



# LiUNA!

March 4, 2013

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## MEMORANDUM

**TO: ALL U.S. AFFILIATES**

**FROM: ARMAND E. SABITONI  
GENERAL SECRETARY-TREASURER**

**SUBJECT: FILING OF ANNUAL GOVERNMENTAL REPORTS --  
LM (U.S. DEPARTMENT OF LABOR)  
990 INFORMATION RETURN (INTERNAL REVENUE SERVICE)**

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We are issuing this release to assist you in the preparation of your annual financial reports to the Government.

### LM-2 OR LM-3 OR LM-4 – U.S. DEPARTMENT OF LABOR

#### Who Must File:

Every labor organization subject to the Labor-Management Reporting and Disclosure Act of 1959, as amended (LMRDA), the Civil Service Reform Act (CSRA), or the Foreign Service Act (FSA) must file one of these reports. These laws cover labor organizations that represent employees who work in private industry, employees of the U.S. Postal Service, and most Federal government employees. Labor Organizations that are comprised of 100% state, county, or municipal government employees are not covered by these laws and, therefore, are exempt from the filing requirements.

#### When to File:

The forms must be completed and filed with the U.S. Department of Labor (DOL) within 90 days after the close of your calendar or fiscal year. It is advisable to send in the forms before the due date so that the forms are actually received by the DOL by the due date.

**Example - Calendar Year Return - 2012 - Due at the DOL by March 31, 2013.**  
(LiUNA recommends filing by Friday, March 29, 2013)

**Example - Fiscal Year Return - Ending March 31, 2013 - Due at the DOL by June 29, 2013.**  
(LiUNA recommends filing by Friday, June 28, 2013)

There is no provision in the law for an extension of time to file these reports and serious penalties can be imposed for late filing or failure to file.

*Feel the Power*

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What Form to File:

This table shows the form your union should file.

<u>TOTAL ANNUAL RECEIPTS</u>	<u>REPORT TO BE FILED</u>
Less than \$10,000	Form LM-4
\$10,000 to \$249,999	Form LM-3
\$250,000 or more	Form LM-2
All Trusteeships regardless of Receipts	Form LM-2

Officer Responsibilities and Penalties:

The president and secretary-treasurer of the labor organization are required to sign Form LM-2, LM-3 or LM-4 and are personally responsible for its filing and accuracy. Under the LMRDA, officers are subject to criminal penalties for willful failure to file a required report and for false reporting.

Form LM-2

An abundance of useful information can be obtained concerning the LM-2 Form at the OLMS website <http://www.dol.gov/olms/>. It is important to note that the form must be filed electronically unless a hardship exemption is applied for and granted. It is advisable to try to file as early as possible to ensure you do not have any last minute problems that may take time to resolve or to ensure there is no logjam of last minute filers.

The only option for filing an LM-2 is using the DOL's Electronic Forms System. Instructions and information can be found at <http://www.dol.gov/olms/regs/compliance/efs/efsintro.htm>. Digital Signatures are no longer necessary or required, but each user, signer, and preparer must register with the DOL to obtain a user name and password. In addition, someone within this group must be responsible for obtaining the organizations year-unique pin number that will be shared with each of the users mentioned above. Please visit <http://www.dol.gov/olms/regs/compliance/efs/efsregister.htm> to obtain information on how to register. As you navigate through the information you will find tutorials on registering to use the system, how to use the system and system requirements.

Form LM-3 or LM-4:

Both of these forms can be filed by using the EFS system, printing a non-interactive version of the form, or requesting a hard copy from the DOL. Follow the links mentioned in the LM-2 section above to access the forms, instructions and other information. Please make sure you review the instructions before completing the Forms

Answer to Question 18 Concerning Changes in Constitution and Bylaws:

For this year, the answer to the question "During the reporting period did the labor organization have any changes in its constitution and bylaws, other than rates of dues and fees, or in practices/procedures listed in the instructions?" is "Yes". Then, under the "additional information" section enter: "The International is filing Constitutional changes on our behalf."

**IRS 990 INFORMATION RETURN -  
RETURN OF ORGANIZATION EXEMPT FROM INCOME TAX**

The IRS completely redesigned Form 990 for the 2008 tax year. There were some additional changes made for the current year, which are discussed on page 1 of the Form 990 instructions. For calendar or fiscal years beginning in 2010 or after, if your organization has \$200,000 or more in gross receipts or \$500,000 or more in total assets at the end of the year, you will be required to use Form 990.

**General Information concerning IRS Form 990:**

**Who Must File:**

Most organizations exempt from income tax must file an annual information return. All labor organizations are tax-exempt organizations that must file.

