuming some present-day relevance of the 1980 BLS study, collective bargaining agreements regularly limit the amount of time a steward could perform union work on company time. These terms could not be enforced absent recordkeeping. Thus no additional record keeping would be required for tracking those hours. In addition, some stewards, whether they are already keeping records or not, will know from the beginning of the year that they will not work more than 250 hours, and that no records will need to be maintained for Form LM-30 purposes. Therefore, DOL estimates that 90% of the 16,614 non-filing union stewards who received some payments from an employer for union work, will have no additional recordkeeping beyond the records they must already keep. DOL estimates that 5% of the 16,614 non filing stewards will need 120 minutes to keep records in preparation for the possibility of filing, for a total of 1,662 hours. These stewards will work for employers that do not require tracking of union work, so they will need to track it for the Form LM-30. The Department estimates that the remaining 5% of the 16,614 non-filing stewards (831) will need 60 minutes each in annual recordkeeping for a total of 831 hours. Of the 1,846 stewards who will need to file, DOL believes that 90% of them (1,661) will keep records in the ordinary course of business. Of the remaining 185 stewards who will file, DOL assumes that they will spend 120 minutes tracking time they would not otherwise have tracked, resulting in a total burden of 370 hours.

The total of the 1,662; 831; and 370 hours discussed above is 2,863 hours. When this is divided by the 223,094 potential filers (204, 634 officers and employees + 18,460 stewards), the average per individual is .8 minute.

**** DOL does not believe that there will be a measurable need for follow-up clarification between union officers/employees and financial institutions. The union official is only seeking a "yes or no" answer from the financial institution as to whether it does 10% or more of its businesses with a named employer.