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ON BEHALF OF
THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS (NCCMP)

TESTIMONY TO

THE 2023 ADVISORY COUNCIL ON EMPLOYEE WELFARE AND PENSION BENEFIT PLANS

TESTIMONY PROVIDED ON:

RECORDKEEPING IN THE ELECTRONIC AGE

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Members of the ERISA Advisory Council, my name is Mariah Becker. I am the Director of Research and Education for the National Coordinating Committee for Multiemployer Plans (NCCMP). I am also an Enrolled Actuary, and a member of the American Academy of Actuaries Multiemployer Plans Committee. I am joined by Stuart Lerner, a Senior Vice President and Administration and Technology Consulting Practice Leader with Segal.

The NCCMP is a non-partisan, nonprofit, tax-exempt social welfare organization created in 1974 with members, plans and contributing employers in every major segment of the multiemployer universe. The NCCMP is the only national organization devoted exclusively to representing the interest of multiemployer plans, organized labor and the job creating employers of American who jointly sponsor them, and the more than 20 million active and retired American workers and their families who rely on multiemployer retirement and welfare plans. The NCCMP's purpose is to assure an environment in which multiemployer plans continue their vital role in providing retirement, health, training, and other benefits to America's working men and women.

Thank you for the opportunity to appear before you today as you examine the implications of employee benefit plans' shift to electronic/digital recordkeeping for compliance with record retention requirements and related matters as provided under the Employee Retirement Income Security Act of 1974, as amended (ERISA).

We would like to start first with a description of the unique structure and characteristics of multiemployer plans.

BACKGROUND ON MULTIEMPLOYER PLANS

Multiemployer plans are a product of the collective bargaining process, where at least one labor organization and two or more unrelated employers provide health, pension and a variety of other employee benefits through negotiated contributions to trust funds that are required by law to be maintained for the "sole and exclusive benefit" of plan participants. Multiemployer plans are jointly trusteed by both labor and management trustees and are subject to applicable provisions of the Taft-Hartley Act, ERISA, and the Internal Revenue Code.

The structure of multiemployer pension and welfare plans is different from that of a single employer plan. Single employer plans typically provide benefits to workers in the same or similar industry at a single workplace. In the multiemployer plan context, however, employees often work for a variety of employers who contribute to a pension or welfare plan based on the terms of a collective bargaining agreement. These workers may be in the construction, entertainment, or transportation industry, or other industries where they are required to perform tasks at a variety of worksites for multiple employers.

Multiemployer plans vary in size of participant population and also vary in the ways in which they are administered. Plans may use third-party administrators (TPAs) to administer some or all of the day-to-day operations of the plan, or plans instead may be self-administered, with fund office staff (referred to herein as Fund Offices) performing daily operations. The plan and the Fund Office are separate entities from either the union or the employer.

Multiemployer plans also vary in terms of electronic recordkeeping capabilities. Plans' experiences with TPAs or Fund Offices vary dramatically due to several factors including size of the participant population, the capabilities of the TPA and Fund Office staff, and funding available for the investment in and maintenance of technology.

Our testimony today focuses on the areas of examination identified by the Council and is intended to reflect the general experience of NCCMP's member multiemployer pension and welfare plans, keeping in mind that the experiences of plans do, in fact, differ widely.

AREAS OF EXAMINATION

***Receiving, Maintaining, and Accessing "Source" Documents*[1]**

TPAs and Fund Offices receive source documents in a variety of ways depending on the systems in place. Many plans still receive paper copies of such documents while other plans receive documents only in an electronic format.

To determine which source documents are maintained by the plan, plans typically adhere to their document retention policy which is usually developed by Fund counsel. These policies vary greatly by plan in terms of content.

