

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS



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Submitted Electronically at
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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington D.C. 20210
Attention: Participant Fee Disclosure Project

Re: Participant Fee Disclosure Project
RIN 1210-AB07

Dear Friends,

The National Coordinating Committee for Multiemployer Plans (the NCCMP) is pleased to provide these comments on the Department's Participant Fee Disclosure Project, as contained in the Federal Register of July 23, 2008, Volume 73, Number 142, pages 43014-43044.

The NCCMP is the only national organization devoted exclusively to protecting the interests of approximately ten million workers, retirees, and their families who rely on multiemployer plans for retirement, health, and other benefits. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a non-profit, non-partisan organization, with members, plans and plan sponsors in every major segment of the multiemployer plan universe, including in the airline, building and construction, entertainment, health care, hospitality, manufacturing, mining, retail food, service and trucking industries. NCCMP members sponsor hundreds of several national and local multiemployer employee pension benefit plans that provide participants with the opportunity to direct the investments in their own individual plan accounts.

The NCCMP commends the Department for this proposal mandating important disclosures to participants. The NCCMP agrees that such disclosures are important to insure that participants and beneficiaries have access to basic, understandable information to provide the tools for their management of their individual accounts. The proposal to provide a substantial amount of this information in a comparative chart format will help to insure that the information is understandable and accessible to participants and beneficiaries. The decline of defined benefit plans in many industries and the growth of plans which delegate investment decisions to

participants and beneficiaries make informed decision-making by participants and beneficiaries, crucial to their retirement security of millions of Americans.

The NCCMP requests, however, that the Department provide an exception or alternative to the proposed timing of certain disclosures for plans that provide immediate eligibility. Most multiemployer individual account plans provide immediate plan eligibility and this combined with the unique structure of multiemployer plans makes it impossible for such plans to comply with the proposed disclosures that must be made “on or before the date of plan eligibility”.

A multiemployer individual account plan is a single plan in which the employees who may be represented by multiple unions and who are employed by many (often hundreds) employers participate. The plan is maintained pursuant to one or more collective bargaining agreements. Employees are eligible to participate in the Plan so long as they are employed by one of the employers maintaining the plan. Employees may move from employer to employer and continue to participate in the plan. While the employer makes employer contributions and/or withholds an employee’s elective deferrals in the case of a 401(k) plan, the plan is administered by a joint labor-management Board of Trustees that is independent of any contributing employer. The employer forwards the contributions and/or elective deferrals to the plan for deposit in the participant’s plan account. Employers have different payroll cycles so elective deferrals are remitted to the plan at different times. The due date for employer contributions is typically established by the collective bargaining parties in the collective bargaining agreements pursuant to which the plan is maintained.

The inherent structural impediment for multiemployer plans to providing information no later than the date of plan eligibility is that the plan fiduciaries (who are also the plan sponsor) who are providing the information are not the employer who hires the participant. Typically, the first time that the plan knows of the existence of a new participant is when employer contributions and/or elective deferrals are received by the plan some period of time after the participant is first employed. The time for payment of employer contributions is established in the collective bargaining agreements pursuant to which the plan is maintained. Elective deferrals are forwarded pursuant to the collective bargaining agreements and the requirements of law. The plan fiduciaries cannot modify the collective bargaining agreements; the collective bargaining parties must bargain and agree upon such modifications.

The plan can request that employers notify the plan immediately when an employee is hired but even if such notice is provided, the employee may be on the job for some period before the disclosure information can be provided to the employee by mail. The only alternative is to rely on the employers to distribute the required information. Experience of plans with relying on employers for other disclosures varies but it is fair to say that the plan will be unable to insure that all (or even a substantial majority) disclosures are provided timely. Some of this is due to the nature of the industries in which multiemployer plans exist. Such industries tend to be characterized by short term employment relationships with one employer. Therefore, an employee may be hired at a construction job site, for example, and disclosures would have to be provided by the supervisor on site.

The unions representing participants generally cannot insure that such disclosures are provided on the first day of employment. In situations in which there is an exclusive hiring hall, the Union may be able to provide the disclosures when an employee is dispatched. However, it is the NCCMP's understanding that a minority of participants in these plans are subject to an exclusive hiring hall.

In addition, many multiemployer individual account plans are regional or national in scope, and the plan must take into account a wide variety of collective bargaining agreements, reporting deadlines, hiring hall arrangements and other factors that may affect the ability of the plan to provide the disclosures on the day an individual is employed. The alternative would be for the collective bargaining parties to modify the agreement to delay eligibility to participate in such plans. Although NCCMP supports the proposed substantive disclosures, it is not appropriate to force an industry to delay existing immediate plan participation in order for plan fiduciaries to be able to comply with the timing of disclosure. To address this problem, the disclosure should be required within a specified time after the participant is first reported to the plan that would give the plan adequate time to provide such disclosures after being notified of the participant's entry into the plan.

We appreciate the Department's consideration of our comments and will be happy to provide additional information or to answer any questions you may have to aid in the development of alternative rules to address these considerations.

Sincerely,

A handwritten signature in cursive script, reading "Randy G. DeFrehn".

Randy G. DeFrehn
Executive Director