

# NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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August 24, 2020

Ms. Kinna Brewington  
Internal Revenue Service  
Room 6529  
1111 Constitution Avenue NW  
Washington, DC 20224

*Submitted via email to [RJoseph.Durbala@irs.gov](mailto:RJoseph.Durbala@irs.gov)*

**Re: Notice and Request for Comments: Proposed Information Collection Request  
Submitted for Public Comment; Comment Request Relating to Annual Certification  
for Multiemployer Defined Benefit Plans, OMB Number: 1545-2111; Regulation  
Project Number: REG-151135-07**

Dear Ms. Brewington:

The National Coordinating Committee for Multiemployer Plans (“NCCMP”) appreciates the opportunity to submit these comments in response to the Internal Revenue Service (“IRS”), Department of the Treasury Notice and Request for Comments regarding Proposed Information Collection Request Submitted for Public Comment; Comment Request Relating to Annual Certification for Multiemployer Defined Benefit Plans (“Comment Request”), published in the Federal Register on June 24, 2020. The Comment Request proposes a form (“Proposed Form”) and instructions (“Instructions”) to be used to report to the IRS the funding status of multiemployer defined benefit retirement plans. Although neither the Proposed Form nor the Instructions were included as part of the Comment Request, the IRS made the Proposed Form and Instructions publicly available (see attachments) and NCCMP has reviewed them.

We appreciate and support the efforts of the IRS in proffering the Proposed Form and the Instructions to ensure consistency in the format and the reporting of information required as part of the annual certification. We also appreciate the IRS’s request for information and ideas on additional measures the IRS could take to enhance the effectiveness of the Proposed Form and the Instructions.

The NCCMP is the only national organization devoted exclusively to protecting the interests of the job-creating employers of America and the more than 20 million active and retired American workers and their families who rely on multiemployer retirement and welfare plans. The NCCMP’s purpose is to assure an environment in which multiemployer plans can continue their vital role in providing retirement, health, training, and other benefits to America’s working men and women.

The NCCMP is a non-partisan, nonprofit, tax-exempt social welfare organization established under Internal Revenue Code (“IRC”) Section 501(c)(4), with members, plans and contributing

employers in every major segment of the multiemployer universe. Those segments include the airline, agriculture, building and construction, bakery and confectionery, entertainment, health care, hospitality, longshore, manufacturing, mining, office employee, retail food, service, steel, and trucking industries. Multiemployer plans are jointly trusted by employer and employee trustees.

## **Summary of Comments**

The NCCMP supports the IRS's efforts to standardize the format of the information filed with the IRS. Consistency in information provided to the IRS and other ERISA agencies is critical to them as well as to the NCCMP and other multiemployer plan stakeholders (including participants, plans, unions and employers) in monitoring and evaluating the vitality of plans and the multiemployer system as a whole.

We have focused our comments on the four areas identified in the Comment Request and provide a number of suggestions for changes that would further enhance the utility of the Proposed Form and the Instructions.

A summary of our comments is as follows:

- The NCCMP applauds the Proposed Form's brief format but notes that it requires only basic zone status information, which may limit its utility to the IRS and the other government stakeholders, most notably the Pension Benefit Guaranty Corporation ("PBGC").
- Actuaries must do projections and analysis in order to complete the annual certification, which, for a plan that is in endangered or critical status, must be disclosed as an attachment to Form 5500, Schedule MB, but only much later. The NCCMP suggests that the Instructions require that this actuarial information, regardless of zone status, be attached to the Proposed Form.
- Requiring available actuarial information be attached to the Proposed Form ensures that current data is used in evaluating the health of plans and the multiemployer system in a timely fashion. Although the same information will eventually become available to the interested agencies and the multiemployer plan stakeholders upon the filing of the Form 5500, Schedule MB, actuarial information provided with the Proposed Form would allow the IRS and the other ERISA agencies, as well as the NCCMP and other stakeholders, to better analyze the well-being of plans and the multiemployer system on a near real-time basis.
- Because actuaries already prepare projections and analysis to complete the annual certification, attaching that documentation to the Proposed Form is not overly burdensome.