Source documents may:

- Be maintained in hard copy form and stored onsite at the TPA or Fund Office or sometimes stored off site at a storage facility;
- Be converted to an electronic image (i.e., scanned and indexed) and stored and preserved in an Enterprise Content Management System (ECM)[2] where the documents can be managed and retrieved. Such documents also exist on older tools including microfiche and other similar tools. If stored electronically in an ECM, hard copies of such documents typically will be maintained in accordance with the plan's record retention policy;
- Be stored on backup computer files as well as long-term digital archives (disks, tapes, etc.); or
- Be originally submitted electronically by the participant, not in paper format, through a secure portal provided by the TPA or Fund Office.

If source documents are received by the plan electronically and are converted to an electronic format, those documents are not typically purged from the plan's systems. However, plans that have implemented modern ECMs have the ability to implement the plan's record retention policy for electronic documents as this functionality is typically available with the software.

Challenges related to receiving, maintaining and accessing electronic documents include the following:

- Ensuring that documents that are being submitted electronically by participants to Fund Offices are being transmitted in a secure manner. This is especially important as many of these documents contain protected health information (PHI) and personally

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[1] We have interpreted the term "source" document to refer to an original document that is used to verify key information associated with requirements under, or obligations to, a plan including, but not limited to, eligibility, benefit and other elections, and employer contribution requirements. The following are examples of source documents: health enrollment forms; vacation/holiday payout request forms; pension applications; birth certificates; divorce decrees; marriage certificates; social security cards; college transcripts (scholarship funds); defined contribution election forms; COBRA election forms; employer remittance reports; collective bargaining agreements; and Summary Plan Descriptions.

[2] Software designed to help organizations manage documents, data and content. The software allows organizations to capture, analyze, distribute, store, and utilize content and data effectively.

identifiable information (PII). To ensure a secure transmission, some TPAs Fund Offices have provided a secure portal by which participants can log-in and upload the documents;

- Not all TPAs and Fund Offices have the budgets to procure, support and maintain the systems and tools required to store and access documents electronically;
- If a TPA or Fund Office receives hard copy sources documents from participants and wants to convert the documents to an electronic format, the TPA or Fund Office will need to image and index the documents so that the documents can be retrieved at a later date. However, not all TPAs or Fund Offices have the resources to scan and index documents;
- If a TPA or Fund Office has a significant volume of historical hard copy source documents, the effort and cost to convert those historical hard copy documents to electronic is significant.

Electronic Records Technologies

Existing Technologies

TPAs and Fund Offices use a variety of systems and tools to maintain electronic records. These systems and tools include benefit administration software and ECM software which can handle document management, records management workflow, scanning, and imaging. Some Fund Offices utilize spreadsheets and stand-alone databases to maintain, calculate, track and store data.

These tools allow TPAs and Fund Offices to scan hard copy documents and index the documents for future retrieval. These tools also allow for documents to be linked with benefits administration systems so that a user can access a document via the participant record.

In the case of TPAs as recordkeepers, plans may rely on other plan professionals to maintain the latest version of documents (i.e., vendor contracts, plan design and benefit descriptions/brochures, etc.) which may require legal counsel and other advisors (actuaries, auditors, pharmacy benefit managers, etc.) to keep up-to-date records. Versioning may be an issue for plans in cases where the TPA of the Fund Office may have some but not all past documents or the most current version.

Movement Away from Paper: Remittance Reports and Participant Portals

One area of significant movement away from paper to electronic submission is employer contribution remittance reports. Remittance reports are required to be submitted to the plan by contributing employers in order to track contribution amounts and participant employment information. Remittance reports typically include participant names, Social Security Numbers, and work information along with contribution amounts and are often accompanied by a physical check that is mailed to the Fund Office or a bank lockbox. As more and more employers and plans embrace electronic transactions, submission of paper remittance reports have been replaced by electronic files as well as by portals for employers to submit this information. Payments are also being submitted to plans electronically (i.e., ACH and wire transfers).

Another area of movement away from paper is the increased use of participant portals between TPAs or Fund Offices and participants. Portals allow participants to login to a secure portal in order to upload a document that can be retrieved by the TPA or Fund Office. There has also been movement on the part of TPAs and Fund Offices to improve efficiencies by uploading participant statements, explanation of benefits, participant statements and other documents for ease in paperless distribution to participants.

