

actually have been filed suggests confusion on the part of those asking the survey questions, or those answering them, or both.

The unions that commented stated that it would be expensive and perhaps not feasible for them to develop the new accounting systems, purchase the new computers, and train their staff to make the changeover to electronic filing within the timeframe required by the proposed effective date. For example, the United Food and Commercial Workers (UFCW) estimates that it will cost two million dollars and take two years to make the necessary changes. Similarly, a study conducted for the AFL-CIO estimates that it will take two to four years for unions to make the conversion to electronic filing. Therefore, the commenters suggested that the Department conduct a pilot program during which some, but not all, unions are required to file electronically. In the alternative, the commenters suggested that the Department devise a phase-in period during which the requirement for electronic filing is postponed, giving unions time to adapt their systems and train their people to meet the new requirements.

These comments suggest that the relevant issue with respect to electronic filing is not whether it should be required, but rather how and when it should be accomplished. Indeed, in light of the Congressional direction that these reports should be filed and made available electronically, and the delay and expense attendant to scanning paper forms in order to make them available on the Internet, electronic filing is clearly necessary and beneficial. In response to numerous comments arguing that more lead-time is required, the Department has modified the proposed effective date for electronic filing, but remains firmly convinced that the technological concerns associated with electronic filing are overstated.

First, the electronic filing requirement applies only to the largest labor organizations, those that have over \$250,000 in annual receipts. Thus, 4,732 unions (about 19% of the total) will be required to file their reports electronically. Unions with annual receipts less than this threshold (62,668 or about 81% of the total) will not be subject to this requirement. See discussion in the Paperwork Reduction Act analysis (Section V(F), from which these numbers are derived. These unions, which are less likely than the larger unions to have full-time staff familiar with electronic bookkeeping and reporting, can still file the simpler Form LM-3 or Form LM-4 reports

manually, if they wish. The technical feasibility study performed by SRA for the Department indicated that the proposal could be implemented with relative ease, and this understanding is consistent with the Department's own familiarity with recordkeeping software and union recordkeeping practices. While the AFL-CIO disputes the number of current electronic filers of Form LM-2, it argues that there are actually nearly twice as many electronic accounting programs in use by labor organizations than the Department assumed. In fact, many of the larger labor organizations that commented on the proposal argued not that they were unfamiliar with electronic accounting programs but that their own sophisticated programs capture different data than that required by the Department's proposal.

The NPRM noted a substantial number of filers using the Department's software to complete the existing LM reports; in fact, more recent data indicate that 76% of the Form LM-2 reports filed in 2002 were completed using the Department's software. The AFL-CIO figures cited above, indicating that far fewer labor organizations use the software, cannot refute the Department's actual usage data. First, the Department's data is based on review of all reports filed during the year, whereas the AFL-CIO survey is based upon questions answered by a relatively small number of filers. Second, the AFL-CIO provided only survey results, not the actual survey instrument, and there is little information provided by which to assess its validity. Finally, as noted above, if the AFL-CIO's assertions regarding its numbers are read literally, they are higher, in some respects, than the Department's own numbers, indicating, at best, some confusion on the part either of those asking the AFL-CIO survey questions, or those answering them, or both.

The most comprehensive response to the SRA technical feasibility report, a study performed by Beaconfire Consulting, Inc., was submitted along with the AFL-CIO's comment. This study does not claim that labor organizations cannot file their annual Form LM-2 reports electronically, but that the Department has underestimated the cost and time involved in converting to an electronic filing system. Most of the issues raised by the Beaconfire study relate not to the cost of compliance for labor organizations, but rather to the cost to the Department to develop the software that will allow labor organizations to submit their reports electronically. The Department is

committed, however, to taking the steps necessary to effectuate the new system with minimal problems.

Although the Beaconfire study also suggests that costs to labor organizations may be higher than the Department assumed, Beaconfire acknowledges that their figures, like those developed by SRA, are merely estimates. Beaconfire assumed, without explanation, that the average data file to be transmitted by unions to the Department will be substantially larger than the size assumed by SRA. SRA, by contrast, stated that it extrapolated file size requirements based on the data types and volume currently being reported on Form LM-2, taking into account the fact that data volume varies significantly from union to union. For data that is not currently being reported, SRA made "worst case" assumptions that it viewed as conservative. See Technical Feasibility Study for an On-Line Financial Downloading System, SRA, Sec. 3.4.1. Without an explanation of Beaconfire's contrary assumptions, it is difficult to assess their validity, particularly in light of the recognized incentive on the part of regulatees "to inflate cost estimates in the hope of securing a less stringent regulation." McGarity and Rutenber, Counting the Cost of Health, Safety, and Environmental Regulation, 80 Texas Law Review 1997, 2044-45 (2002).

In addition, the Beaconfire study fails to recognize that the information required by the new Form LM-2 is not structurally complex or fundamentally different from the information that has been reported on the current form. The study, which notes problems encountered in the initial development of the Department's e.LORS program, also fails to take into account the Department's plans to leverage existing hardware and software components and to integrate the enhanced reporting system into the Department's existing infrastructure.

In revising its estimates of the likely cost of compliance with this rule, and in particular of compliance with the requirement that labor organizations file the Form LM-2 electronically, the Department carefully considered the information in the record regarding the existing capabilities of labor organizations. The AFL-CIO submitted survey data from its affiliates that suggests: 12.5% of local unions do not use computer accounting software; 21% of national and international unions and 33% of local unions would need new hardware; 62% of national and international unions and 75% of local unions would need new or upgraded software; and 14% of all unions said it