



February 12, 2009

Denise M. Boucher  
Director, Office of Policy, Reports and Disclosure  
Office of Labor-Management Standards  
U.S. Department of Labor  
200 Constitution Ave, NW, Room N-5609  
Washington, DC 20210

**Re: RIN 1215-AB62: *Labor Organization Financial Reports*; Notice of Proposed Extension of Effective Date**

Dear Ms. Boucher,

Associated Builders and Contractors, Inc. (ABC) submits the following comments in response to the above-referenced notice of proposed extension of effective date, published in the *Federal Register* on February 3, 2009, at 74 Fed. Reg. 5899. ABC previously submitted comments to this docket in response to the U.S. Department of Labor's (hereinafter Department) Notice of Proposed Rulemaking published in the *Federal Register* on May 12, 2008, at 73 Fed. Reg. 27346.

The current notice asks the public to comment on whether the Department should extend the February 20, 2009 effective date of the Final Rule that the Department adopted in this rulemaking and published in the *Federal Register* on January 21, at 74 Fed. Reg. 3678. The Final Rule revised the existing version of Form LM-2 with the goal of achieving greater financial transparency by organized labor, and added new procedures and standards under which the privilege that smaller unions currently have to file a Form LM-3 could be revoked in instances where financial reporting is found to be delinquent or materially deficient. As discussed in detail below, ABC strongly supported the goals and additional filing requirements of the proposed rule and we strongly support the Final Rule. ABC is opposed to any extension of the effective date of the Final Rule, and we urge the Department to adhere to the original effective date of February 20.

**About Associated Builders and Contractors**

ABC is a national construction industry trade association representing 25,000 individual employers in the commercial and industrial construction industry. ABC represents both general contractors and subcontractors throughout the United States. The majority of ABC's member companies are "merit shop" companies, and our diverse membership is bound by a shared commitment to the construction industry's *merit-shop philosophy*. The merit-shop philosophy is grounded on the principal of full and open competition, without regard to labor affiliation. The merit-shop philosophy helps ensure that taxpayers and consumers alike receive the most for their tax and construction dollars.

Conservatively, ABC's members employ more than 2 million skilled construction workers, whose training, skills, and experience span all of the twenty-plus skilled trades that comprise the construction industry. The workforce of merit-shop companies comprises more than eighty (80) percent of the private commercial construction industry.

**The effective date of the Final Rule should not be extended or otherwise delayed.** ABC has long advocated the importance and benefit of ensuring that the financial transactions of organized labor are transparent. As the Department recognized in the preamble to the proposed rule, financial transparency “promotes both the labor organization’s own interests. . . and the interests of the public and government.” 73 Fed. Reg. at 27346. ABC looks forward to the Final Rule’s swift implementation without further hindrance or delay.

There is a clear need for all Form LM-2 filings to be as complete and readily available to union members and the public as possible. According to the Department’s Office of Labor Management Standards’ (OLMS) most recent annual report, the LM-2 filings have resulted in over 900 convictions and over \$91.5 million in recovered union funds and restitution since 2001. In fiscal year 2008 alone, the Department obtained 103 criminal convictions and over \$3 million.

In light of the funding that will soon flow to organized labor—especially to construction unions—as a result of the economic stimulus package, the need to ensure union financial transparency has become even greater. As with the public’s demand for transparency in banks and other corporate entities receiving economic stimulus funds, there is an equally compelling need for the public to have the same benefit of transparency when it comes to the receipts and expenditures of labor organizations. Both the proposed rule and the Final Rule provided ample justification for the regulatory changes adopted in the Final Rule and there is simply no reason to revisit the issue or delay the Final Rule’s implementation. Indeed, a delay in the effective date could easily be used by the rule’s opponents to justify further delay due to the added administrative burdens that would be incurred to pull together and report the additional information that the rule requires. At a minimum, such a delay could be used to justify filing an incomplete LM-2 report this year (2009), just when the economic stimulus funds would be reaching the intended employers and workers.

**On-time implementation of the LM-2 rule is entirely consistent with, and would reinforce, the President’s commitment to rigorous financial oversight and accountability.** In remarks made at the White House on January 21, 2009, President Obama referred to the “beginning of a new era of openness in our country.” The President also emphasized his administration’s dedication to implementing a new standard of openness, stating, “[t]ransparency and the rule of law will be the touchstones of this presidency.”

The administration has made significant efforts to emphasize and underscore the importance of public accountability and improved financial oversight. The American Recovery and Reinvestment Act contains stimulus transparency provisions that will require recipients to report on the use of recovery spending, and increase auditing and investigation measures. According to Treasury Secretary Timothy Geithner, the proposed Financial Stability Plan will contain a “framework of oversight and governance,” designed to “give the American people the transparency they deserve.” President Obama mentioned these policies during his February 9 press conference, stating that they will create “an unprecedented level of transparency and accountability,” so the American public can clearly see how taxpayer money is being spent.

ABC understands that the Department’s solicitation of these comments was triggered by a federal regulatory review directive, issued by the Office of Management and Budget (OMB) on January 21. The directive’s purpose was to give the new administration the opportunity to review rulemakings issued during the waning days of the Bush administration in order to prevent the publication of regulations that fail to meet the regulatory standards that OMB articulated in the directive. However, under close scrutiny of each of the directive’s standards it is clear that the Final Rule meets the standards with flying colors and, therefore, there is no basis whatsoever for delaying the February 20, 2009 effective date of the Final Rule:

1. The rule was drafted, proposed, and finalized in a “procedurally adequate” manner.
2. The rule reflected proper consideration of the facts.

3. The rule reflected due consideration of the agency's statutory or other legal obligations.
4. The rule is based on reasonable judgment about the legally relevant policy considerations.
5. The rulemaking process was open and transparent.
6. Objections to the rulemaking were adequately considered, including objections that presented contrary facts and arguments.
7. Interested parties had the benefit of access to the facts, data, and analyses on which the agency relied.
8. The rule found adequate support in the rulemaking record.

Accordingly, for the reasons set forth above, as well as the reasons put forth in ABC's earlier comments to this docket, the Department's adoption of the Final Rule is amply justified and much needed. The rule's timely implementation is necessary to carry out the Department's statutory mandate to combat union-related corruption, as directed by the Labor-Management Reporting and Disclosure Act (LMRDA). The Department should stick to its guns by implementing the rule on February 20, as originally announced.

Respectfully submitted,



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Director of Legal and Regulatory Affairs



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