EMPLOYERS AND OPERATING ENGINEERS LOCAL NO. 520
HEALTH AND WELFARE FUND
REQUEST FOR WAIVER OF THE ANNUAL LIMITS REQUIREMENTS OF
<u>PHS ACT SECTION 2711</u>

December 2, 2010

Set forth below is the information in support of the application of the Employers and Operating Engineers Local No. 520 Health and Welfare Fund (the "Plan") for waiver of the restricted annual limits requirement of PHS Act Section 2711(a)(2) for the plan year January 1, 2011 through December 31, 2011, in accordance with OCIIO Sub-Regulatory Guidance 2010-1 issued September 3, 2010, as supplemented by OCIIO Sub-Regulatory Guidance 2010-1A issued November 5, 2010, and as further supplemented by the directions provided by various reviewers at Health and Human Services for other plans that have submitted such a request.

1. <u>Terms of the Plan for Which Waiver is Sought</u>

Included with this Request for Waiver is a copy of the Summary Plan Description and Plan Document.

As indicated in the enclosed document, the Plan provides a comprehensive or full range of health benefits. The Plan was in effect prior to March 23, 2010, currently complies with the interim final regulations relating to grandfathered health plans, and intends to maintain grandfathered plan status. The PPACA effective date for the Plan is January 1, 2010, and the Plan will adopt the appropriate Plan amendments required under PPACA guidance, part of which will be determined by HHS's ruling on the Plan's Request for Waiver.

The Plan provides for mental health and substance abuse benefits. Those benefits are described on pages 7-8 of the Summary Plan Description and Plan Document. The Plan does not have an annual dollar limit on mental health or substance abuse benefits. Please note that the Plan is a collectively bargained plan, and based on the bargaining agreements in effect under the Plan, the Mental Health Parity Act does not become effective for the Plan until January 1, 2013.

2. <u>Number of Individuals Covered by the Plan</u>

There are (b)(4) individuals covered by the Plan, including (b)(4) active employees with (b)(4) dependents, and (b)(4) retirees and employees on COBRA with (b)(4) dependents and widows of retirees. There are (b)(4) employers who participate in and contribute to the Plan. All of the Plan enrollees are seeking the waiver.

3. <u>Benefit Limits and Rates Applicable to the Plan</u>

a. <u>Benefit Limits</u>

The Plan includes a (b)(4) overall lifetime limit for all benefits combined, which will be converted to an annual maximum on January 1, 2011. There are a number of individual benefit lifetime and annual dollar limits, but no overall annual dollar limit on benefits. The Plan is not requesting a waiver of the PPACA requirements for any of the benefit limits other than the prescription drug cap, as discussed in the following paragraph.

It is our understanding that the prescription drug benefit cap described below is potentially subject to the PPACA annual limit requirements, depending on whether this benefit is considered an essential health benefit under the PPACA for which we are awaiting further guidance. We hereby request relief from those requirements for the prescription drug benefit cap to the fullest extent permitted by law and subject to any future guidance that clarifies whether and to what extent this benefit is an essential health benefit.

- **WAIVER REQUESTED FOR THE FOLLOWING ANNUAL BENEFIT LIMIT: Maximum of** (b)(4) **per coverage period (June 1 through May 30) for prescription drug benefits** (SPD, page 11)

b. <u>Contribution Rates</u>

Primary funding for the Plan is derived from participating employer contributions. Currently employers are required to contribute (b)(4) per hour for each hour that an active employee receives compensation from a participating employer, which is designed to cover the full cost of participant coverage under the Plan based on the current Plan terms. If an employee has not worked sufficient hours to qualify to have the employee's coverage funded solely by employer contributions, the employee can make up the balance of hours required by contributing the difference in hours also at the rate of (b)(4) per hour—which are referred to in the Plan as "self-payments."

Although the Plan is self-funded and therefore, participants do not pay insurance premiums, in response to HHS's request for premium information concerning the Plan, the Plan administers three separate "premium-like" participant cost structures that appear to fit this HHS criteria—the Active Employee COBRA Premium, the Non-Medicare Retiree Premium, and the Medicare Retiree Premium. Each of these premiums reflects the cost of coverage for the participant group addressed. Set forth below are 3 charts or tables that are intended to address the premium information that we understand HHS has asked other plans to submit in connection with their waiver requests.

<u>ACTIVE EMPLOYEE COBRA PREMIUM</u>

(Note: the covered group includes former employees who are not eligible for retiree benefits as well as active employees, along with their respective dependents. The rate provided is a composite rate and is the same for all coverage tiers. The premium resets as of June each year.)

