



AMERICAN ACADEMY *of* ACTUARIES

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March 24, 2020

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224-0001
Email: IRS.Commissioner@IRS.gov

Via Electronic Mail Only

Re: Request for Leniency on Deadline for Multiemployer Pension Plan Certifications

Dear Commissioner Rettig:

The Multiemployer Plans Committee of the American Academy of Actuaries¹ respectfully submits this letter requesting leniency from the secretary of the Treasury on the enforcement of the deadlines for the annual actuarial certification for multiemployer pension plans due in early 2020, as a result of the current crisis related to the COVID-19 virus.

As described below, the crisis may make it difficult for plan actuaries to complete annual status certifications for plan years beginning on January 1, 2020, by the statutory deadline, which is March 30, 2020. Depending on how the crisis unfolds in the coming weeks and months, it could impact the ability of plan actuaries to deliver certifications due after March 30, 2020, as well.

Background

Under section 432(b)(3)(A) of the Internal Revenue Code (IRC), the plan actuary of a multiemployer pension plan must certify the plan's status to the secretary of the Treasury and to the plan sponsor not later than the 90th day of each plan year. Therefore, certifications of status for plan years beginning January 1, 2020, must be completed by Monday, March 30, 2020.

¹ The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

Based on data from the most recently completed Form 5500 filings, there are about 650 multiemployer plans with plan years beginning on January 1 to which the March 30, 2020, deadline would apply. This total represents more than half of all multiemployer plans.

Under IRC section 432(b)(3)(B), when performing the annual certification, the plan actuary is required to make projections of plan assets and liabilities for the current and succeeding plan years. This section also requires that any projection of industry activity, including future covered employment and contribution levels, to be based on information provided by the plan sponsor—in other words, the board of trustees for the plan—which must act reasonably and in good faith.

Boards of trustees for multiemployer plans typically meet a few times a year, often quarterly. For many plans, standard operating procedure is for the actuary to seek trustee input on industry activity at the meeting immediately preceding the due date for the actuarial certification. For example, for a January 1 plan year certification, a plan actuary would often seek trustee input on industry activity at the meeting scheduled in February or March. Depending on the plan's situation, gathering trustee input on industry activity could involve a detailed discussion of recent trends and future expectations.

IRC section 432(b)(3)(C) describes penalties for the plan actuary's failure to certify the plan's status by the 90th day of the plan year. Specifically, failing to complete the certification on time shall be treated as a failure by the plan administrator to file the annual report (Form 5500) for purposes of section 502(c)(2) of the Employee Retirement Income Security Act (ERISA) of 1974.

Impact of the COVID-19 Crisis

The COVID-19 crisis has disrupted lives and businesses across the United States. A small but significant number of individuals have been infected by the virus. These infections impact not just individuals, but their families, friends, and business associates.

As a result of the crisis, virtually all multiemployer plan actuaries are now working from home, outside of their normal office environment. They are adapting to new procedures for completing their work, while adhering to actuarial standards of practice and their own companies' quality standards. In addition, systems and networks have been strained by the sudden shift to the all-remote environment, causing outages that add to the time needed for plan actuaries to complete projects such as the annual status certifications.

Most multiemployer plan boards of trustees that had scheduled meetings in March 2020 (especially in mid- or late March) have canceled or postponed them. With these cancellations and postponements, the actuaries for these plans might have missed the usual forum for gathering trustee input on industry activity.

Finally, the current crisis could have a significant and lasting impact on future industry activity for multiemployer plans, which in turn can significantly alter a plan's projected funding levels. Plan trustees will not be able to precisely predict how the current crisis might change industry activity, and the magnitude of the impact could vary greatly by industry. Nevertheless, plan trustees may desire an in-depth discussion with the plan actuary to understand their obligation

under the applicable statute to provide input, and the potential impact on the plan's certified status. Having such discussions will add time to the process of gathering the necessary trustee input.

Closing

Due to the challenges created by the COVID-19 crisis, we respectfully request leniency from the secretary of Treasury on the enforcement of the deadline and penalties associated with the actuarial certifications of status for multiemployer pension plans that are due in early 2020. This leniency is particularly important for certifications for plan years beginning on January 1, 2020, which are due on March 30, 2020. Depending on how the crisis unfolds in the coming weeks or months, leniency may be needed for certifications due after March 30, 2020, as well.

We also respectfully request that the secretary of Treasury publish guidance, as soon as practical, informing multiemployer plan sponsors and actuaries of its position on this matter.

We thank you for your consideration. We would be happy to discuss any of the issues raised in this letter at your convenience. If you have any questions or would like to discuss these issues further, please contact Philip Maguire, the Academy's pension policy analyst, at 202-785-7868 or maguire@actuary.org.

Sincerely,

Christian Benjaminson, MAAA, FSA, EA
Chairperson, Multiemployer Plans Committee
American Academy of Actuaries

Jason Russell, MAAA, FSA, EA
Vice Chairperson, Pension Practice Council
American Academy of Actuaries

cc: Harlan Weller, Office of Tax Policy, U.S. Department of the Treasury
Carol Weiser, Benefits Tax Counsel, U.S. Department of the Treasury
David Ziegler, Actuary, Internal Revenue Service