## **Background on Multiemployer Plans**

### *Structure of Multiemployer Plans*

Multiemployer pension plans are a product of the collective bargaining process, where at least one labor organization and two or more employers provide pension benefits through negotiated contributions to fund trust funds that are required by law to be maintained for the “sole and exclusive benefit” of plan participants. Multiemployer pension plans are jointly trusted by both labor and management trustees and are subject to applicable provisions of the Taft-Hartley Act, the Employees Retirement Income Security Act of 1974, as amended (“ERISA”), and the IRC.

### *The Pension Protection Act of 2006: Funding Rules and Annual Certifications*

The Pension Protection Act of 2006 (“PPA”) amended ERISA and the IRC to include stricter funding rules for multiemployer pension plans. The PPA also added reporting and disclosure requirements, including annual certifications that are based on specified measures as applied to: critical status (or “red zone”) plans, endangered status (or “yellow zone”) plans, or seriously endangered status (or “orange zone”) plans. Plans that are neither critical nor endangered are “green zone” plans. The Multiemployer Pension Reform Act of 2014 added critical and declining as a category of critical status plans to describe plans that are in severe financial distress, and provided special rules for entering into and emerging from certain zone statuses.

In determining the zone status of a plan, the actuary generally must make projections for the current and succeeding plan years as to the value of plan assets and liabilities as of the beginning of such year. With the exception of information on projected industry activity that is provided by the plan sponsor, the actuary’s projections are documented and are based on reasonable actuarial estimates, assumptions, and methods that offer the actuary’s best estimate of anticipated experience under the plan.

The actuarial work that is required to complete the annual certification is similar to publicly available information filed with the Schedule MB to the Form 5500. However, the annual certifications are required to be filed no later than the 90th day of each plan year and, therefore, provide information about plans on a more timely basis than the Schedule MB, which is typically filed about 1½ years later.<sup>1</sup>

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<sup>1</sup> Form 5500 and attached schedules, including Schedule MB, are required to be filed no later than the last day of the seventh month after the plan year ends (for a calendar year plan, July 31 of the following year). Because plans may extend this deadline by two and one-half months (for a calendar year plan, until October 15 of the following year) this means that information provided on the Form 5500 and the Schedule MB may be first available as late as 18 months after the annual certification.

*Current Status of Multiemployer Pension Plans and the Need for Informed Legislative and Policy Reform*

The multiemployer pension system is an integral part of the U.S. economy. In 2015, the multiemployer system paid \$158 billion in federal and \$82 billion in state and local taxes, supported 13.6 million American jobs, and contributed more than \$1 trillion to U.S. GDP.<sup>2</sup> This includes \$41 billion in pension payments and \$203 billion in wages to active employees. These plans provide more than 10 million workers the ability to accrue retirement benefits in essential industries such as trucking, food services, and construction.

Historically these plans have offered stable retirements for millions of workers, but the entire system is under threat of collapse. Due to a confluence of economic, statutory, regulatory, and demographic events, approximately 120 multiemployer pension plans (including several that are systemically important) are projected to run out of money within the next several years. These plans represent 1.5 million participants. Additionally, the plans' insurer of last resort, the PBGC's multiemployer insurance fund, is projected to become insolvent in 2025 concurrently with the insolvency of the nation's largest multiemployer pension plan in terms of benefit payments.

The majority of multiemployer pension plans are financially strong. However, without a legislative solution aimed at helping distressed plans and the PBGC to avoid insolvency, the result will be billions in lost tax revenue and billions in new safety net entitlement spending for the federal government. The NCCMP and other multiemployer stakeholders, who collect and analyze plan information required to be provided to the ERISA agencies, are on the forefront of developing and advocating for meaningful and informed legislative action and policy change that helps distressed plans and the Pension Benefit Guaranty Corporation, but that does not harm the majority of financially-healthy plans.

