To: Office of Management and Budget
Attn: OMB Desk Officer for DOL-OLMS

Re: **The Ironworker Management Progressive Action Cooperative Trust ("IMPACT") Comment on: Labor Organization Annual Financial Reports for Trusts in Which a Labor Organization is Interested, Form T-1 Proposed Rule. RIN 1245-AA09**

The Ironworker Management Progressive Action Cooperative Trust ("IMPACT"), and the National Ironworkers and Employers Apprenticeship Training and Journeyman Upgrading Fund ("National Training Fund") are strongly opposed to the proposed T-1 reporting requirement contained in 29 CFR Part 403 as currently proposed. The requirement is unnecessary, overly burdensome, and as such, it should not be adopted. The rule imposes a broader requirement on the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the "Iron Workers") that would impose additional reporting and monitoring of those report by IMPACT and the National Training Fund.

The stated purpose of the Form T-1 requirement is to increase transparency in labor organization finances by requiring them to file what essentially amounts to an LM-2 on behalf of associated trusts. *29 CFR Part 403, 25133.* Congress has determined that labor organization members should have access to information about the financial condition and operation of their labor organizations and has established reporting obligations accordingly. 29 U.S.C. 431(b). The reporting requirement kicks in if the labor organization has management control or financial dominance over the trust. *29 CFR Part 403, 25132.* A labor organization is deemed to exercise management control over the trust when it has a majority of the members on the trust's governing board, and financial dominance is defined as 50 percent or more of the trust's receipts during the annual reporting period. *29 CFR Part 403, 25132.* If the threshold for management control or financial dominance is met, the labor organization, not the trust, must file the Form T-1. In this instance, no labor organization exercises dominance or control over the National Training Fund or IMPACT since these entities are jointly trusteed and direct union monies do not substantially support them.

The proposed rule goes to great lengths to discuss the importance of transparency in labor organizations. The stated purpose of this rule is to crack down on previous instances of fraud. The inference is that prior to this rule, there was no mechanism to stop labor organizations from avoiding their LM-2 requirements by transferring funds to their trusts. The Federal Register then goes on to site numerous instances of such fraud that were detected without the proposed rule adoption: a local disbursing $700,000 to a trust, a former business manager pleading guilty to embezzling $550,000 from an operational account, a trustee who submitted a false reimbursement to a training fund. *29 CFR Part 403, 25135-6.* These are just a few of the examples cited.

We do not believe that imposition of burdensome requirements of *29 CFR Part 403* on IMPACT and the National Training Fund will achieve what Congress intended in *29 U.S.C. 431(b)* because "access to information about the financial condition and operation of [their] labor organizations" is fully disclosed in LM-2s, and Form T-1 attempts to scrutinize contributions and

funds that are not a part of "financial condition and operation of labor organizations" because they are remitted directly to trustees and are used not just for Title 1 Landrum Griffin Act purposes.

Since inception in 2002, IMPACT has served the union Iron Working Industry in the form of a Taft-Hartley labor-management cooperative trust with a stated mission to improve the economic competitiveness and expand work opportunities for of the Ironworkers and signatory contractors. IMPACT is funded through collectively-bargained employer contributions based on a percentage of employee wages which contributions are remitted by the employers to IMPACT. We do not agree that contributions made pursuant to a collective bargaining agreement should be considered the labor organization's contributions because the remittance is initiated by the employers, and not any labor organization. Modern technology in banking allows for ACH remittance of collectively-bargained contributions bypassing labor organization altogether. IMPACT and the National Training Fund have already implemented policies for ACH remittance of all contribution and dues receipts to ensure transparency. We do not believe that imposing T-1 financial compliance on labor organizations will achieve more transparency than what ACH and modern banking have to offer. For this reason, Form T-1 filing requirement should not be enacted, or, if enacted, it should not apply to organizations like the Iron Workers, IMPACT, the National Training Fund or related entities because the Congress's concerns can be met through ACH and modern banking.

