There are numerous trusts in which employers contribute to an industry fund that is controlled by management representatives and the union has no power of appointment of any of the trustees. Management associations negotiate these contributions into the Collective Bargaining Agreement as a method of funding their industry promotion funds. The mere fact that financial contributions come from employers pursuant to a Collective Bargaining Agreement does not mean that the union has dominance or control over the fund.

The Secretary seeks comments as to whether the labor organization will have difficulty obtaining information necessary to file a T-1 form from the trust. The answer is that the industry trust funds will most likely not share that information with the local union.

As a result, the proposal that contributions made pursuant to a Collective Bargaining Agreement should be deemed as coming from the union should be eliminated.

**Form 5500 Exemption**

The proposed regulation includes an exemption from filing for employee benefit plans covered by ERISA that file Form 5500. The proposal also seeks comments on whether this exemption should be maintained. (84 FR 25139) This exemption should be maintained because the information provided in the 5500 reports of an employee benefit plan is complete and fulfills the goal of transparency.

The proposal states that trust reporting is necessary to prevent the evasion of the LMDRA reporting requirements. The examples of criminal activity provided in the proposed regulations are already required to be disclosed on form 5500 as either a nonexempt party in interest transaction, or as a prohibited transaction. As a result, the regulation does not add transparency, it merely duplicates it.

The Department's reason for the regulation does not apply to situations in which the money is being directed from the employers either to a management-controlled industry fund or to any of the jointly managed ERISA Trust Funds. A Union cannot transfer money from its local general fund to its pension fund, then transfer that pension fund money to a local union officer. The local union does not control the Trust Fund. Such a disbursement would be a prohibited transaction under ERISA.

We support the exemption from filing Form T-1 for any ERISA plan that files a Form 5500.

## Jointly Managed Funds

The exemption that excludes trusts that file 5500 forms should be expanded to exclude reporting on all jointly managed trusts. The most common type of trust found in collective bargaining agreements are trusts which are jointly managed by management and labor. Each trust fund is formed as a result of a collective bargaining agreement. These plans are also referred to as multi-employer's funds, Taft-Hartley trusts, joint trusts, jointly trusted plans, ERISA trust funds and labor-management employees benefit plans. They have one important common feature; they are administered by a board of trustees in which labor and management are equally represented.

Joint trusts are common when a group of employers, usually in the same industry, join together with the unions with which they have bargaining agreements, to establish a multi-employer trust. Joint trusts are common in the construction industry which includes the iron worker industry.

The Trustees of the plans are charged with determining what types of benefits will be included in the plan. Payments of these benefits are made from a trust which is funded by employer contributions established through negotiations. Contributions are made by each employer in the fund on behalf of each of its covered employees.

The International Iron Workers' support expanding the exemption for trusts that file form 5500 to include all jointly managed trusts because the labor organization does not have control or financial dominance over the trust.

## Confidentiality

The proposed regulation is designed to disclose expenditures of certain trusts including apprentice trust funds. The joint apprenticeship trust fund is a regulated apprentice fund that is subject to annual audits, submission of 990 forms, routine Department of Labor audits, as well as a management board that is equally divided between management and labor representatives.

Requiring the Union representatives to disclose all contributions received in excess of $10,000 and all disbursements made in excess of $10,000 would require disclosure by the apprentice fund of its employees, their salaries, instructor salaries, apprentice coordinator salaries, payments to vendors, suppliers, equipment manufacturers, training materials, publications, website designers, and many other features which are confidential and proprietary.

At present, the Department of Labor is considering the creation of apprentice programs that are not registered. These programs are called Industry Recognized Apprentice Programs, or IRAPS. At present, the construction industry is exempt from the regulations and we believe this exemption should continue. Should the exemption not continue, these unregistered programs would have the benefit of reviewing the confidential and proprietary information from apprentice programs designed by industry contractors and labor representatives over the course of the past 50 years. This would give a competitive disadvantage to the existing and successful apprentice programs, and an undeserved advantage to start up programs

There is also competition among union trades and training facilities. While trade lines are usually distinct in the construction industry, there is an overlap in which the trades both compete for and train the best quality workers. To require one training fund to disclose receipts and disbursements to another training fund, would allow them to know how to compete for instructors, coordinators, and other aspects of apprentice fund operations. The required disclosure of this confidential information should not be allowed, and the proposed regulation should exempt all jointly managed trust funds.

**Conclusion**

Consequently, the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers submits that the proposed regulation should be limited to Trusts that are controlled by the Union or Unions involved directly or through their ability to appoint the majority of the governing Board of Trustees. Contributions made from employers pursuant to a Collective Bargaining Agreement should not be deemed as coming from the union when used as a test to determine whether the Union has financial dominance over the Trust. The regulations should continue to exclude trusts that file form 5500 and any other jointly managed trust.

Respectfully submitted,

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