**What Form to File:**

Form 990-N may be used if an organization normally has gross annual receipts of \$50,000 or less. Form 990 EZ may be used by organizations whose gross annual receipts are less than \$200,000 and that have total assets less than \$500,000 at the end of the year. All others must use Form 990.

**When and Where to File:**

The form must be completed and filed on or before the 15th day of the 5th month following the close of the calendar or fiscal year. For those affiliates on a calendar year, the form is due by May 15, 2013, for the calendar year 2012. It should be mailed by certified mail to the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201-0027.

Although Form 990 or Form 990-EZ can be electronically filed or mailed, in some cases, Form 990 **must** be filed electronically. Visit [www.irs.gov/efile](http://www.irs.gov/efile) for more information. It is extremely important to file the 990 Return on time as there is a \$20 per day penalty, up to a maximum of \$10,000, for late filing unless the delay can be proven to be due to a reasonable cause. If the labor organization has annual gross receipts exceeding \$1 million, the penalty is \$100 per day, up to a maximum of \$50,000. **It is the responsibility of the officers to ensure that the 990 return is filed on time.** The IRS strictly enforces these penalty provisions of the law and it is extremely hard to prove a reasonable cause for late filing. Make every possible effort to file this 990 Return on time.

An automatic extension of time to file can be obtained, if necessary, for an additional 3 months. Form 8868 is used for this purpose. If more time is needed another 3 months extension can be request; however, it must be approved by the IRS.

**General Information Concerning Form 990:**

The changes made for the current year's form is on page 1 of the Instructions for Form 990. The form consists of a 12-page, 12-part core form that is required to be completed by all organizations that file Form 990 and schedules to be completed by those organizations that

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satisfy the applicable requirements for each schedule. On page 5 of the instructions is a section (C) that gives filers a sequencing list to complete the form and schedules.

It is not practical to completely discuss all the changes made in 2008 concerning Form 990 in this memo. Instead, a review of a few of the changes will be discussed and there will be assistance given in answering some of the questions that relate to all LIUNA US affiliates.

Part IV Checklist Required Schedules:

A series of 38 questions, not all applying to labor organizations, are asked to determine which schedules have to be completed by the organization.

Part VI Governance, Management, and Disclosure:

This part requests information regarding an organization's governing body and management, governance policies, and disclosure practices. Although the IRS admits that many of the questions deal with policies and procedures that are not required by federal law, the IRS believes many of these practices should be a part of an organization's good governance and accountability practices to safeguard its assets. In many cases you will be required to do more than simply answer yes or no to a question. We will be addressing many of these questions in the assistance section of this memo.

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Organizations must report compensation for both current and former officers, directors, trustees, key employees, and highest compensated employees. Review the instructions carefully to determine everybody that should be included. Compensation from related organizations and, in some cases, compensation from an unrelated organization must be included. In addition, there is a section that lists the five highest compensated independent contractors that received more than \$100,000.

Information from Current and former Officers, Directors, Trustees and Key Employees:

There are a number of questions that relate to current and former officers, directors, trustees, and key employees throughout Form 990. The following is a list:

- Part IV, Line 27, Schedule L, Part III – issuance of grants and other assistance
- Part IV, Line 28, Schedule L, Part IV – concerning business transactions
- Part VI, Section A, Line 1 – concerning independence (only relates to voting members of board)
- Part VI, Section A, Line 2 – concerning family and business relationships (this does not apply to former officers)
- Part VII, Section A, Column E & F – compensation from related organizations

A "safe harbor" is provided which will insulate an organization against penalties for incomplete or inaccurate filings with respect to these new questions and which requires the use of questionnaires to be completed and signed by governing board members and senior management. The following documents have been posted on the web at

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<http://www.liunaBuildsAmerica.org/990> for your use concerning the questionnaire:

- Sample cover letter
- Sample Questionnaire
- Detailed instructions for each question
- A glossary of terms

#### **Assistance in Answering Certain Questions:**

Make sure to answer all applicable questions so that your return is considered complete. To help you in answering some of the questions on the Form 990 we have prepared the following:

- Question H(c) on 1<sup>st</sup> page: Four Digit Group Exemption Number (GEN) - 0121;
- Question I on 1<sup>st</sup> page: Organization type - 501(c)(5);
- Part IV, Question 3 has to do with political contributions made during the year. If state or local political contributions were made from the local or council treasury during the year, the questions must be answered in the affirmative and Schedule C Part 1-A and 1-C must be completed.

In addition, you must file Form 1120 POL, U.S. Income Tax Return on Certain Political Organizations (Schedule C Part 1-C question 4). The 1120 POL Return imposes a corporate tax on political contributions made from the treasury of a local union or district council. Consult with your accountant and/or attorney if this is the case. The question does not pertain to contributions made from a separate segregated political organization set up outside of the local union or district council. It pertains only to political contributions made from the local or council treasury.