The Board of Trustees of IMPACT is comprised equally of employer and employee trustees providing the checks and balances for both the union and the management. As an example of the balance in union-management control, in the case of any trustee absence during an IMPACT board meeting, IMPACT by-laws call for weighted bloc voting ensuring that neither the employer nor the employee representatives have more than 50 percent of the vote. We reject the Department's position that T-1 compliance is necessary for "transparency in labor organization finances" because the checks and balances in labor- management cooperation already provide for this transparency and control. The employers, who remit contributions, exercise full control over the funds until deposited into the IMPACT lockbox. Labor organizations that collectively-bargain contributions for IMPACT should not be required to make financial disclosures for funds that are never in their control.

IMPACT is a labor-management cooperative trust with participating locals in the US and Canada. Because all funding comes from collectively-bargained contributions, all Ironworkers local unions participating in IMPACT may be subject to Form T-1 compliance, according to the Department's proposed definition. 29 CFR Part 403 explains that Form T-1 should be filed for each trust in which "labor organization is interested." In 29 CFR Part 403, at 25140, consideration is given to the costs of preparing Form T-1 stating that the information will be "identical for each participating labor organization and allocating the reporting costs among the labor organizations, as determined by the trust, and will keep their total costs only marginally higher than if a Form T–1 was required to be filed by only one of the participating labor organizations." We do not agree with this assertion because IMPACT trust funds cannot be used outside of its Trust Document prescribed purposes for the sole benefit of labor unions in their federal T-1 compliance. Considering that under the proposed rule Form T-1 will be mandated for all local unions participating in IMPACT, and further considering that criminal and civil penalties of labor organization's officers for violating LMRA are taken with all seriousness and respect, it is unlikely those officers will rely entirely on documents prepared by a trust on contributions made

by signatory employers without labor organization's control of those contributions at any point (direct remittance discussed above).

The Form T-1 requirement seeks to "mak[e] it more difficult for a labor organization to avoid, simply by transferring from the labor organization's books to the trust's books, the basic reporting obligations that would apply if the funds had been retained by the labor organization." 29 CFR Part 403, 25134. Concerning IMPACT, the funds are never in the Iron Workers possession or on their books. The funds are deducted from the wages paid to employees and are sent to IMPACT. Therefore, the very intent of the rule does not include trusts such as IMPACT. Additionally, since the contributions to IMPACT are derived completely from employers, the Iron Workers do not meet the threshold for financial dominance.

Requiring a labor organization to complete Form T-1 for funds that are not under their control, and funds that they do not supply, is overburdensome. This requirement would necessitate that the Iron Workers comb through every employer's contributions to IMPACT in order to complete Form T-1. The costs to accurately complete Form T-1 would far surpass the estimated $8,222.28. 29 CFR Part 403, 25145.

Furthermore, the Ironworkers do not meet the threshold for management control required by the Courts. As previously mentioned, not only is the Board of Trustees equally divided, but the weighted voting provision ensures that employer representatives are never less than 50 percent of the vote. The very mission of IMPACT is to promote the industry, not simply to promote the interests of Iron Workers themselves.

The proposed rule on Form T-1 compliance does not correspond to the intent of Congress in 29 U.S.C. 431(b) because it does not provide for desired transparency, but rather imposes on IMPACT and the National Training Fund monitoring of report accuracy on funds that are never in union control. Further, enactment of the proposed rule will create an expensive bureaucratic process which can be avoided by the use of ACH deposits directly from employers into trusts bypassing labor organization all together. Lastly, the proposed rule is an attempt to impose expensive additional compliance requirement on labor organization in addition to LM-2 requirement and the proposed cost distribution is not consistent with LMRA and purposes of labor-management cooperative trusts.

As the Court noted in *AFL-CIO v. Chao, 409 F.3d at 389–391(DC Circuit 2005),* the Secretary's ability to "promulgate rules requiring financial reporting" is limited and again, "the promulgation of Form T-1 exceeds Secretary's authority by requiring general trust reporting ". 409 F.3d at 391, to the extent that such reporting would exceed the unions' reporting requirements under Title I of the Landrum-Griffin Act. IMPACT expenditures may legitimately go for trust purposes that are beyond traditional union expenditures under which Title I reporting requirements may be triggered. The issue is not one of "control." Rather the issue is of one of whether the T-1 rule covers only those funds which would otherwise be covered under Title I. Here the proposed rule is overly broad.

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