

January 12, 2001

Office of Regulations and Interpretations
Pension and Welfare Benefits Administration
Room N-5669, U.S. Department of Labor
Washington, D.C. 20210

Attention: Disclosure RFI

Dear Sir or Madam,

I am writing on behalf of the National Coordinating Committee for Multiemployer Plans (the NCCMP) in response to the Department's September 14, 2000 Request for Information on fiduciary disclosures.

The NCCMP is the only national organization devoted exclusively to protecting the interests of the more than nine 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 more than 240 Affiliate and Associate Affiliate members of the NCCMP encompass plans and plan sponsors in every major segment of the multiemployer plan universe. The NCCMP is a nonprofit organization.

Multiemployer plan trustees and the unions and employers that sponsor the plans through collective bargaining communicate with plan participants and their families through many channels and in a broad variety of contexts. In addition to formal communications material such as SPDs and benefit announcements and notices, benefit-related issues may be covered in meetings where benefit discussions are or are not a planned part of the agenda. They can also arise in informal, even impromptu, encounters between employees and plan trustees, union officials or employer representatives.

Multiemployer plan trustees are prime examples of the "two-hat" principle for ERISA fiduciaries: almost all of them are union officials or executives of employers or employer associations. They may negotiate with one another over benefit-plan matters one day, and then meet as plan trustees and ERISA fiduciaries the next. Information disseminated to employees about the bargaining process may relate to benefit matters; information communicated to plan participants about their benefits may refer to collective bargaining agreements. This dynamic creates unique issues for multiemployer plan sponsors, as they must carefully balance the intertwined role of parties negotiating and administering collective bargaining agreements along side the role of plan sponsor.

Page 2

Given the tremendous and complex variety of communications between multiemployer plan participants and people who might be (or might be perceived as) plan fiduciaries, the NCCMP believes it would not be productive for the Department to attempt to delineate fixed rules governing the fiduciary nature of plan-related communications, aside from those specifically required by law. The current statutory construct provides adequate guidance and standards as they relate to disclosure obligations under ERISA. We therefore recommend against the development of formal regulations, and urge the Department to exercise great caution in expressing positions in litigation that could have unintended consequences for parties in other situations.

Above all, whatever the Department decides to do in this connection, the NCCMP urges you to keep in mind the distinctive characteristics of multiemployer plans and the special circumstances surrounding their fiduciaries' communications with plan participants.

Given the complexity of the issues, the NCCMP may submit supplemental comments on the issues raised by the RFI. In addition, of course, we would be happy to provide you with any other information that could be helpful to your consideration of these important matters. Please feel free to be in touch with me at (202) 756-4644 with any questions you may have.

Sincerely,

Randy G. DeFrehn
Executive Director