## **DETAILED COMMENTS**

**I. The Proposed Form does not include sufficient information to have practical utility beyond basic reporting of zone status.** (*Responsive to "Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility"*)

While the NCCMP appreciates the Proposed Form's brief format, the Instructions and the Proposed Form do not require plan information other than zone status. We are concerned that the Proposed Form and Instructions, which suggest but do not require the attachment of actuarial information relevant to the determination of a plan's zone status, will curtail the gathering of useful information by the IRS. Of particular importance are actuarial projections and a detailed description of actuarial assumptions and methods used to support the actuary's determination as

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<sup>2</sup> See [The National Coordinating Committee for Multiemployer Plans, Multiemployer Pension Facts and the National Economic Impact, January 5, 2018.](#)

to zone status. Such detailed information is more useful to the IRS in providing a fuller picture as to the health of plans than simply zone status in evaluating the state of multiemployer plans and of the system as a whole.

**II. The IRS's estimated burden on plans of the proposed collection of information is reasonable.** *(Responsive to: "Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used")*

The Instructions provide that the estimated time per respondent to complete the form is 45 minutes and the estimated total annual burden is 1,200 hours. The NCCMP believes these estimates are reasonable based on the information currently required to complete the Proposed Form.

**III. Actuarial information (including projections and descriptions of assumptions and methods used to complete the annual certification) provides timely data that would enhance the utility of the Proposed Form.** *(Responsive to "Enhance the quality, utility, and clarity of the information to be collected")*

The Proposed Form provides necessary but basic information on the general health of multiemployer pension plans as measured by zone status. In contrast, projections and descriptions of assumptions and methods performed by actuaries to complete the annual certification provide timely and detailed information for evaluating the trajectory of plans and the multiemployer system. This actuarial work, much of which is also required to be provided with the later filed and publicly available Schedule MB to the Form 5500, should be required to be submitted with the Proposed Form and made available for public review. Such information would allow the IRS, as well as the NCCMP and other stakeholders, to evaluate plans using near real-time data as to financial health of plans and their scheduled progress. Such information, and access to it, is particularly important in light of the looming crisis that threatens a small but important number of multiemployer plans, and informs legislative solutions and policy choices aimed at preserving and protecting those plans.

**IV. Requiring that available actuarial projections and a description of assumptions and methods be attached to the Proposed Form does not create an additional burden for plans or actuaries** *(Response to: "Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses")*

As discussed above, actuarial projections that include a detailed description of assumptions and methods is essential in evaluating the relative health of multiemployer pension plans and the system as a whole. Because actuaries must already prepare projections for the current and

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succeeding plan years as to the value of plan assets and liabilities as of the beginning of such year in order to complete the annual certification, attaching such information to the Proposed Form does not create any additional burden. For this reason, the Instructions and the Proposed Form should require that otherwise-available actuarial information be submitted, by means that are convenient and consistent with technological capability of the submitter, to support the actuary's determination as to zone status and scheduled progress.

### **Conclusion**

We appreciate and applaud the IRS's efforts to standardize the annual certification reporting requirement. We believe, however, that the Instructions and the Proposed Form could be enhanced as described above.

Regards,

A handwritten signature in black ink, appearing to read "M. Scott", is displayed within a light gray rectangular box.

Michael D. Scott  
Executive Director

Attachments: Proposed Form and Instructions

**Form xxxx**Department of the Treasury  
Internal Revenue Service**Annual Certification for Multiemployer  
Defined Benefit Plans**

- This Form is required to be filed under Internal Revenue Code Section 432(b)(3)  
► Complete all entries in accordance with the instructions

OMB No. 1545-2111

File with IRS Only

For calendar plan year \_\_\_\_\_ or fiscal plan year beginning \_\_\_\_\_ and ending \_\_\_\_\_

**Part I Basic Plan Information**

- 1a Name of plan  
1b Three-digit plan number (PN)  
1c Plan sponsor's name  
1d Employer identification number (EIN)  
1e Plan sponsor's telephone number  
1f Plan sponsor's address, city, state, ZIP Code

**Part II Plan Actuary's Information**

- 2a Plan actuary's name  
2b Plan actuary's address, city, state, ZIP Code  
2c Plan actuary's firm name  
2d Plan actuary's firm address, city, state, ZIP Code  
2e Plan actuary's enrollment number  
2f Plan actuary's telephone number

