



June 3, 2010

The Honorable Phyllis Borzi
Assistant Secretary, Employee Benefits Security Administration
U.S. Department of Labor
Washington, D.C. 20210

The Honorable Michael F. Mundaca
Assistant Secretary, Tax Policy
U.S. Department of Treasury
Washington, D.C. 20220

The Honorable Jay Angoff
Director, Office of Consumer Information and Insurance Oversight
U.S. Department of Health and Human Services
Washington, D.C. 20201

Dear Ms. Borzi, Mr. Mundaca and Mr. Angoff:

I am writing on behalf of the American Benefits Council to share our views on the applicability of the delayed effective date rule for collectively-bargained health plans included in the Patient Protection and Affordable Care Act of 2010 (PPACA), as amended.

The American Benefits Council represents primarily large employers and other organizations that collectively either sponsor or administer health and retirement benefits covering over 100 million Americans. Many of our member companies sponsor health benefit plans that are maintained pursuant to collectively-bargained agreements.

Since the passage of the Employee Retirement Income Security Act of 1974 (ERISA), employee benefit plan legislation has been carefully drafted to avoid the imposition of significant mandates on collectively-bargained plans in the middle of applicable bargaining cycles. The need for a delayed effective date for collectively-bargained plans has been recognized whether the legislation involved has affected pension benefit plans (as in the case of ERISA, TEFRA, DEFRA, REA, TRA '86, EGTRRA, and the PPA) or group health plans (as in the case of DEFRA, COBRA, Code Section 89 nondiscrimination rules (which were repealed before they became effective), or the Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA).

In that same spirit, PPACA includes section 1251(d) – a deferred effective date rule for applying various health care reform coverage mandates insofar as they would apply to collectively-bargained plans. The language used in section 1251(d) is virtually identical to language used historically by Congress for collectively-bargained plans in various legislative acts dating back to ERISA and provides that subtitles A and C of PPACA “shall not apply” to collectively-bargained plans until termination of the last collective bargaining agreement related to the health coverage.

Some have argued that, notwithstanding section 1251(d), certain grandfathered health plan coverage mandates otherwise applicable under PPACA to grandfathered health plans should apply equally to all collectively-bargained group health plans at the same time as they apply to non-collectively-bargained group health plans. This interpretation would impose undue costs and administrative burdens on collectively-bargained arrangements mid-bargaining cycle and would, essentially, render section 1251(d) and the policy underlying a delayed effective date for collectively-bargained plans meaningless.

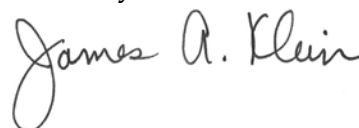
Employers and labor organizations have relied on the history of deferred effective date rules for collectively-bargained plans in interpreting section 1251(d) as a true deferred effective date rule. In fact, we are aware that many others in the employee benefits community (including consulting firms, law firms, labor organizations and others) have agreed with and articulated the view that section 1251(d) should be read as a delayed effective date rule for all of the PPACA mandates.

We have attached an analysis for your consideration and recommend that this important issue be clarified in future agency guidance so that employers and labor organizations can continue to rely on the deferred effective date provisions of PPACA in future collective bargaining negotiations. Timely clarification is important, because if the agencies determine that a deferred effective date does not apply, employers and labor organizations will need to plan immediately for how to implement the PPACA provisions mid-bargaining cycle.

We would be pleased to respond to any questions you may have regarding our analysis as to the applicability of a deferred effective date for collectively-bargained group health plans.

Thank you for your consideration of our views on this important issue.

Sincerely,

A handwritten signature in cursive script that reads "James A. Klein". The signature is written in black ink and is positioned above the printed name and title.

James A. Klein
President