It is important to note again that TPAs and Fund Offices have varying levels to which these technologies have been implemented and, if implemented, there are varying degrees to which these technologies are utilized by plan participants. The adoption and utilization of technology varies greatly across industries, geographies and generations.

Emerging Technology

TPAs stay abreast of emerging technologies and trends in order to remain competitive. Fund Offices stay current through their system vendors, viewing new technologies at industry conferences, and through consulting firms including Segal and others.

While there is a likelihood that artificial intelligence (AI) can be utilized within some electronic record systems and tools, there has not been significant demonstration of that usage by the benefits administration system vendors at this point. However, AI is currently utilized in document scanning and imaging solutions as it relates to optical character recognition (OCR). AI allows for the improved reading and classifying of documents during the scanning process and therefore increases the level of automation.

Accuracy, Access, and Retention

Accuracy, authenticity, and completeness of electronic recordkeeping will vary by the systems and tools utilized by a TPA or Fund Office. Some TPAs and Fund Offices store information in paper files or store data in a single system. Others store data across multiple systems, and some use a combination of multiple systems and hard copy files.

TPAs and Fund Offices typically implement access controls to ensure that only those who need to access a specific file or record have the necessary access to perform their job function (i.e. calculating a benefit, health eligibility files, etc.). This is especially true as it relates to e-PHI and accessing PHI for the purposes of treatment, payment or operations. Health plans must comply with the requirements of the Health Insurance Portability and Accountability Act (HIPAA)'s security rule, and typically have implemented access controls and controlled access generally based on job roles and duties (role based security). Most systems have data security audit functions that allow system administrators to see who has accessed the record of an individual and who has changed the data or information of a record.

In terms of data retention, TPAs and Fund Offices follow their data retention policy and guidelines. These guidelines are usually developed by legal counsel and follow statuary and regulatory guidance regarding retention as well as accounting practices and guidelines as it relates to plan audits. For hard copy documents, documents are usually only retained in compliance with minimum retention policies. However TPAs and Fund Offices typically do not purge electronic files and records , because electronic storage of documents is relatively inexpensive to maintain.

Record Transfers

During a recordkeeper transition, the transferring of records usually requires the outgoing administrator to provide all plan records, employer records and participant level electronic data and information in a prescribed file format to the incoming administrator. This data is generally required by contract to be transmitted securely. In addition, any hard copy files must be sent to the new administrator as well, unless such documents are stored at an off-site facility and the new administrator wants to maintain the files in place and assume paying the storage fees on behalf of the plan.

Data integrity (the accuracy, authenticity, and completeness of data) during a recordkeeping transfer is usually achieved by reconciling and balancing the data after the data has been transmitted to the new TPA or recordkeeper. The incoming recordkeeper will compare the data that was sent with the data received from the current vendor, often using software tools to perform the reconciliation of data.

The process of migrating data into the recordkeeping system of the new vendor will vary depending on the data elements provided by the outgoing vendor and the data elements and fields maintained in the new system. Regardless of the migration and conversion process, prior to going live with the administration of benefits, the incoming TPA will reconcile the most recent month (i.e., pension payments, eligibility counts, contributions by fund, etc.). While the goal in the conversion process is typically to balance the prior system, there is a possibility during these conversions that the incoming vendor's interpretation of a plan rule could differ from the interpretation of the prior vendor resulting in data discrepancies.

Guidance

Looking forward, we recommend that future guidance should be provided following the usual notice and comment period to provide stakeholders with the opportunity to provide the Department with feedback. In addition, any proposed guidance should be scalable across clients of various sizes and should reflect plans' financial ability to invest in the appropriate systems and tools to comply with the guidance.

Clear guidance would be helpful and welcomed by both TPAs and Fund Offices regarding utilization of e-signatures. Current rules are unclear with regard to the use and availability of e-signatures have become an unnecessary barrier to the adoption of electronic documentation.