**Part III Plan Status**

- 3 Check the appropriate box to indicate the plan's Section 432 status
- ☐ Neither endangered nor critical ☐ Neither endangered nor critical due to special rule in Section 432(b)(5)
- ☐ Endangered ☐ Seriously endangered
- ☐ Critical ☐ Critical due to election under Section 432(b)(4)
- ☐ Critical and Declining

**Part IV Scheduled Progress in Funding Improvement Plan or Rehabilitation Plan**

- 4 Check the appropriate box to indicate whether the plan is making the scheduled progress in meeting the requirements of an applicable funding improvement plan (FIP) or rehabilitation plan (RP)

	Yes	No	N/A
Funding Improvement Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rehabilitation Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Sign Here****Statement by Enrolled Actuary**

To the best of my knowledge, the information supplied in this actuarial certification is complete and accurate. As required by Section 432(b)(3)(B)(iii), the projected industry activity is based on information provided by the plan sponsor. The projections are based on reasonable actuarial estimates, assumptions and methods that (other than projected industry activity) offer my best estimate of anticipated experience under the plan.

\_\_\_\_\_  
Actuary's signature\_\_\_\_\_  
Date**For Paperwork Reduction Act Notice, see instructions.**

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

### Purpose of Form

The Form xxxx, Annual Certification for Multiemployer Defined Benefit Plans, is used to report the actuarial certification of a multiemployer plan's status. The plan actuary must file this form annually with the IRS to satisfy the reporting requirements of Section 432(b)(3).

The Pension Protection Act of 2006 (PPA), Pub. L. 109-280, added Section 432 to the Internal Revenue Code. Section 432(b) generally provides for a determination by the enrolled actuary for a multiemployer plan as to whether the plan is in endangered status or in critical status for a plan year. Section 432(b)(3) requires the plan actuary to submit a certification each plan year to the Secretary of the Treasury and to the plan sponsor. The plan actuary must certify whether the plan is in endangered status for the plan year; whether the plan is or will be in critical status for the plan year or for any of the succeeding five plan years; and whether the plan is in critical and declining status for the plan year. The certification should include a statement as to when a plan has adopted a funding improvement plan or rehabilitation plan (if applicable) and whether the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan. The actuarial projections, statements, and exhibits that are relevant to the determination of the plan status may be attached to this form.

### Who Must File Form

The enrolled actuary of a multiemployer plan must annually certify the plan's status and file this form with the IRS.

### When to File

The Form XXXX must be filed no later than the 90th day after the beginning of the plan year for which the certification is made.

**Note.** If the filing due date falls on a Saturday, Sunday or legal holiday, the Form xxxx may be filed on the next day that is not a Saturday, Sunday or legal holiday.

### Where to File

Submit your certification once per year using only one of the following methods.

Mail the form to:

Department of the Treasury  
Internal Revenue Service  
Employee Plans Compliance Unit (EPCU: 7602)  
Room 1700 - 17th Floor  
230 S. Dearborn St.  
Chicago, IL 60604

Fax the form to EPCU at 855-215-7122

Email the form to EPCU at [EPCU@irs.gov](mailto:EPCU@irs.gov) with Multiemployer Certification in the subject line

**Note.** More than one submission will result in duplicate entries. The IRS cannot guarantee security with email submissions.

## Who Must Sign

The plan's enrolled actuary must sign and date the Form xxxx.

## Penalties

Any failure of the plan actuary to certify the plan's status by the due date specified in Section 432(b)(3)(A) will be treated for purposes of Section 502(c)(2) of the Employee Retirement Income Security Act of 1974 as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under Section 101(b)(1) of the Act. A penalty of up to \$ 1,100 per day applies.

## Specific Instructions

### Part I - Basic Plan Information

**Lines 1a and 1b.** Enter the formal name of the plan and the three-digit plan number (PN) assigned to the plan.

**Line 1c.** Enter the plan sponsor's name.

**Line 1d.** Enter the nine-digit employer identification number (EIN) assigned to the plan sponsor. Do not use a Social Security number in lieu of an EIN. A plan sponsor without an EIN must apply for an EIN from the IRS using Form xxxx.

