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Office of Health Plan Standards & Compliance Assistance
Employee Benefits Security Administration
Room N - 5653
United States Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Attn: RIN 1210-AB52

Re: Proposed Regulation - Summary of Benefits and Coverage and the Uniform Glossary
Federal Register Volume 76 #162, Page 52442 et seq.

Dear Department of Labor:

This firm represents a number of Taft-Hartley multi-employer Welfare Benefit Plans governed by ERISA. These plans have provided group health coverage to participants for more than 40 years each. Generally those group health plans are self funded and not insured. These plans are only a small fraction of the universe of plans providing coverage to millions of union members and their families, who are often ignored when rulemaking decisions involving group health plans are made.

While the plans I represent and their Trustees do not quarrel with the overall purpose of your proposed regulation regarding Summary of Benefits and Coverage and the Uniform Glossary, the portion of the proposed regulation found at §2590.715-2715(a)(ii)(B) fails to consider the usual methodology employed by these Plans, and hundreds of other plans like them, in establishing eligibility for coverage.

The proposed regulation, subsection B provides:

> "The SBC must be provided as part of any written application materials that are distributed by the plan or issuer for enrollment. If the plan does not distribute written application materials for enrollment, the SBC must be distributed no later than the first date the participant is eligible to enroll in coverage for the participant or any beneficiaries. (emphasis

supplied)"

My clients, and hundreds of other like them, provide coverage to plan participants based upon hours worked, hours contributed or contributions made on behalf of employees of employers bound by collective bargaining agreements to make contributions to the plans. Generally speaking, under those plans, an employee will initially become covered under the plan at such time as the employee has worked a sufficient number of hours or has a sufficient number of dollars contributed on his behalf to the Plan to satisfy the eligibility requirements established by the plan. None of my clients require any enrollment on the part of a plan participant to become eligible for benefits under the plan .

By basing the timing of the required furnishing of the SBC solely upon enrollment or eligibility to enroll, the proposed regulation fails to provide any guidance to group health plans that do not require enrollment as a condition to coverage under the group health plan.

Absent the inclusion in any final regulation of a provision addressing when the SBC must be provided in circumstances where no enrollment is required for coverage, there will be little or no uniformity in the practices adopted by such group health plans who provide coverage to millions of American workers.

A review of the typical rules currently in effect for such group health plans may serve to both highlight the problems created by the absence of guidance and assist the Department in formulating future regulatory guidance:

1. An employer bound by a collective bargaining agreement will initially hire an employee in a category of work covered by the collective bargaining agreement. That employee may or may not be a union member - (particularly in a right-to-work states such as Florida) and may not have been referred to the employer through a sponsoring union.

2. The employee may work only a few hours and be terminated either because he is unacceptable as an employee or because the employer no longer needs the services of that employee. That employee may then work for other employers in a category of work for which contributions to the Plan are required; or the employee may never again work under the Plan. Alternatively, the employee may continue to work on a full time basis for the employer or for other employers in a category of work for which contributions are required to be made to the Plan .

3. Generally speaking, some time around the middle of the month following the employment of the employee, the employer will be required to report the hours worked by the employee during his initial employment month and pay any contributions due.

4. Upon receipt of the contributions for that employee, which may occur as much as 45 to 60 days after the employee is first employed, the group health plan will have its first knowledge of the existence of the employee and the mere possibility that the employee will become covered under the Plan. Even that report does not provide the Fund office with an address for the employee, merely the name and social security number.

5. While initial eligibility rules may vary, let us assume that the Plan requires 360 hours of covered employment in a three month period and coverage commences the first of the month following attainment of the 360 hours requirement.

6. Again, there are a number of fact patterns that can arise. But assuming the employee works on a fairly full time basis, It may take two months or three months of employment for the employee to gain coverage under the Plan .

7. Unfortunately, under none of those circumstances would the Plan be aware that the employee has attained coverage until it receives the contribution report form from the employer which reflects that the amount of hours worked or contributions due for the preceding months were sufficient for the employee to become covered under the Plan.

8. At best, the plan will learn of the participant's coverage effective on the first of a month, some 15+ days after the coverage becomes effective.

Under current rules established by the Department of Labor with respect to Summary Plan Descriptions, the employee receives a Summary Plan Description after the plan becomes aware that the employee has satisfied the requirements to be eligible for coverage under the plan.

Any rule that would require the Plan to furnish the SBC prior to the employee becoming eligible for coverage will have the following consequences:

1. Employees will receive an SBC for a plan for which the employee is not currently eligible and may mislead the employee into wrongfully believing that

the employee is covered.

2. The plan will be providing the SBC to employees who never attained coverage under the plan, again giving rise to confusion on the part of the employee.

Under the proposed regulation, the obligation to furnish the SBC is properly placed upon the group health plan where there is no insurance coverage, however, the question is - "When is it to be furnished?"

We would urge the agencies to adopt a rule allowing Taft-Hartley multi-employer Welfare Benefit Plans governed by ERISA to satisfy the SBC requirement by furnishing the SBC within a reasonable period **after**:

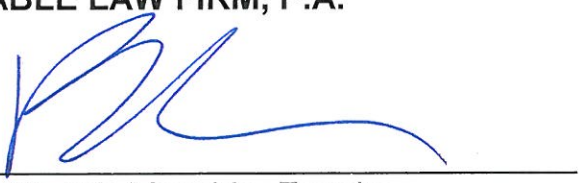
1. The Employee becomes eligible for coverage under the Plan, and

2. The Fund office becomes aware by the receipt of reports from Employer that the Employee has become eligible for such coverage.

If you should have any questions whatsoever, please feel free to contact me.

Very truly yours,

VENABLE LAW FIRM, P.A.



By _____
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