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Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration, Room N–5653
U.S. Department of Labor
200 Constitution Avenue, NW.
Washington, DC 20210
Attention: RIN 1210–AB43

Re: Annual and Lifetime Limits as applied to the Teamsters Insurance Premium Reimbursement Fund

Dear Sirs:

I represent the Teamsters Insurance Premium Reimbursement Fund ("Fund"). As currently structured, active employees contribute $3.00 per week, which is deducted from their paychecks by their employer and transmitted to the Fund. After making 312 weeks of contributions, an employee becomes eligible for benefits upon his retirement. When the employee retires at or after age 57, the Fund will reimburse the retiree and spouse up to $250 per month each toward the cost of retiree health insurance provided either by the employer or by a qualified HIPAA Plan.[1] Benefits terminate upon the retiree and/or spouse reaching age 65 or receiving an aggregate of $5,000.00 in reimbursed premiums. The Trustees have been assured that a minimum contribution of $936.00 can sustain a lifetime benefit maximum of $5,000.00. Conversely, the Trustees have been assured that the contribution rate cannot sustain benefits without the $5,000.00 lifetime maximum and $3,000.00 annual maximum. If the lifetime and annual maximum prohibition applies to the Fund, the Trustees will be compelled to terminate the Fund.

The Trustees have, therefore, authorized me to comment concerning the impact of the Patient Protection and Affordable Care Act and its elimination of annual and lifetime benefit limits. In particular, this request is based upon the portion of the Regulations published in the Federal Register on June 28 requesting comments about Health Reimbursement Arrangements which include both active and retired employees and which state that the prohibition of maximums generally does not apply to Health Savings Accounts. 75 Fed. Reg. 37188 at 37190-37191.

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[1]The Trustees are considering amending the Plan Document to include reimbursement of COBRA premiums for laid off and terminated employees.

Based on this portion of the preamble to the Regulations, the Trustees believe that there are valid reasons that the benefit maximums do not, or should not, apply. First, the Fund is probably not a Health Reimbursement Arrangement withing the meaning of the preamble. To the extent that the Fund receives contributions only from employees, with the employer acting merely as a conduit, the Fund is not a "promise by an employer to reimburse medical expenses" and, therefore, not an HRA. But this does not resolve our problem, because the prohibition of maximums may still apply.

The Fund is analogous to a Health Savings Account, to which the PPACA benefit maximums may not apply. However, The Fund differs from a typical HSA in several ways. Unlike an HSA, the benefits are limited to reimbursement of medical premiums. And, unlike an HSA, the participant has no "account" or any claim to his contributions. He can forfeit his contributions by death while in active employment or by failing to make the minimum 312 weeks of contributions. But he can receive benefits well in excess of his contributions; although it is unlikely to happen, he can receive $5,000.00 for only $936.00 in contributions. If the Funs is termed an HSA, it would be permitted to retain its maximum benefit limitations.

Second, the Preamble provides that "in the case of a stand-alone HRA that is limited to retirees, the exemption from the requirements of ERISA and the Code relating to the Affordable Care Act for plans with fewer than two current employees means that the retiree-only HRA is generally not subject to the rules in PHS Act section 2711 relating to annual limits." The Fund is a stand-alone plan with benefits limited to retirees. Yet because contributions are received from, or on behalf of, active employees, ERISA applies even though only non-employees receive benefits. Nevertheless, the Preamble states that "When HRAs are integrated with other coverage as part of a group health plan and the other coverage alone would comply with the requirements of PHS Act section 2711, the fact that benefits under the HRA by itself are limited does not violate PHS Act section 2711 because the combined benefit satisfies the requirements." Although the Fund may not be an HRA, the Fund's benefits are integrated with benefits provided by <u>other</u> benefit plans which are required to comply with PPACA, including the prohibition on annual and lifetime maximums. If the Fund can take advantage of the integration exception in the Regulations, the Fund can retain its annual and lifetime benefit restrictions.

Third, the new 42 U.S.C. §2711(b) expressly permits a "group health plan or health insurance coverage" to establish annual and lifetime maximums "on specific covered benefits that are not essential health benefits ...." Assuming that the Fund is a "qualified health plan or health insur[er]," the benefits provided by the Fund are not "essential health benefits" within the meaning of 42 U.S.C. §2711(b) and PPACA Section 1302(b). In fact, the Fund does not provide health benefits within the meaning of PPACA. Rather, the Fund provides reimbursement, or partial reimbursement, of premiums paid by a retiree to obtain essential health benefits as defined by PPACA. If it does not provide "essential health benefits," the Fund can retain its annual and lifetime benefit restrictions.

We believe that the Regulation does not address the Fund's situation. Accordingly, we request the Department to issue Regulations or an advisory opinion which will permit the Trustees to continue providing benefits and not terminate the Fund.

Very truly yours,

Jonathan G. Axelrod

cc: Michael McCall