	January 2010 COBRA Premium (in effect as of June 2009)	January 2011 (Renewal) COBRA Premium (in effect as of June 2010)	January 2011 COBRA Premium (if $750,000 annual limit was applied)—Dollar Increase	January 2011 COBRA Premium (if $750,000 annual limit was applied)—Percentage Increase
EE	(b)(4) per month	(b)(4) per month	(b)(4) per month	(b)(4)
EE + Child (if applicable or other appropriate tier)	(b)(4) per month	(b)(4) per month	per month	(b)(4)
EE + Spouse (if applicable or other appropriate tier)	(b)(4) per month	(b)(4) per month	(b)(4) per month	(b)(4)
Family (if applicable or other appropriate tier)	(b)(4) per month	(b)(4) per month	(b)(4) per month	(b)(4)

NON-MEDICARE RETIREE PREMIUM

(Note: the covered group includes retired employees who are not Medicare eligible, along with their dependents. The premium resets as of June each year.)

	January 2010 Non-Medicare Retiree Premium (in effect as of June 2009)	January 2011 (Renewal) Non-Medicare Retiree Premium (in effect as of June 2010)	January 2011 Non-Medicare Retiree Premium (if $750,000 annual limit was applied)—Dollar Increase	January 2011 Non-Medicare Retiree Premium (if $750,000 annual limit was applied)—Percentage Increase
EE	(b)(4) per month	(b)(4) per month	(b)(4) per month	(b)(4)
EE + Child (if applicable or other appropriate tier)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4)
EE + Spouse (if applicable or other appropriate tier)	(b)(4) per month	(b)(4) per month	(b)(4) per month	(b)(4)
Family (if applicable or other appropriate tier)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4)

MEDICARE RETIREE PREMIUM

(Note: the covered group includes retired employees who are Medicare eligible, along with their dependents. The premium resets as of June each year.)

	January 2010 Medicare Retiree Premium (in effect as of June 2009)	January 2011 (Renewal) Medicare Retiree Premium (in effect as of June 2010)	January 2011 Medicare Retiree Premium (if $750,000 annual limit was applied)—Dollar Increase	January 2011 Medicare Retiree Premium (if $750,000 annual limit was applied)—Percentage Increase
EE	(b)(4) per month	(b)(4) per month	(b)(4) per month	(b)(4)
EE + Child (if applicable or other appropriate tier)	(b)(4) per month (no additional charge for covered children of retirees)	per month (no additional charge for covered children of retirees)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4)
EE + Spouse (if applicable or other appropriate tier)	(b)(4) per month	(b)(4) per month	(b)(4) per month	(b)(4)
Family (if applicable or other appropriate tier)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4) per month (no additional charge for covered children of retirees)	(b)(4)

4. Description of Why Compliance with the Interim Final Regulations Will Result in a Significant Decrease in Access to Benefits for Plan Participants

The following information is being provided through the advice and assistance of the Segal Company, a nationwide human resources consulting firm with extensive expertise in multiemployer health plan funding.

The Plan's prescription drug benefit limit described above is a Plan provision necessary to keep the Plan's claim costs in line with the employer contributions. Increasing or removing this limit, as required by the PPACA, would significantly increase the Plan's overall expected cost by (b)(4) The (b)(4) increase is a composite of the increases in the three participant cost structures analyzed in the three charts discussed in the preceding section of this Request.

In addition, this change to the Plan's prescription drug limit may adversely impact the levels at which Plan participants utilize covered services. A significant increase in utilization would increase Plan costs further.

Participating employer contributions are determined by collective bargaining agreement, under which the employer contributions are capped until the end of the agreement. As a result, any increase in employer contributions to cover the additional costs associated with the increase in the annual benefit limits cannot be negotiated until the five year term of the applicable collective bargaining agreement expires. It is not reasonable to believe that employers will agree to mid-term adjustments of their collective bargaining agreements. Even if additional employer contributions were feasible, the added costs would be highly burdensome in the highly competitive construction industry that is covered by the Plan, which would result in further job losses, and as a result, fewer employees working sufficient hours to either obtain or retain benefit eligibility.

Because additional participating employer contributions are not available during the term of the bargaining agreements, the increased costs must be made up either by increased employee contributions or by reduction in benefits. However, the bargaining agreements also prohibit any increase in employee contributions during the term of the agreement other than bargained scheduled increases. Plan benefits would have to be decreased in order to offset the additional costs caused by the PPACA benefit limit requirements by increasing participant out-of-pocket costs for prescription drug benefits. This would be reflected as a substantial increase in the prescription drug copays for all participants from (b)(4) generic/(b)(4) brand (retail) and (b)(4) generic/(b)(4) brand (mail order) to (b)(4) generic/(b)(4) brand (retail) and (b)(4) generic/(b)(4) brand (mail order).

The size of the Plan cost increase, being fully passed on in the form of decreased benefits through increased employee out-of-pocket expenses, would provide a substantial hardship to the participants.

5. Plan Administrator Attestation

We hereby certify the following:

(a) The Employers and Operating Engineers Local No. 520 Health and Welfare Fund was in force prior to September 23, 2010.

(b) The Employers and Operating Engineers Local No. 520 Health and Welfare Fund currently complies with the interim final regulations relating to grandfathered health plans and intends to maintain grandfathered plan status.

