

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

815 16TH STREET, N.W., WASHINGTON, D.C. 20006 • PHONE 202-737-5315 • FAX 202-737-1308



SEAN MCGARVEY
CHAIRMAN

MICHAEL D. SCOTT
EXECUTIVE DIRECTOR
E-MAIL: MSCOTT@NCCMP.ORG

September 6, 2022

Mr. Ali Khawar
Acting Assistant Secretary
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Submitted electronically via www.regulations.gov

Re: Notice of Proposed Rulemaking: Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications (RIN 1210-AC05)
Docket No. EBSA-2022-003

Dear Acting Assistant Secretary Khawar:

On behalf of the National Coordinating Committee for Multiemployer Plans (“NCCMP”), this is our request to have a representative testify at the upcoming hearing regarding the proposed changes to the procedures governing the filing of applications for administrative exemptions from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974, *as amended* and the Internal Revenue Code of 1986, *as amended*.

The NCCMP is the only national organization devoted exclusively to protecting the interests of multiemployer plans, as well as the unions and the job-creating employers of America that sponsor them, and the more than 20 million active and retired American workers and their families who rely on multiemployer retirement, health and welfare plans. The NCCMP’s purpose is to assure an environment in which multiemployer plans can continue their vital role in providing retirement, health, training, and other benefits to America’s working men and women.

The NCCMP is a non-partisan, nonprofit, tax-exempt social welfare organization established under Internal Revenue Code Section 501(c)(4), with members, plans and contributing employers in every major segment of the multiemployer universe. These industries include airline, agriculture, building and construction, bakery and confectionery, entertainment, health care, hospitality, longshore, manufacturing, mining, office employee, retail food, service, steel, and trucking/transportation. Multiemployer plans are jointly trusted by labor and management trustees.

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Our proposed witness is the NCCMP's General Counsel, Paul A. Green. Mr. Green's contact information is as follows:

Paul A. Green
Mooney, Green, Saindon, Murphy & Welch, P.C.
1920 L Street, N.W., Suite 400
Washington, DC 20036
(Tel.) (202) 783-0010
(Fax) (202) 783-6088
pgreen@mooneygreen.com

As noted above, Mr. Green would be presenting the views of the NCCMP. The NCCMP's comment on the proposed rulemaking was filed on May 31, 2022.

We anticipate that the testimony presented will generally raise the issues discussed in the NCCMP's comment letter. These include the following:

- The complexity of the relationships involving multiemployer plans and their various stakeholders, which necessarily involve one or more unions, multiple employers, multiple trustees, vendors, and other professionals, and can result in unique circumstances that require unique solutions to best protect the interests of a plan's participants and beneficiaries.
- The importance of maintaining a robust and flexible process for obtaining individual prohibited transaction exemptions in order to achieve the best possible results for plan participants and beneficiaries by permitting transactions that do not fit within the existing statutory and administrative class exemptions, but that include appropriate protections and safeguards.
- The benefits of continuing to permit informal, anonymous conversations with the Department prior to the filing of a prohibited transaction exemption ("PTE") application, and the harm that would be caused by eliminating such conversations.
- The disadvantages of the proposal to prohibit the use of unaffiliated individuals and other small players as independent fiduciaries in proposed transactions.
- The disadvantages of the unnecessarily overbroad automatic denial of PTE applications if any person or entity involved in the proposed transaction is under investigation by any governmental entity for any reason, without regard to the nature of the investigation and whether it has any bearing at all on the proposed transaction.
- The potential harm that may be caused by the "chilling effect" from issuing formal denials of applications that have been withdrawn for any reason.
- The merits of the Department's proposal to make the effect of any revocation of a PTE prospective-only.
- Congressional recognition that prohibited transaction exemptions would be necessary to benefit plans and beneficiaries as codified at 29 U.S.C. § 1108.

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We appreciate the opportunity to present the views of the NCCMP and look forward to confirmation of our request to testify.

Regards,

A handwritten signature in black ink, appearing to read "M. Scott", is centered within a light gray rectangular box.

Michael D. Scott
Executive Director