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32BJ Health Fund Response to Department of Labor Proposed Rule "Improving Transparency into Pharmacy Benefit Manager Fee Disclosure" RIN 1210-AB37 (91 FR 4348)

April 15, 2026

Daniel Aronowitz, Assistant Secretary
U.S. Department of Labor
Employee Benefits Security Administration
Office of Regulations and Interpretations
Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

RE: RIN 1210-AB37, 91 FR 4348 – Proposed Rule "Improving Transparency into Pharmacy Benefit Manager Fee Disclosure"

Dear Assistant Secretary Aronowitz:

The 32BJ Health Fund submits these comments in response to the Department of Labor's proposed rule "Improving Transparency into Pharmacy Benefit Manager Fee Disclosure" (91 FR 4348).

The 32BJ Health Fund is an unusually effective collaboration between a labor union and management to provide affordable, comprehensive, and innovative health coverage to working-class people. We aggregate employer contributions from 5,000 employers, ranging from many small businesses to global real estate firms, and use these contributions to provide benefits to 200,000 members of the SEIU Local 32BJ union and their families. The union members are cleaners, property maintenance workers, doorpersons, security officers, window cleaners, building engineers, school and food service workers, and airport workers in over 10 states and Washington, DC.

The 32BJ Health Fund ("Fund") supports regulations that promote transparency into pharmacy benefit manager ("PBM") compensation. In the absence of standardized compensation disclosure, the Fund cannot evaluate competing PBM arrangements on a common basis during Request for Proposal ("RFP") and renewal processes. The inability of group health plans, including the Fund, to assess PBM compensation reasonableness operates on two levels: first, no health plan, including the Fund, can compel complete disclosure even when it requests one; second, even disclosures that are provided lack the contract-level specificity, including, for example, which manufacturer rebate contract a plan is assigned to, necessary to evaluate fully whether compensation terms are competitive.

The Fund supports this rulemaking and submits comments below, which are based on the Fund's direct experience as a large, self-insured purchaser of pharmacy benefit management services, including PBM contracting and PBM RFP processes.

Relationship to the Consolidated Appropriations Act (CAA) of 2026

The CAA 2026 mandates 100% pass-through of rebates, fees, and remuneration for plan years beginning on or after August 2028, with semiannual drug-level reporting to the National Drug Code ("NDC") level. The disclosure framework in this proposed rule is the mechanism by which plan sponsors will verify that the CAA 2026 pass-through requirement is being honored. The two instruments are complementary.

Specific Responses to DOL Proposed Rule Questions for Comment
The following responses reflect the 32BJ Health Fund's direct experience and recommendations from working with PBM vendors.

Question: Drug Manufacturer and Rebate Aggregator Payment Disclosure Specificity (Paragraphs (e)(3) and (e)(6)) *The Department asks whether "payments" is sufficiently specific to ensure full disclosure of manufacturer compensation.*

The 32BJ Health Fund finds the term "payments" does not capture the contract assignment structure through which manufacturer rebates are distributed to plans.

A PBM may represent to multiple plan sponsors that each receives "100% pass-through" of manufacturer rebates. However, a single manufacturer may maintain multiple rebate contracts simultaneously and assign different plans to different contracts. Two plans can each receive 100% pass-through while receiving materially different per-NDC dollar amounts. The term "payments" does not require disclosure of which contract a plan is assigned to or what that contract's per-NDC terms are.

We recommend that the term "payment" be revised to include contract-level specificity so that it would ensure:

- Disclosure of the specific manufacturer rebate contract under which the plan is enrolled, identified by a unique contract reference;
- Reporting per-NDC rebate amounts applicable to the plan's assigned contract on the same semiannual schedule as other compensation disclosures; and
- Establishment of a mechanism allowing plan fiduciaries to compare per-NDC rebate amounts against a market range for that NDC, without requiring disclosure of other plans' contract terms.

Without contract-level specificity, a pass-through disclosure would satisfy the rule's formal, technical requirement but without providing the information a fiduciary needs to assess fully whether the plan's assigned contract is competitive.

Question: Additional Compensation Types Beyond Specific Categories — Catch-All Adequacy (Paragraph (e)(8)) *The Department asks whether the catch-all in paragraph (e)(8) is sufficient, or whether specific compensation types should have their own disclosure requirements.*

The 32BJ Health Fund finds that the catch-all in paragraph (e)(8) is insufficient. Indirect manufacturer compensation, including volume discounts and administrative fees paid by manufacturers or their agents, has grown as a share of total PBM manufacturer revenue and is not captured by the specific categories in paragraphs (e)(1) through (e)(7).

