

the proper reporting of time spent by an officer attending a funeral for an employer representative on a joint union-employer committee.

A union sought clarification whether a union can report all the hours worked by its support staff (e.g., receptionists, stenographers, secretaries, and mail room personnel) under a single category, or is required to provide an estimate for each individual by each of the functional categories.

The AFL-CIO contended that the proposed rule has the potential for reporting misleading information. In this regard, it states that the NPRM, but not the proposed instructions, indicates "[t]he time allocated among the categories for each officer [or employee] should total 100% of that [individual's] time." This possible requirement, coupled with the 10% increment for estimates, creates the risk of distorting how the individual spends his or her time. The AFL-CIO posed the question of how a union should report an employee's time if she spends 85% to 90% of her time on "contract negotiation and administration," 5% to 7% of her time on "political activities," and the same amount of her time on "lobbying." A union expressed concern about the liability of union officials who will be required to sign the union's report. In its view, it is unfair to impose this obligation upon the reporting officials, given what it considers the subjective nature of the reporting and the official's inability to verify any estimates provided by other individuals.

The Department believes that requiring unions to report the estimated amount of time expended by their officers and employees will provide useful information to their members. It will enable members to determine better how the union utilizes its human resources. A union's own labor costs represent a substantial portion of its yearly disbursements, and the allocation of the time expended by the officers and employees serves the same purpose as the allocation of a union's other disbursements. Moreover, by reporting how its officers and employee spend their time, by functional category, union members are better able to gauge the union's total investment of resources—labor and capital—to a group of activities. Based on its review of the entire record, the Department concludes that such reporting will not impose undue burden on the union or the individuals on its payroll. While union officials will be required to exercise judgment in making the necessary estimates, it should be remembered that only a good faith estimate, not precise reporting, is required. Union officials

should be guided by the purpose of the reporting requirement—providing accurate information to union members—in deciding how best to characterize their activities for reporting estimated time. Finally, no official who makes a good faith, reasonable effort to accurately report estimated time need fear criminal liability, even if the estimate proves arguably inaccurate. *See* 29 U.S.C. 439.

The Department has determined, as a general rule, that it is unnecessary to impose on unions a requirement that they report their time on a more precise basis than a 10% estimation. The Department is not requiring unions to keep detailed time records. The labor organization need only estimate the time spent on each activity. It is up to the labor organization to determine the least burdensome way to provide the information. However, the Department believes the 10% estimation will be sufficient to enable members to evaluate how the time of the union's officers and employees is directed and whether it reflects an appropriate use of the union's financial resources. To avoid the misperception that a union's officers and employees spend no time in a category (or categories)—a possibility if time in a category is less than 5%—we have revised the instructions to provide that where the time reported by an individual in an activity is less than 5% of his total work time, he should use his or her best estimate to the nearest percentage and report this amount. Similarly, in reporting aggregate totals of time, the union, instead of rounding down to zero, must report its best estimate to the nearest percentage and report this amount. This change should enable unions to ensure that reported time estimates add up to 100% for each employee and this requirement has been made clear in the instructions.

The Department does not believe that allowing unions to customize categories or establish subcategories of existing categories, as some commenters proposed, would promote the purposes of the statute. As discussed in further detail above with respect to the use of functional categories for reporting disbursements, a "customizing" approach would result in vast differences in reporting formats from union to union. This divergence would eliminate a baseline of comparison, result in confusion, and decrease the value of information reported to members and the public. Similarly, the concerns about the difficulty of attesting to the time estimates appear to be overstated. The union should be able to determine without difficulty the manner in which time estimates are to be made.

So long as the union has a reasonable operating procedure in place and takes reasonable steps to ensure that officers and employees are following that procedure, the individual responsible for submitting the report generally has no reason for concern. Only "willful" violations—actions that are intentional or taken in reckless disregard of legal requirements—will give rise to liability. *See* 29 U.S.C. 439. While the responsible official's reporting duties have increased, the standard by which this duty is measured has remained unchanged.

The final Form LM-2 instructions have been revised to clarify how particular activities should be reported and how some common multi-task activities may be allocated. *See* Section III(C). As discussed in the final instructions, union officers and employees should provide estimates based on the total number of hours they work on union business, not merely the first 40 hours or other measure of an individual's paid workweek. Despite the Department's efforts to provide clear instructions, the quality of the estimates reported will ultimately depend upon the care taken by the reporting unions in making them. Nevertheless, the Department believes that permitting unions to estimate the time spent in specific activities provides a appropriate balance between the dual objectives of providing as much useful and relevant information to union members while reducing, to the extent practicable and appropriate, any burden on reporting unions. Reporting unions will be encouraged to provide information that is objective, accurate, and reliable because they will want their members to be aware of the time spent by their union's officers and employees in activities on their behalf. Moreover, because the information will be presented in a clear and complete manner, union members will be in a position to determine whether the time reported appears to be appropriate and accurate, thus encouraging unbiased reporting. Because union members elect their officers and are responsible for the governance of their union, even estimated reporting of the manner in which officers and employees spend their time will be far more useful than the total lack of any such information in Form LM-2 prior to these revisions. Accordingly, even though allocating time by estimated percentages is not as precise as exact measurements of time, the fact that the estimates will be reviewed with interest by union members is itself an incentive that is