NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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Submitted electronically via http://www.regulations.gov

August 30, 2010

The Honorable Phyllis Borzi
Assistant Secretary
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Room S-2524
Washington, D.C. 20210

Re: RIN 1210–AB08

Dear Ms. Borzi:

The National Coordinating Committee for Multiemployer Plans (the NCCMP) is pleased to provide these comments on the interim final rule published by the Department of Labor on July 16, 2010 implementing disclosure requirements under ERISA §408(b)(2) to assist plan fiduciaries in assessing the reasonableness of contracts and arrangements.

As you know, the NCCMP is the only national organization devoted exclusively to protecting the interests of the approximately twenty-six million workers, retirees, and their families who rely on multiemployer plans for their health and other benefits, including over ten million of those whose retirement benefits are provided by multiemployer defined benefit pension plans. The NCCMP's purpose is to assure an environment in which multiemployer plans can most effectively continue their vital role in providing benefits to working men and women who work in industries characterized by highly mobile workforces. 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, automotive, building and construction, entertainment, health care, hospitality, longshore, manufacturing, mining, retail, food production sales and distribution, building services and trucking industries.

We believe that the interim final regulations will generally be beneficial to multiemployer plans. Specifically, we believe that it is appropriate that the interim final regulations apply to both defined contribution and defined benefit plans and to plans of all sizes. We also agree that the regulations should be expanded as indicated to apply to welfare plans.

In a multiemployer plan, employer contributions to the plan are negotiated in the collective bargaining process. Fees for plan services are typically paid for out of plan assets, so the cost of services is a direct offset to the level of benefits the plans can provide. This is the case for

defined benefit, defined contribution and welfare plans, regardless of plan size. The requirements of the interim final regulations will provide additional tools to plan fiduciaries to enable them to obtain information from service providers to evaluate the reasonableness of contracts and arrangements. Although most service providers willingly make this information available, some do not.

The problem is more acute for small plans. Larger plans typically have sufficient bargaining power to obtain more information from reluctant potential service providers, but that ability is certainly the exception rather than the rule for small plans. This situation has left trustees of small plans (and some larger plans) with the choice of rejecting a contract with seemingly good fees but little actual information, or paying higher fees to a service provider that provides more transparency.

While we understand the reasons for the Department's decision to consider more carefully the kinds of fee disclosures that should be required in connection with health plans, we urge you to maintain that project at a very high priority. For many multiemployer plans, the fee arrangements of insurance companies, pharmacy benefit managers and similar providers are considerably more difficult to penetrate than even those on the investment side. At least large retirement plans often have investment consultants who are familiar with the financial industry enabling them to scrutinize and evaluate many of the fee arrangements. Recent state-level enforcement actions looking into how health insurance companies and pharmacy benefit managers price benefits and determine claims reimbursements, have highlighted this as an area that is far more opaque and is often a source of great frustration to plan fiduciaries. While the Affordable Care Act may eventually help unravel some of these mysteries, plans are struggling with skyrocketing health care costs now, making the prompt extension of rules requiring greater transparency of fees charged to health funds all the more critical.

We support the change in §2550.408b-2(c)(1)(iii)(A) to require disclosure from ERISA fiduciaries as well as from investment advisers registered under either the Investment Advisers Act of 1940 or State law. The broader scope is appropriate and helpful to plan fiduciaries given the facts-and-circumstances nature and thus the uncertainty of determining fiduciary status under either ERISA or the 1940 Advisers Act. At the same time, it makes good sense to focus, as the final regulation does, on service providers that are fiduciaries or that are indirectly compensated in ways that might not be apparent to their customers, without inadvertently imposing new disclosure and documentary requirements on those dealing with plans in circumstances where the costs are naturally transparent, such as simple fixed-fee or hourly cost arrangements.

We understand that service providers may feel that required disclosures may best and most efficiently be provided through multiple documents Nevertheless, unless the provider can direct the purchaser of such services to the places within such documents in which they believe the required information appears, plans will be required to invest considerable resources, including significant professional fees to be paid from the plan, attempting to cull such information or guess at what the provider had intended in order to satisfy that such information is included in the vendor's submissions. Therefore, where the service provider elects this option to meet its disclosure requirements, we urge the Department to require that covered service providers

furnish a summary disclosure statement (or “road map”) to the plan that would provide an overview of the information disclosed for plan fiduciaries and would indicate where the detailed elements of the disclosures are to be found. Such a document should not add to the compliance burden of service providers because they must have some mechanism for determining that they have, in fact, disclosed all of the required material and, once assembled for one client, will have few, if any, modifications for others. A summary can serve this checklist function for the service provider as well as assist plan fiduciaries and should reduce this burden for the plan.

Finally, we urge the Department to provide additional guidance, through regulation or otherwise on the meaning of the requirement that a reasonable contract or arrangement must permit "termination by the plan without penalty to the plan on reasonably short notice under the circumstances". We have been advised that service providers sometimes insist that plans enter into contracts with limited termination "windows" that may extend for three years and occasionally longer. As discussed above, multiemployer plans may be confronted with a choice between attractive fees and such restrictive provisions. There is little information on what is considered "reasonably short notice" under various circumstances. Guidance and/or examples regarding what is meant by this phrasing would provide useful assistance and reduce unnecessary disputes over its meaning for both plan fiduciaries and service providers.

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

Sincerely,

Randy G. DeFrehn
Executive Director