

# NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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December 1, 2010

The Honorable Phyllis C. Borzi  
Assistant Secretary, Employee Benefits Security Administration  
U.S. Department of Labor  
Washington, D.C. 20210

Re: RIN 1210-AB42

Dear Ms. Borzi:

The National Coordinating Committee for Multiemployer Plans (the NCCMP) is pleased to provide these comments on the Amendment to Interim Final Regulations implementing the rules regarding when a group health plan has status as a “grandfathered health plan” under the Patient Protection and Affordable Care Act. The Amendment was published by the Departments of Labor, Treasury, and Health and Human Services (the “Departments”) on November 17, 2010.

As you know, the NCCMP is the only national organization devoted exclusively to protecting the interests of the approximately ten million workers, retirees, and their families who rely on multiemployer plans for retirement, health and other benefits. The NCCMP’s purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit, non-partisan organization, with members, plans, and plan sponsors in every major segment of the multiemployer plan universe, including in the airline, building and construction, entertainment, health care, hospitality, longshore, manufacturing, mining, retail food, building service and trucking industries.

The NCCMP filed comments on the Interim Final Regulations concerning grandfather status. In those comments, we noted that for insured collectively bargained plans, a change in insurance issuers during the period of the collective bargaining agreement would not, by itself, cause a plan to lose its status as a grandfathered health plan at the termination of the agreement. However, a change in issuers after the termination of the CBA would result in loss of grandfather status. We noted that clarification of this rule in the regulations would be helpful. Because many CBAs last three to five years, it is important to know if a plan’s trustees are locked into a relationship with a particular insurance issuer and when they can move to a more advantageous relationship with a new issuer. We also asked the Departments to clarify whether a plan would lose grandfather status when it adds a new insured benefit option.

We appreciate and commend the Amendment to the Interim Final Regulations that provides that a group health plan may change health insurance coverage without ceasing to be a grandfathered plan, provided the plan otherwise meets the grandfather standards. The Amendment applies to changes to insurance coverage that are effective on or after November 15, 2010. The Departments invited comments on the Amendment with respect to the prospective effective date of the rule and how that affects plans with different plan years.

In our view, there is no reason to apply this significant change only prospectively, and we recommend that the Amendment apply retroactively. Not all plan sponsors would be able to take advantage of retroactive application at this time, but it should be an option for those plan sponsors interested in applying it to contracts effective prior to November 15. Those plan sponsors that have already made a significant investment in non-grandfathered status (e.g., the insurance product was priced as a non-grandfathered plan and employee premiums have already been established with those benefits in mind) would not have to reverse course if they think it would be too disruptive or not possible. However, other plan sponsors would be free to keep or reclaim their grandfathered status. Of course, for retroactive application to be a possibility for any plan sponsors, the Departments would need to announce this change as soon as possible.

We also recommend that the Departments clarify that the Amendment applies when a self-insured group health plan enters into a new contract with an issuer. This certainly appears to be the case based on the language of the revised regulatory text, but the focus in the preamble and in the accompanying fact sheet on “changing” issuers confuses the issue unnecessarily. Permitting a change in issuers as well as a funding shift from self-insured to insured is consistent with the Departments’ stated intent to treat insured and self-insured plans similarly.

## **Conclusion**

Thank you for the opportunity to provide comments on this important issue. We will be pleased to provide any additional information that you might find useful.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy G. DeFrehn". The signature is written in a cursive, flowing style.

Randy G. DeFrehn