**Line 1e.** Enter the plan sponsor's telephone number.

**Line 1f.** Enter the plan sponsor's address including the room or suite number, the street address, the name of the city, the two-character abbreviation of the U.S. State or Possession and the ZIP Code. If this is a foreign address, enter the foreign routing code and country name. Do not abbreviate the country name.

### Part II - Plan Actuary's Information

**Line 2a.** Enter the plan actuary's name.

**Line 2b.** Enter the plan actuary's address including the room or suite number, the street address, the name of the city, the two-character abbreviation of the U.S. State or Possession and the ZIP Code. If this is a foreign address, enter the foreign routing code and country name. Do not abbreviate the country name.

**Line 2c.** Enter the plan actuary firm's name.

**Line 2d.** Enter the plan actuary firm's address including the room or suite number, the street address, the name of the city, the two-character abbreviation of the U.S. State or Possession and the ZIP Code. If this is a foreign address, enter the foreign routing code and country name. Do not abbreviate the country name.

**Lines 2e and 2f.** Enter the plan actuary's enrollment number and telephone number.

### Part III - Plan Status

**Line 3.** Check the appropriate box to indicate the plan's status. See Section 432(b) for determination of the plan's status.

A plan is in endangered status if the plan is not in critical status and, as of the beginning of the plan year, (1) the plan's funded percentage for the plan year is less than 80%, or (2) the plan has an accumulated funding deficiency for the plan year or is projected to have an accumulated funding deficiency in any of the six succeeding plan years

(taking into account amortization extensions under Section 431(d)). Under Section 432(j), a plan's funded percentage is the percentage determined by dividing the value of the plan's assets by the accrued liability of the plan.

A plan is in seriously endangered status if the plan is in endangered status and the plan's funded percentage for such plan year is less than 80% and the endangered plan has an accumulated funding deficiency for such plan year (or is projected to have such an accumulated funding deficiency for any of the six succeeding plan years), taking into account any extension of amortization periods under Section 431(d).

A plan is in critical status for a plan year if it meets any of four specified tests under Section 432(b)(2)(A), (B), (C), and (D).

The plan sponsor of a multiemployer plan that is not in critical status for a plan year but that is projected by the plan actuary to be in critical status in any of the succeeding five plan years may, not later than 30 days after the date of the certification, elect for the plan to be in critical status effective for the current plan year. The plan year in which the plan sponsor elects to be in critical status will be treated as the first year in which the plan is in critical status, regardless of the date on which the plan first satisfies the criteria for critical status, and a plan that is in critical status under this paragraph will not emerge from critical status except in accordance with Section 432 (e)(4)(B).

A plan is in critical and declining status if the plan is in critical status for a plan year and the plan is projected to become insolvent within the meaning of Section 418E during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80%).

In making the determinations and projections applicable under the endangered and critical status rules, the plan actuary must make projections for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to participants and beneficiaries under the plan for the current plan year as of the beginning of the year. The actuary's projections must be based on reasonable actuarial estimates, assumptions and methods that offer the actuary's best estimate of anticipated experience under the plan. Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, must be based on information provided by the plan sponsor, and the plan sponsor must act reasonably and in good faith. The projected present value of liabilities as of the beginning of the year must be based on either the most recent actuarial statement required with respect to the most recently filed annual report or the actuarial valuation for the preceding plan year.

#### **Part IV - Scheduled Progress in Funding Improvement Plan or Rehabilitation Plan**

**Line 4.** Check the appropriate box to indicate whether the plan is making the scheduled progress in meeting the requirements of an applicable funding improvement plan or rehabilitation plan. If the actuarial certification is with respect to a plan year that is within the plan's funding improvement period or rehabilitation period arising from a prior certification of endangered or critical status, the actuary must certify whether the plan is making scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

#### **Paperwork Reduction Act Notice.**

We ask for the information on this form to carry out the Internal Revenue laws of the United States. Section 432(b)(3)(A) requires an actuarial certification of whether a multiemployer plan is in endangered status, and whether a multiemployer plan is or will be in critical status, for each plan year. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 45 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you.

You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Do not send the form to this address.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained if their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

DRAFT - NOT FOR PUBLIC USE