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Mr. Robert J. Doyle
Director, Regulations and Interpretations Office
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

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Dear Mr. Doyle:

As your office prepares regulations implementing the annual funding notice requirement imposed on multiemployer pension plans in Section 103 of the Pension Funding Equity Act of 2004 (PFEA '04), I would like to submit the following comments for your consideration. The Newspaper Association of America (NAA) represents approximately 2,000 newspapers accounting for nearly 90 percent of the daily circulation in the United States. While most NAA members are dailies, many weekly newspapers are also members. The newspaper industry employs more than 381,300 workers in the United States. Many member newspaper companies contribute to multiemployer pension plans on behalf of their employees pursuant to labor contracts with a variety of unions.

While NAA supports this new law's goal of increased transparency – as well as the Department's proposal for implementing the statute's notice requirements – NAA is concerned that the "model notice" in the proposed regulation, unless modified, could inadvertently misrepresent the future financial condition of these multiemployer pension funds.

Increased transparency is particularly important because, as the Government Accountability Office (GAO) has stated and the Department of Labor (DOL) has recognized, the multiemployer regulatory system shifts financial risk away from the government and onto contributing employers and their participating employees. See GAO March 2004 Report, "*Private Pensions: Multiemployer Plans Face Short- and Long-Term Challenges.*" Contributing employers bear the risk of funding benefits for all participants, not just their own employees, and face significant withdrawal liability if they leave these plans; participating employees face the risk of reduced benefits when these plans become underfunded, as well as the risk of lower benefit guarantees from the Pension Benefit Guaranty Corporation if these plans become insolvent.

Requiring multiemployer pension plans to provide employers, employees and unions with more complete and more timely information about the funding status of these plans is thus essential. Without complete and timely information, the parties most affected by these plans – employers and their employees -- can neither monitor the financial stability of these plans nor take appropriate actions to protect their interests.

Comments on the Proposed Regulation

PFEA '04 is certainly a step in the right direction in terms of transparency in the multiemployer pension plan system. For the first time, these plans are required to make annual disclosures to employees, employers, and unions about their funding status, including their "funded current liability percentage" and the ratio of the market value of assets to benefit payments. NAA believes that additional and more detailed information needs to be disclosed, on a timely basis, to employers and employees, but recognizes the limitations of PFEA '04, which requires that only a few basic funding numbers be provided annually.

The Department's regulation appropriately recognizes that these numbers are simply a snapshot in time -- based on information from Form 5500s -- that contain data already many months old. The Department's proposed model notice thus attempts to put these numbers in context and includes proposed disclaimers about the relevance of these numbers to the plans' future funding status. While NAA supports placing these numbers in proper context, consistent with the statutory mandate to make these notices understandable to the average plan participant, NAA is concerned that language in the proposed model notice could inadvertently convey to participating employers and employees a false sense of security, particularly in plans that are underfunded.

The Funded Current Liability Percentage. NAA agrees that the funded current liability percentage should be put in proper context. The funded current liability percentage relies on the "actuarial value of assets" (determined using assumed factors) instead of the actual "market value of assets," so that the reported funding percentage may paint a more positive picture of the plan's funding than the actual value of assets would support. For example, in one multiemployer plan covering newspaper employees, the current liability percentage based on the actuarial value of assets would be 98% for the 2003 plan year, while the market value of assets would indicate that the plan was only 82% funded.

NAA recognizes that the proposed model notice includes two statements explaining that (1) "[i]n general, the higher the percentage, the better funded the plan" and (2) "[t]he funded current liability percentage . . . is not indicative of how well a plan will be funded in the future or if it terminates." NAA believes that the first statement is appropriate, but that the second statement needs to be expanded to add: ***"This funded current liability percentage is based on financial data and assumptions for the period ending [insert relevant valuation date]. This percentage will change over time. Whether this percentage will increase or decrease depends on a number of factors, including how the plan's investments perform, what assumptions the plan makes about rates of return, whether employer contributions to the fund increase or decline, and whether benefits payments from the fund increase or decline."***

The Assets-to-Benefit-Payments Ratio. NAA has similar concerns about the proposed model notice's statements about the assets-to-benefit-payments ratio. The model notice includes a statement that "This ratio suggests that the Plan's assets could provide for approximately [enter amount calculated above] years of benefit payments in annual amounts equal to what was paid out in the Plan Year. However, the ratio does not take into account future changes in total benefit payments or plan assets." NAA is concerned about suggesting or extrapolating anything from the assets-to-benefit-payments ratio, since many factors influence an on-going plan's ability to make benefit payments in future years. NAA recommends that this statement in the model

notice be expanded to add the following: ***“This ratio is based on financial data and assumptions for the period ending [insert relevant valuation date] and is not necessarily predictive of the plan’s future financial condition. The market value of plan assets in future years depends on the level of employer contributions to the plan, the market performance of the plan’s investments, and the level of benefits payments. The level of future benefit payments likewise depends on a number of factors, including the rate of retirement of plan participants, the size and demographics of the retiree pool, and their mortality rates.”***

In closing, NAA supports your efforts to ensure that the required annual funding notices provide employers, employees and unions with accurate and understandable information about the funding status of their multiemployer plans. We respectfully request that you consider the above information as you prepare final regulations for this extremely important law. Please feel free to contact Katherine M. Elsen, Director of Government Affairs, at 202 638-4770 if you need additional information or would like to meet with anyone from our industry.

Respectfully submitted,

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