(c) The application of restricted annual limits under the Patient Protection and Affordable Care Act to the Employers and Operating Engineers Local No. 520 Health and Welfare Fund will result in a significant decrease in access to benefits for the individuals covered by the Plan.

Ronald D. Johnson

Ronald D. Johnson
Chairman of the Board of Trustees
for the Employers and Operating
Engineers Local No. 520 Health and
Welfare Fund, the Plan Administrator
for the Employers and Operating
Engineers Local No. 520 Health and
Welfare Fund

CARY HAMMOND
RICHARD SHINNERS
JOSEPH W. LARREW
GREG A. CAMPBELL
ANN G. DALTON
JANINE M. MARTIN
SHERRIE A. SCHRODER
JAGADEESH B. MANDAVA
DARLENE WARNICK
MARK S. VOELPEL
MARY V. KHOURI
BRIAN LOVE
MICHAEL A. EVANS
EMILY R. PEREZ

HAMMOND AND SHINNERS, P.C.

ATTORNEYS AND COUNSELORS
SUITE 200
7730 CARONDELET AVENUE
ST. LOUIS (CLAYTON), MISSOURI 63105
WEBSITE: www.hammondshinners.com

JOHN A. TURCOTTE, JR.
(Retired)

JANET E. YOUNG
(1953-2008)

KARL SAUBER
(Retired)

(314) 727-1015
FAX (314) 727-6804
TOLL FREE 1-888-727-1015

December 2, 2010

Department of Health and Human Services
Office of Consumer Information and Insurance Oversight
Office of Oversight
Room 737-F-04
200 Independent Ave. SW
Washington, DC 20201

ATTENTION: James Mayhew

RE: Request for Waiver of the Annual Limits Requirements of PHS Act Section 2711 for the Employers and Operating Engineers Local No. 520 Health and Welfare Fund

Dear Mr. Mayhew:

The Employers and Operating Engineers Local No. 520 Health and Welfare Fund (the "Plan") hereby requests waiver of the restricted annual limits requirement of PHS Act Section 2711(a)(2), as added by the Patient Protection and Affordable Care Act ("PPACA"). Enclosed is the Request for Waiver application on behalf of the Plan in support of this request, as directed by OCIIO Sub-Regulatory Guidance 2010-1 issued September 3, 2010, as supplemented by OCIIO Sub-Regulatory Guidance 2010-1A issued November 5, 2010, and as further supplemented by the directions provided by various reviewers at Health and Human Services for other plans that have submitted such a request. This application addresses the plan year beginning January 1, 2011 and ending December 31, 2011, the first plan year during which the PPACA becomes effective for the Plan.

Please note that this Request for Waiver is being submitted both electronically to the HHS website at ociiooversight@hhs.gov on December 2, 2010, and in hard copy sent via overnight delivery on December 3, 2010.

Our firm represents the Employers and Operating Engineers Local No. 520 Health and Welfare Fund, which is a self-funded Taft-Hartley multiemployer welfare benefit plan. The Plan provides health and welfare benefits to employees who are represented by Operating Engineers Local 520, a labor union whose membership includes employees in the construction industry.

Based on our understanding of the PPACA restrictions on group health plan annual limits on the dollar value of essential health benefits and as fully discussed and demonstrated in the attached Request for Waiver, it appears that those restrictions would impose a substantial hardship on the finances of the Plan to the extent the Plan is required to increase its prescription drug annual limitation from (b)(4) to at least $750,000, well over (b)(4) times the current limit. As indicated in the attached Request for Waiver, implementation of the PPACA benefit limit requirements is estimated to significantly increase overall Plan costs at least (b)(4). Because of collective bargaining agreement obligations, those increased costs can only be addressed through decreased benefits by increasing prescription drug copays from (b)(4) to (b)(4) . This would place a substantial burden on the individuals who participate in the Plan.

For the reasons stated above and in the attached application, the Plan requests waiver of the PPACA restricted annual limits requirements for the Plan's prescription drug benefit annual cap for the plan year January 1, 2011 through December 31, 2011, along with any and all other relief from the PPACA benefit limit requirements that is allowable under the law, including, to the extent permissible, extension of any and all waivers granted for the 2011 plan year through the plan year ending December 31, 2013. Since the Plan must adopt and implement all amendments required by the PPACA prior to January 1, 2011, the PPACA effective date for the Plan, your prompt attention to this request is greatly appreciated.

If you have any questions or need additional information, or if I can help facilitate this request in any way, please do not hesitate to contact me.

Sincerely,

Mark S. Voelpel

MARK S. VOELPEL

MSV/pjb

Enclosure.

cc: Ronald D. Johnson
Cyril "Pete" Korte
David Glastetter
Cary Hammond
William H. Bork
Susan V. Sullivan

Pages 8 through 131 redacted for the following reasons:
- -
(b)(4)