



JANUARY 2009

PRESIDENT-ELECT OBAMA'S STIMULUS PACKAGE PROPOSAL

FCA SENDS LETTERS TO PRESIDENT-ELECT OBAMA'S TRANSITION TEAM AND TO KEY MEMBERS OF CONGRESS SUPPORTING THE ECONOMIC STIMULUS PACKAGE.

Economic Stimulus Package: President-Elect Obama has promised to boost this Nation's overall economy with a significant injection of construction stimulus spending—one of his top priorities and a shot in the arm for the entire construction industry, specifically the unionized segment since these jobs would be subject to prevailing wages. During one of his weekly radio addresses, he stated his vision favors a program that "focuses on energy efficiency, technology deployment, school and health system modernization, and infrastructure upgrades. In support of this initiative, the U.S. Conference of Mayors pointed out there were thousands of "ready to go" infrastructure projects that could be initiated immediately which would provide jobs. The National Governors Association has provided a list of \$136 billion in public works projects that could be available for bids within six months.

Anticipating such a stimulus package, on Dec. 18, FCA expanded its coalition partnerships by participating in a forum of the Chief Executive Officers of numerous construction-industry associations. The forum, hosted by AGC, was attended by FCA's CEO Stuart Binstock. It included other associations from numerous FCA Alliances (e.g., representatives from AGC, ASA, ICE, MCAA, NECA, SMACNA, and TAUC). The forum's purpose was to jointly identify and ask the incoming Administration and Congress to fund specific building initiatives that should be included in that Economic Stimulus Plan—initiatives that would (1) identify shovel-ready projects that could be started quickly, (2) suggest contractor/owner tax incentives that would promote energy efficiency with far-reaching environmental implications, and (3) create jobs that would put people to work immediately. After that forum, two letters were generated, signed jointly by both management and labor organizations, and sent to Obama's Transition Team and key Members of Congress. These two letters separately (1) identified the construction-industry infrastructure investment opportunities—particularly pointing out the types of infrastructure targets that would meet the above threefold requirements—and (2) proposed the types of tax incentives that should be awarded to contractors and building owners.

PRESIDENT-ELECT OBAMA'S OTHER INDUSTRY ACTIONS.

ANTICIPATE OTHER CHANGES AFFECTING THE UNION CONSTRUCTION INDUSTRY.

Expect the Obama Administration to address changing certain aspects of the Davis-Bacon Act, to work on worker classification issues, and to provide its direction concerning use of the E-Verify Program. Look for legislative attempts to expand Davis-Bacon program coverage and to reduce the paperwork and other administrative burdens. In addition, expect Davis-Bacon prevailing wage protections to be applied to any guest worker program. As a senator, he was a leading proponent of worker misclassification legislation (i.e., introducing **S.2044: Independent Contractor Proper Classification Act of 2007**). Similar legislation most likely will be introduced in the 111th Congress. One indication of how the new Administration plans to treat amnesty and the guest worker program might come in its approach on implementing the new E-Verify regulations, released on Nov. 14, 2008, just days before they would have become vulnerable to being rescinded by the new Administration. President Bush signed into law (P.L. No. 110-329) **H.R.2638: the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act** which provides \$100 million to continue and improve the E-Verify program in FY2009.

SUPPORT BOLSTERED BY STRONG DEMOCRATIC MAJORITIES IN BOTH HOUSES.

Labor is praising President-elect Obama's lopsided win as a victory for workers' rights, an opportunity for labor to grow and prosper in the wake of the voters' electoral mandate for change under the majority Democratic Party representation in both houses of Congress, not to mention the White House. Some of the Obama Administration's early actions most likely will include a repeal of Executive Order 13202, which currently bans the requirement of PLAs on federally funded projects, and a push to pass **S.1041/H.R.800: Employee Free Choice Act (EFCA)**, the latter being labor's top priority in the new 111th Congress. This legislation would amend the NLRA to give workers the option to form a union through a NLRB check of authorization cards signed by a majority of employees. At the IUPAT's request, the FCA Board of Directors on Jan. 9, 2009, voted in favor of jointly supporting this legislation.

PRESIDENT SIGNS PENSION FUND RELIEF LEGISLATION.

H.R.7327: Worker, Retiree, and Employer Recovery Act of 2008 Becomes Public Law No. 110-458: On December 23, 2008, President Bush signed H.R.7327 into Public Law No. 110-458—thereby averting any requirement for employers to increase their fund contributions and/or cut employee benefits. This law, however, does not erase funding obligations, but it does adjust some payment schedules set up in the Pension Protection Act of 2006, in light of the economic downturn. In addition to pension funding relief, it will also protect employee benefits and make technical corrections to several provisions under the 2006 law. The bill was passed largely as a result of the persistent efforts of a large labor-management coalition (the National Coordinating Committee for Multiemployer Plans), including the FCA. The law now contains key multiemployer provisions which the Coalition had been aggressively pursuing: a one-year freeze in the zone certification, three years of additional time for plans certified to be "Red" or "Yellow" zone plans in 2008 or 2009, additional disclosure language to participants of plans that elect to use the freeze, and the PPA Technical Corrections.

TOP REGULATORY ISSUES

PBGC'S RULE AMENDS REGULATIONS ON COMPUTING WITHDRAWAL LIABILITY.

The PBGC final rule, effective Jan. 29, 2009, implements provisions of the Pension Protection Act that deal with the allocation of unfunded vested benefits to employers withdrawing from multiemployer pension plans and that deal with an employer's withdrawal liability when such a plan is less than 65 percent funded. The complete text of the rule may be accessed at <http://op.bna.com/dlrcases.nsf/r?Open=vros-7msu2r>.

ADVANCE COPIES OF FORM 5500: ANNUAL RETURN OF EMPLOYMENT BENEFIT PLAN IS AVAILABLE.

The DOL has announced the availability of advanced copiers of revised Form 5500: the Annual Return/Report of Employment Benefits Plan for 2008. Pension and welfare benefit plans are required to file this form annually to provide information about their finances, investments, and operations. The revised form contains modifications, including a new actuarial schedule. Multiemployer defined benefit pension plans must also file financial asset information as an attachment for retirement plan information on the form's Schedule R. Some plans with fewer than 25 participants even have the option of filing a simplified Form 5500. Advanced copies of the forms, schedules, and instructions are not to be used for actual filing. See <http://www.dol.gov/ebsa/5500main.html> for more information.

OSHA ESTABLISHES PRE-EMPLOYMENT CITATIONS FOR PPE VIOLATIONS.

Under a recently published final rule (OSHA-2008-0031), OSHA wants to make it perfectly clear that employers will be required to provide PPE and training to every covered employee and can be cited for noncompliance on a per-employee basis. This rule will become effective on Jan. 11, 2009. However, issuing per-employee citations, like other types of per-instance citations, is a matter of prosecutorial discretion wholly outside the scope of this rulemaking.

OSHA CLARIFIES ASBESTOS TRAINING REQUIREMENTS.

OSHA has ruled that workers performing Class III asbestos work are expected to undergo at least two hours of annual refresher training, including a hands-on component, within 12 months of their initial training. Their initial training must take at least 16 hours and meet the EPA's requirements for asbestos training of personnel. Class III asbestos work includes "repair and maintenance operations wherein asbestos-containing material is likely to be disturbed."

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