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**MULTIEMPLOYER PENSION PLAN
INFORMATION MADE AVAILABLE UPON
REQUEST**

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By: **Ginger B. LaChapelle, Esq.**

I. INTRODUCTION

A. OVERVIEW

1. On March 2, 2010, the Department of Labor (“DOL”) issued final regulations related to multiemployer plan disclosures of actuarial and financial documents. The final regulations are effective April 1, 2010.

B. BACKGROUND

1. The Pension Protection Act of 2006 (“PPA”) added a new Section 101(k) to the Employee Retirement Income Security Act (“ERISA”) requiring multiemployer plans to disclose copies of various actuarial and financial reports upon written request from participants, beneficiaries, employee representatives, and employers that have an obligation to contribute to the plan.

II. REQUIREMENTS

A. PERSONS ENTITLED TO REQUEST DOCUMENTS

1. Under Section 2520.101-6(e) of the regulations, documents must be provided upon receipt of a written request to the following individuals:
 - a. Any participant;
 - b. Any beneficiary receiving benefits under the plan;
 - c. Any labor organization representing participants under the plan; and
 - d. Any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability under Title IV of ERISA.

B. DOCUMENTS THAT MUST BE PROVIDED UPON RECEIPT OF A WRITTEN REQUEST

1. Pursuant to Section 2520.101-6(c) of the regulations, upon receipt of a written request from a participant, beneficiary, employee representative, or contributing employer, the plan must disclose copies of the following financial and actuarial reports:
 - a. Periodic actuarial reports (including sensitivity testing, and any study, test, document, analysis or other information received by the plan from an actuary of the plan that depicts alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not such information is received by the plan at regularly scheduled intervals) which have been in the plan's possession for at least 30 days;
 - b. Quarterly, semi-annual, or annual financial reports from the investment manager or other fiduciary which have been in the plan's possession for at least 30 days; and
 - c. Copies of applications for amortization extensions filed with the Secretary of the Treasury and related determinations.

C. TIMEFRAMES FOR FURNISHING REQUESTED DOCUMENTS

1. Under Section 2520.101-6(b) of the regulations, the requested documents must be provided within 30 days of the plan's receipt of the request.
2. Pursuant to Section 2520.101-6(d)(3) of the regulations, if a requested document has been in the plan's possession for less than 30 days at the time the request is received, the plan is not required to furnish such document until it has been in the plan's possession for 30 days. However, because requesting parties may not know about this limitation on their right to receive reports, the final regulations require the plan administrator to furnish a timely notice – no later than 30 days after the date on which the request was received by the plan – informing the requester of the existence of the report and the earliest date on which the report can be furnished by the plan.

D. CHARGES FOR DOCUMENTS

1. Pursuant to Section 2520.101-6(b)(3) of the regulations, the plan administrator may impose a reasonable charge to cover the cost of furnishing requested documents, the charge may include the cost of mailing or delivering the documents, plus the cost of reproducing

the documents, but in no event may the charge for reproducing the documents exceed the lesser of:

- a. The actual cost to the plan for the least expensive means of acceptable reproduction of the documents; or
- b. 25 cents per page.

E. LIMITATIONS AND EXCEPTIONS

- 1. Pursuant to Section 2520.101-6(d) of the regulations, the information required to be disclosed shall not include:
 - a. Any report or application for an amortization extension that was furnished to the requester within the 12-month period immediately preceding the date on which the request is received by the plan;
 - b. Any information that has been in the plan's possession for six years or more;
 - c. Any information or data that served as the basis for any requested report or application; and
 - d. Any information that the plan administrator reasonably determines to be either:
 - (1) Individually identifiable information with respect to any plan participant, beneficiary, employee, fiduciary, or contributing employer (other than an investment advisor or other person preparing a financial report – as long as such individual is not an employee of the plan); or
 - (2) “Proprietary information” regarding the plan, any contributing employer, or any entity providing services to the plan.
- 2. For purposes of the exception for “proprietary information” discussed above, the final regulations define “proprietary information” as trade secrets and other non-public information (e.g., processes, procedures, formulas, methodologies techniques, and strategies) that if disclosed by the plan, may cause or increase a reasonable risk of financial harm to the plan, a contributing employer, or an entity providing services to the plan.

III. CONCLUSION

A. WHAT PLANS SHOULD DO NOW

1. Since the regulations are effective April 1, 2010, plans should be honoring any requests that they received from eligible individuals for the above referenced documents. Plans should also consider amending their record disclosure policies to confirm with the new requirements.