- Part IV, Question 5 must be answered "Yes" by 501(c)5 organizations. When completing Schedule C, Part III-A Question 1 answer the question "Yes".
- Part IV, Question 34 asks "Was the organization related to any tax-exempt or taxable entity?". Please note that based on the definition of control in the instructions the International is not considered to be related to any Local Unions or District Council for purposes of this question. Make sure you review other organizations that may be related to your organization based on the instructions.
- Part VI, Question 4 concerns changes to organizational documents. The answer this year is "Yes". We suggest that on Schedule O you state the following: "The Constitution that governs our organization was changed to reflect amendments made during the 24<sup>th</sup> Convention held September 12-15, 2011." (Note: The wording is the same as suggested for the 2011 LM-2. In 2012, a correction was made to an amendment approved and adopted during the 24<sup>th</sup> Convention.)
- Part VI, Question 11 asks, "Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?" If you will give a copy of the Final Form 990 to each voting member of the governing body prior to filing the form, answer the question "Yes". You must also describe in Schedule O the process, if any, by which the Form 990 has been reviewed.
- Part VI, Question 12a-c concerns a written conflict of interest policy.
  - 12(a) should be answered "Yes". This is due to the Code of Best Practices that is part of the LIUNA constitution.
  - 12(b) "Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?". The answer is

"Yes". The reason for this answer is that the Department of Labor Form LM-30 requires that certain situations where there may be conflicts of interest must be reported annually. We suggest that on an annual basis you review any LM-30 filing done by your employees.

- o 12(c) "Did the organization regularly and consistently monitor and enforce compliance with the policy?". The answer is "Yes". We suggest that on Schedule O you state the following:

"The written conflict of interest policy is included in the Code of Best Practices that is part of the Constitution by which our Organization is governed. Any member or employee of the organization can contact the LIUNA (an affiliated organization also governed by the Constitution) General President with any complaint arising under the Constitution, the Code of Best Practices, or any other disciplinary rule, regulation, practice, or procedure adopted by the LIUNA General Executive Board. The Code of Best Practices explains the disciplinary procedure that must be followed when necessary and the independent officers who are entrusted to enforce the Code. The US Department of Labor requires all non-clerical employees to report on Form LM-30 potential situations where there may be conflicts of interest. This information is open to the public."

- Part VI, Question 13 asks "Did the organization have a written whistleblower policy?" Answer this question "Yes" due to the Code of Best Practices and the Inspector General's office.
- Part VI, Question 14 asks "Did the organization have a written document retention and destruction policy?". If you follow the suggested record retention guidelines in the Accounting and Finance Manual then the answer is "Yes". Ideally, your organization should use the information in the Manual and adapt it to your organization.
- Part VI, Question 18 concerns public inspection requirements. The Form 990 must be made available for public inspection and Appendix D in the 990 instructions describes what must be made available, what to do if a request is made in-person or in writing, and what can be charged if a request is made for a copy of the Form 990. Make sure one of the boxes is checked for question 18.
- Part VI, Line 19 states "Describe in Schedule O whether (and if so, how), the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year." We suggest the following answer:  
"The Constitution (Governing document) and Code of Best Practices (conflict of interest policy) is available through the United States Department of Labor, OLMS, online public disclosure room. The information is filed under Laborers' International Union of North America, which files the information on behalf of all affiliated organizations. In addition, our organization files an annual financial report with the Department of Labor which can also be obtained on the online public disclosure room."
- Part X, check the box "Organizations that follow SFAS 117, check here" and complete line 27.

Political Organizations:

If a political organization was required to file a Form 8871, Political Organization Notice of Section 527 Status, then it is required to also file Form 990. Please contact your accountant and/or attorney if there are any questions.

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**FILING COPIES OF THE ANNUAL FINANCIAL REPORTS WITH**  
**HEADQUARTERS AND THE LIUNA REGIONAL OFFICE**

In 1969, the General Executive Board passed a ruling that makes mandatory the filing of copies of LM Forms and 990 Returns at the **International Headquarters and the LIUNA Regional Office for your region**. The copies of these forms (**originals to the Government**) must be filed at **Headquarters and the LIUNA Regional Office** no later than the due dates required by Federal law for the original form. If you file the Form LM-2 electronically, please send in the printed version. Also, send the International Headquarters and the Regional Office a copy of an accountant's financial report.



ARMAND E. SABITONI  
General Secretary-Treasurer

AES:dmr

cc: U.S. Regional Managers  
Field Auditors

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