**Thomas M. Conway**
Chairman

**Emily M. Newport**
Executive Director

*Submitted Electronically via E-OHPSCA1251.EBSA@dol.gov*

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

Re: RIN 1210-AB42
Interim Final Rules for Group Health Plans and Health Insurance Coverage Relating to Status as a Grandfathered Health Plan under the Patient Protection and Affordable Care Act

Dear Ms. Borzi:

The Steelworkers Health and Welfare Fund (the "Fund") is providing these comments on the interim final regulations implementing the grandfather requirements of the Patient Protection and Affordable Care Act (the "Affordable Care Act") published by the Departments of Labor, Treasury, and Health and Human Services on June 17, 2010 (the "Interim Final Rules").

The Fund is a multiemployer health and welfare fund that provides benefits to over 43,000 participants, including collectively bargained employees of more than 300 participating employers. A number of groups participate in the Fund only with respect to retirees. Each participating group has its own schedule of benefits and is issued its own summary plan description; most participate on a fully insured basis and are separately experience-rated.

The Preamble to the Interim Final Rules provides that "the exceptions of ERISA section 732 and Code section 9831 for very small plans and certain retiree-only health plans, and for excepted benefits, remain in effect and thus, ERISA section 715 and Code section 9815, as added by the Affordable Care Act, do not apply to such plans or excepted benefits." The Interim Final Rules, however, do not provide any guidance as to what constitutes a "plan" for purposes of the retiree-only plan exception.

We are writing to you to express our strong concern that the regulations be clarified to ensure that retiree-only benefit programs like those provided under the Fund, which provide benefits to retirees under a separate schedule of benefits, are within the retiree-only plan exception. Failure to make this interpretation clear, or any contrary interpretation, will significantly increase the cost of the benefits under

the mandated coverage and eligibility rules of the Affordable Care Act, a result that is manifestly not in accord with the Congressional intent.

Most of the employers that contribute to the Fund on behalf of their retirees already require retirees to pay a portion of the premium cost, and that portion would increase if the cost of the benefits were to increase as a result of these retiree-only programs becoming subject to mandated benefit requirements, making the benefits unaffordable for many retirees. Increased benefit costs would also encourage those employers that do not currently require a co-premium payment from retirees to implement such a requirement. In addition, some of the retiree groups currently participating in the Fund – for example, groups where the sponsoring employer has gone out of business – have only a fixed dollar amount dedicated to retiree benefits and no source of additional funding. In many cases, the dollar amount was determined based on actuarial projections of how much money would be needed to fund specific benefits for a group of retirees for the rest of their lifetimes. The cost associated with providing additional mandated benefits would mean that the money set aside for such a particular group would run out earlier than originally anticipated, leaving the retirees with no coverage.

In short, imposition of the cost of complying with the mandated coverage and eligibility rules of the Affordable Care Act on these retiree-only programs would result in loss of coverage for many retirees, rather than expanded coverage. While some employers will simply leave the Fund in hopes that by doing so they may provide less costly, mandate-free benefits to retirees under a stand-alone plan, others will cease providing coverage altogether, given the relatively higher administrative cost they would have to assume by using a vehicle other than the Fund. And many of the sponsoring employers would be unable to obtain comparable coverage for the smaller groups of retirees on the same favorable terms that the Fund has been able to provide, given its size.

For the reasons set forth above, we respectfully urge EBSA to clarify the interim rule by including in the final rule an express exception to the mandates of the Affordable Care Act for benefits provided through retiree-only benefit schedules.

Thank you for your consideration in this matter.

Sincerely,

Emily M. Newport

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Executive Director