AMERICAN ACADEMY *of* ACTUARIES

March 22, 2005

Mr. Paul T. Shultz
Director, Employee Plans Determination Redesign
Internal Revenue Service
1750 Pennsylvania Ave., NW, Room 483
Washington, DC 20006

Dear Paul:

On behalf of the American Academy of Actuaries'[1] Multiemployer Plans Task Force, we appreciate our recent opportunity to meet with you to discuss concerns about the Internal Revenue Service (IRS) position on the crediting of contributions, specifically the provisions under Internal Revenue Code (IRC) Sec. 412(c)(10)(B) for multiemployer plans — "contributions received during the section 412 grace period must be due for work performed during the plan year that has just ended in order to be credited to that year."

There has been a long-standing practice and understanding that multiemployer plans have the same flexibility as single employer plans to meet minimum funding requirements by recognizing contributions made within eight and one-half months following the plan year-end. This is referred to as *contribution borrowing*. While contribution borrowing is not a common practice in multiemployer plans, task force members have provided you with examples in which the practice is used.

In the first instance, we discussed its use in a budgetary sense to define the contribution level for the plan year following the actuarial valuation, so that contributions made six months after the end of the year are used for the previous year's funding requirements. In other circumstances, late contributions received after the plan year, which can often go beyond the two and one-half month period referenced in our discussions, are recognized. In the final case discussed, contributions have been *borrowed* to meet minimum funding when a plan, for a multitude of reasons, needed the extra contributions to avoid a funding deficiency.

We are concerned by any limitation on contribution borrowing. For example, if contributions made on hours (or some other basis) in a plan year aren't enough to meet the minimum funding requirement, employers would have an obligation to fund the deficiency, barring any available action the trustees can take to avoid the deficiency. No member of our task force has actually dealt with an actuarial certification of deficiency or the process of assessing the deficiency after the Form 5500 filing date on extension. However, the approach of *contribution borrowing* is the least disruptive way to avoid a funding deficiency. It's no different from dedicating employer contributions to meet minimum funding, than if the plan were found to be deficient and additional funding charges were assessed against employers after the filing of the certification.

[1] The American Academy of Actuaries is the public policy organization for actuaries of all specialties within the United States. In addition to setting qualification standards and standards of actuarial practice, a major purpose of the Academy is to act as the public information organization for the profession. The Academy is nonpartisan and assists the public policy process through the presentation of clear actuarial analysis. The Academy regularly prepares testimony for Congress, provides information to federal and state elected officials, regulators and congressional staff, comments on proposed federal and state regulations and legislation, and works closely with state officials on issues related to insurance. The Academy also develops and upholds actuarial standards of conduct, qualifications and practice, and the Code of Professional Conduct for all actuaries practicing in the United States.

We hope our meeting and this brief summary help frame the issue and clarify the value of maintaining this practice. If you have any questions or would like to discuss further, please contact Heather Jerbi, the Academy's senior pension analyst (202.785.7869; Jerbi@actuary.org).

Again, thank you for your time. On a personal note, on behalf of the members of this task force and the Academy in general, I would like to express our appreciation for your public service in greatly enhancing the relationship between the actuarial profession and the IRS.

Sincerely,

Kenneth A. Kent, MAAA, EA, FCA, FSA
Vice President, Pension Practice Council
American Academy of Actuaries