The Fund's understanding is that this indirect compensation now represents approximately 40% of total manufacturer payment flows to PBMs, up from approximately 11% previously. A catch-all provision does not produce standardized, comparable disclosures for a compensation stream of this scale.
The Fund also notes the absence of a standardized definition distinguishing "direct compensation" (fees paid by the health plan or its consultants or brokers) from "indirect compensation" (amounts received from manufacturers or affiliated entities). Without uniform definitions, disclosures will not be comparable across PBMs.

We recommend:

- Creating a defined disclosure category for indirect manufacturer compensation, expressly including volume discounts and administrative fees paid by manufacturers or their agents;
- Defining "direct compensation" as fees paid directly by the health plan, its consultants, or its brokers; and
- Applying disclosure requirements to compensation routed through offshore rebate aggregators and Group Purchasing Organizations ("GPOs") affiliated with the PBM.

The Fund supports retention of the "agent" definition in paragraph (m) because the existing definitions of "affiliate" and "subcontractor" do not reach the specific entities most likely to be used to route manufacturer compensation off-book. An offshore rebate aggregator or GPO that lacks an equity relationship with the PBM falls outside "affiliate," and one that routes payments to the PBM, rather than performing services for it, falls outside "subcontractor." The "agent" definition closes this gap. Removing it would create a clear structural pathway for PBMs to route indirect manufacturer compensation through entities that satisfy neither existing definition, defeating the disclosure requirement the rule is designed to enforce.

Question: Frequency of PBM Formulary Changes and Advance Notice (Paragraph (e)(9)(iii)) *The Department asks how frequently PBMs make formulary changes, and whether advance notice is currently given to self-insured plans.*

The Fund supports a rule that specifies a minimum number of days of advance notice, and agrees with the Department's proposal in the preamble of a 75-day minimum advance notice period. A 75-day advance notice period would allow responsible plan fiduciaries time, and provide the information necessary, to evaluate the impact of material modifications before those modifications take effect.

Machine-Readable File (MRF) Standardization for PBM Data

Paragraph (k)(3) of the proposed rule would permit self-funded plans to request Machine-Readable File (MRFs) from their PBM. The proposed rule as currently written only would require use of an industry-standard drug name and a non-proprietary identifier such as the NDC. The Fund recommends the Department expand this into standardized MRF specification.

The Fund's experience using hospital price transparency MRFs demonstrates that minimal file format guidance produces data that is not comparable across entities and not usable for benchmarking without significant processing. The Fund expects the same outcome for PBM MRFs absent standardization.

We recommend the following minimum elements for a standardized PBM MRF, limited to compensation disclosure fields within the scope of this rulemaking:

- NDC as the required drug identifier (11-digit format);
- Dispensing channel as a required field with controlled vocabulary: retail, mail order, specialty;
- Gross and net drug cost per NDC per dispensing channel;
- Rebate amount per NDC per dispensing channel, reported as a dollar amount;
- Spread amount per NDC per dispensing channel, where applicable;
- Manufacturer contract identifier under which the rebate was calculated; and
- Formulary tier and applicable utilization management requirements per NDC.

The Fund recommends that the Department convene a technical expert panel, including self-insured plan users, analytics vendors, and PBM representatives, to establish a formal MRF schema prior to finalizing the rule.

Conclusion

The 32BJ Health Fund urges the Department to finalize this rule with the following specific requirements: (1) contract-level rebate specificity under paragraph (e)(3), including unique contract reference identifiers and per-NDC rebate reporting on a semiannual schedule; (2) a defined disclosure category for indirect manufacturer compensation covering volume discounts and administrative fees, which now represent approximately 40% of total manufacturer payment flows to PBMs; (3) retention of the "agent" definition in paragraph (m) to close the definitional gap that "affiliate" and "subcontractor" do not cover; (4) a mandatory 75-day minimum advance notice period for material formulary modifications, consistent with participant notice requirements; and (5) a standardized MRF schema, developed with input from a technical expert panel, prior to rule finalization.

Requiring granular, standardized, and enforceable disclosures would strengthen plan sponsors' ability to assess fully whether PBM compensation is reasonable, helping ensure that plan fiduciaries fulfill their responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA).

Respectfully submitted,

Cora Opsahl
Director, 32BJ Health Fund