

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

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January 29, 2024

Internal Revenue Service
Room 6526
1111 Constitution Avenue, N.W.
Washington, DC 20224
pra.comments@irs.gov
Attn: Andres Garcia

By Email

**Re: Request for Comments: Form 15315
Annual Certification for Multiemployer Defined Benefit Plans
OMB Control No. 1545-2111**

Dear Mr. Garcia:

The National Coordinating Committee for Multiemployer Plans (“NCCMP”) appreciates this opportunity to respond to the Internal Revenue Service’s (“IRS”) Request for Comments on Form 15315, *Annual Certification for Multiemployer Defined Benefit Plans* (the “Form”), published at 88 Fed. Reg. 83204-83205 (November 28, 2023).

The NCCMP is the only national organization devoted exclusively to protecting the interests of multiemployer plans, as well as the unions and the job-creating employers of America that jointly sponsor them, 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. These industries include airline, agriculture, building and construction, bakery and confectionary, entertainment, health care, hospitality, longshore, manufacturing, mining, office employee, retail food, service, steel, and trucking/transportation. Multiemployer plans are jointly trusted by labor and management trustees.

Summary of Comments

As the IRS is aware, the NCCMP previously commented on the draft of what is now Form 15315 when it was first proposed in 2020. We note that the final version of the Form is substantially unchanged from the proposal. Although circumstances have changed since the Form was originally proposed, our comments remain relevant.

The NCCMP appreciate 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. In general, however, we continue to believe that the utility of the Form could be improved by requiring more information, information that should be readily available to the plan actuaries who prepare the required annual certifications and complete the Form.

A summary of our comments is as follows:

- Although the NCCMP applauds the Form's brief format, we note 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. If the plan is in endangered or critical status, that fact, along with other relevant information, must be disclosed on Schedule MB (*Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information*), Form 5500, but only much later. The NCCMP suggests that the actuary's projections and analysis, regardless of zone status, be required to be attached to the Form.
- Requiring that available actuarial information be attached to the 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, requiring that such actuarial information be filed with the 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 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 trusteesd by both labor and management trustees and are subject to Section 302(c)(5) of the Labor Management Relations Act of 1947 (the "LMRA" or "Taft-Hartley Act"), the Employee 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 termed “green zone” plans. The Multiemployer Pension Reform Act of 2014 added critical and declining status as a new 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 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 Schedule MB, which is typically filed about 1½ years later.¹

DETAILED COMMENTS

- 1. The Form does not solicit sufficient information to have practical utility beyond basic reporting of zone status. (Response to: “Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility?”)**

Although the NCCMP appreciates the Form’s brief format, it does not require plan information other than zone status. We are concerned that the Form and the accompanying instructions, which suggest but do not require the attachment of actuarial information relevant to the determination of a plan’s zone status, is insufficient to accumulate the information useful to the IRS and other government and private sector stakeholders. Of particular importance are actuarial projections and a detailed description of actuarial assumptions and methods used to support the actuary’s

¹ 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.

determination as 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.

2. The IRS’s estimated burden on plans of the collection of information is reasonable. (Response to: “The accuracy of the agency’s estimate of the burden of the collection of information.”)

The original Notice and Request for Comments for the draft form² estimated that the time per respondent to complete the form is 45 minutes and the estimated total annual burden is 1,200 hours. The NCCMP continues to believe that these estimates are reasonable based on the information currently required to complete the Form. Furthermore, because the additional attachments recommended by the NCCMP will have already been prepared in order to complete the annual certification, we do not expect that any additional time required to complete the Form would be material if our recommendations are followed.

3. 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 Form. (Responsive to “Ways to enhance the quality, utility, and clarity of the information to be collected.”)

The Form provides necessary but basic and incomplete 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 would 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 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 important to assist in informing legislative solutions and policy choices aimed at preserving and protecting multiemployer plans.

4. Requiring that available actuarial projections and a description of assumptions and methods be attached to the Form does not create an additional burden for plans or actuaries (Response to: “Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.”)

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

² 85 Fed. Reg. 38020 (June 24, 2020).

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system as a whole. Because actuaries must already prepare projections for the current and 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 this information to the Form does not create any additional burden. Therefore, this otherwise-available actuarial information should be required to be submitted with the Form, 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 continued efforts to improve and standardize the annual certification reporting requirement. In furtherance of these efforts, we believe that the Form could be enhanced as described above.

Regards,

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

Michael D. Scott
Executive Director