

July 26, 2019

Mr. Andrew Davis  
Chief of the Division of Interpretations and Standards  
Office of Labor-Management Standards  
U.S. Department of Labor  
200 Constitution Ave N.W.  
Room N-5609  
Washington, DC 20210

Re: RIN 1245-AA09

Dear Mr. Davis,

We write to urge the Office of Labor Management Standards (“OLMS”) of the U.S. Department of Labor (“DOL”) to extend the comment period on RIN 1245-AA09, its proposed rule that would require a labor organization to file an annual financial report, the Form T-1, for certain trusts in which the labor organization has an interest (the “Proposed Rule”). 84 Fed. Reg. 25130 (May 30, 2019). The rule proposed by OLMS is a complex regulation that will impose substantial new reporting requirements on labor organizations and affiliated trusts. Comments on the Form T-1 are due to OLMS on or before July 29, 2019. We strongly believe that stakeholders need more time to consider all of the ramifications of the significant financial reporting rule that OLMS has proposed, as explained below.

The Form T-1 report has had a complicated regulatory history. The T-1 Form was originally proposed and finalized by OLMS in 2002 and 2003, respectively. In 2005, the D.C. Circuit Court vacated the Form T-1 reporting requirement as overly broad and exceeding the Department of Labor’s regulatory authority in *AFL-CIO v. Chao*, 409 F.3d 377, 389-391 (D.C. Cir. 2005). Following the D.C. Circuit’s ruling, OLMS again published a revised, final Form T-1 reporting rule in 2006. This final rule was struck down by the district court in Washington, D.C., for failing to provide a new notice and comment period under the Administrative Procedures Act (“APA”). *AFL-CIO v. Chao*, 496 F.Supp. 2d 76 (D.D.C. 2007). In 2008, the Form T-1 rule was again proposed and finalized by OLMS, only to be formally rescinded by the agency in 2010.

The regulation has been struck down by federal courts on two occasions, once for violating the APA’s requirement to give stakeholders an opportunity to comment on the regulation, we believe that OLMS should be sensitive to giving the regulated community

an appropriate amount of time to digest and offer constructive comments on the rulemaking. OLMS gave a 60-day comment period in its notice of proposed rulemaking published on May 30, 2019. A sixty-day comment period beginning on May 30th is difficult for employers, employee benefit funds, tax exempt organizations, and labor organizations and their related entities to meet in light of the fact that many of the key decision makers of these entities are on summer vacations during the months of June and July. Moreover, many of these entities' decision-making committees and boards commonly meet to discuss key issues, including legal developments, on a quarterly basis. This means that these leaders will have, at best, one quarterly meeting in which to be briefed on the Form T-1 proposed rule, to digest its significance, and to develop substantive comments on the rulemaking. That is simply not enough time for the key constituencies affected by this rule to consider the proposed rule's many implications and to provide meaningful feedback to OLMS. In addition, we note that members of the labor and benefits press have focused little attention on the Form T-1 proposal. As a result, this proposal is virtually unknown to many of the key constituencies that would ordinarily provide comments.

We also note that in 2016, the Department of Labor (the Employee Benefits Security Administration or "EBSA") published major proposed changes to the Form 5500, an annual reporting Form comparable to the Form T-1 that is filed by ERISA covered-benefit plans. 81 Fed. Reg. 47534 (July 21, 2016). As proposed, that rulemaking included a 60-day comment period. However, after numerous interested parties requested an extension of the comment period, EBSA extended the comment period for an additional two months. 81 Fed. Reg. 65594 (Sept. 23, 2016). We believe that OLMS should likewise extend the Form T-1 comment period for an additional 60 days, at a minimum. We request an additional 90 days in order to provide adequate comments on this complex rulemaking.

Union-affiliated apprenticeship and training plans are one of the key types of entities that would be significantly affected by the proposed Form T-1 reporting requirement. It is worth noting that the entities interested in the Form T-1 proposed regulations are currently highly involved in commenting on a separate proposal by the Department of Labor's Employment and Training Administration ("ETA"). In this regard, on June 25<sup>th</sup>, ETA published a proposed rule under the National Apprenticeship Act that establishes an entirely new process for federal recognition of apprenticeship programs and their apprentices. 84 Fed. Reg. 29970 (June 25, 2019). Comments are due to the ETA by August 26th. For this reason, employers, tax-exempt organizations, unions, apprenticeship plans, and other constituencies interested in and potentially affected by the proposed Form T-1 regulation in particular are uniquely unable to engage with the Form

T-1 proposal at this time and will not be able to develop substantive comments by the deadline of July 29<sup>th</sup>.

Thank you for considering our request to extend the comment period on the Form T-1 reporting rules.

Sincerely,



Todd Stafford  
Executive Director

cc: Patrick Pizzella, Acting Secretary of Labor  
Arthur F. Rosenfeld, Director, OLMS  
Andrew Auerbach, Deputy Director, OLMS

