

Department's approach. Instead, the AFL-CIO's contention rests, in large part, on its view that the Department has underestimated the baseline burden hour data used by the Department for the current Form LM-2 and that, therefore, the Department has underestimated the burden for the revised form. As discussed below, this baseline was based on what the Department believed was the accepted burden associated with the current Form LM-2, as reflected in the Department's numerous, unchallenged submissions to OMB in obtaining OMB's approval to continue using the form. Based on the information submitted by the AFL-CIO and other commenters in response to the Department's proposal, and the Department's own analysis, however, the Department has adjusted its burden hour estimates upward for the current form. These adjustments are discussed in detail below.

Contrary to the AFL-CIO's view, the Department's paperwork analysis in the NPRM was well reasoned, especially in the absence of any earlier challenge to the Department's prior assessment of the time required to prepare the current Form LM-2. As discussed below, the Department has revised its estimates in preparing the PRA analysis for the final rule and presents a more refined assessment by the Department of any burden imposed on reporting unions under the new Form LM-2.

The Department used the AFL-CIO and other commenters' estimates when they provided information that the Department did not have and that increased the accuracy of its estimates by adding to the Department's own data and auditing experience. The Department used the following AFL-CIO data estimating the average burden for completing the current Form LM-2: 1,500 hours each for 141 national and international unions and 200 hours each for 5,038 local unions. The latter number reflects the number of unions in the 2002 OLMS e.LORS data. These figures yield a weighted average of 239 hours, which the Department rounded up to 240 hours for use in making additional burden assessments. The Department had to make some assumptions about the local unions due to the scarcity of data. The AFL-CIO only surveyed 23 local unions on their actual experience with the current form. Since the AFL-CIO did not include estimates for consulting, accounting, legal, or similar costs, the Department had to assume additional hours for these activities in order to arrive at a weighted average for computing a total burden

estimate for filers for completing the current Form LM-2.

The AFL-CIO provided some information that appears to contradict the burden hour estimates discussed above. The AFL-CIO's report included an estimate of burden for the current Form LM-2, based on an average of 52 hours for each individual employed by a union (but without specifying the average number of individuals it used as a divisor). This figure is not consistent with its 1,500 and 200 burden hour estimate, when applied to the Department's 2001 or 2002 e.LORS data that contains the reported number of employees and officers for all Form LM-2 filers. Thus, in the Department's view, the AFL-CIO's per employee estimate may not accurately reflect a true average. For this reason, the Department chose, instead, to rely on the AFL-CIO's alternative, per union, estimate of the number of hours required to complete the current Form LM-2.

Some of the AFL-CIO data involved broad subjective or qualitative categories that could not be used to estimate burden hours. For example, the estimate that 45% of local unions said that it would be quite difficult to extremely difficult to compile the name, address, date, amount, and purpose for all charges by functional category, is illustrative of the effort associated with the itemization requirement in the final rule but can not be used to develop actual burden hour estimates. Moreover, this estimate also demonstrates that 55%, or a majority, of local unions find the change less difficult. Of course, the Department did not use the AFL-CIO's data in computing the burden of complying with the revised Form LM-2 to the extent that the data pertained to requirements that were addressed in the Department's proposal, but not embodied in the final rule.

The Department also used the AFL-CIO data on the number of unions using functional reporting to refine its recordkeeping burden estimates. Specifically, the AFL-CIO data relating to the unions' ability to itemize disbursements were used to corroborate the Department's data and auditing experience. The Department notes, however, that the data either understate the unions' capacity to report information by functional categories or by implication shows that a substantial number of unions are not in compliance with the current reporting requirements (the current report requires the tracking of all receipts and disbursements in order to place them in the appropriate schedule and category on the current form). However, the Department did not use the AFL-CIO data relating to

problems that unions might encounter in classifying information by the categories included in the Department's proposals in developing burden hour estimates because of the subjective/qualitative nature of the information. The Department used almost all of the AFL-CIO information concerning the computer software and hardware capabilities of unions. This information added accuracy to the Department's own data and estimates.

The argument that the Department's proposal shifted the cost of developing and implementing electronic filing to unions by making unions responsible, in part, for some of the software development ignores the fact that the Department will provide, at no cost to unions, the software that allows unions to file electronically with the Department. Reporting unions, however, may be required to make changes to the way that they record the information in order to prepare the revised Form LM-2 and submit it electronically, and the Department has included the costs of such changes in the estimates discussed below. The AFL-CIO's disagreement with the Department's burden estimate in the NPRM was based, in part, on its view that unions currently experience considerable difficulty in timely reporting annual financial information, and that the Department's proposals, by adding new requirements, are overly burdensome. In support of this position, the AFL-CIO included information about the unions' current record on timeliness. While, as discussed above, the Department has used the burden hour estimates provided by the AFL-CIO to reassess the Department's estimate of the time required for completing the current forms, qualitative assessments of difficulty or timely-submission data could not be used to develop burden hour estimates. The Department also did not utilize the information used by the AFL-CIO to support its assertion that the Department had failed to consider whether, and the extent to which, unions might need additional resources to comply with the proposal. Although this information illustrates the need to use external support staff or the need to hire additional in-house staff to address the higher burden hours associated with the revised Form LM-2, the information is not helpful for estimating average or total burden hours, but simply illustrates the choices unions have to comply with the current and final rule.

The AFL-CIO's contention that the Department could have chosen less burdensome alternatives to achieve the same objectives is unpersuasive. As demonstrated by the final rule, the