



AMERICAN ACADEMY *of* ACTUARIES

January 15, 2003

Mr. Paul Shultz
Director, EP Rulings and Agreements
Department of the Treasury
1111 Constitution Ave, NW
Washington, DC 20224-0002

Dear Mr. Shultz:

The American Academy of Actuaries¹ Pension Practice Council recently created a task force, composed of consulting actuaries throughout the country who specialize in working with multiemployer plans, to examine issues related to these plans. As chair of this task force, I appreciate this opportunity to present our thoughts regarding the emerging crisis among these types of programs.

Defined benefit multiemployer plans have specific challenges in the volatile market we've been facing for the past three years. This is the worst bear market since ERISA. Consequently, there is an unprecedented interest in relief from the usual minimum funding requirements. Unlike single-employer plans, multiemployer plans are independent entities governed by joint boards of trustees who also have responsibilities to the employers or unions that collectively participate in and sponsor these programs. In addition, contributions and/or benefits are defined through collective bargaining with contractual commitments that typically extend from 3 to more than 5 years. As a result, with the investment losses that have occurred over the past 3 years, many of these funds have seen dramatic increases in their contribution requirements, to potentially well above the amounts stipulated by the collective bargaining agreements.

As consulting actuaries, we advise multiemployer plan joint boards on the law and regulations that are available to help them address the funding issues they face. There are a number of tools available in the law and regulations to provide additional time for funding past investment losses. Specifically, these tools extend the minimum funding requirements, and hence allow time so the needed changes in benefit and/or contribution levels can be addressed in the regular collective bargaining process.

We are asking you to promulgate guidance on the alternative funding relief provisions in the Internal Revenue Code and regulations. Specifically, many of these provisions require individual plans to apply for approval of funding method changes or offer few regulations providing guidance on their application. In addition, when we have attempted to apply for relief, our efforts have sometimes been met with a high degree of resistance or complexity relative to the multiemployer programs. This situation leaves us ill advised to suggest to our clients that there is some relief.

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.

It's critical and time sensitive to better define what potential relief exists to extend the minimum funding requirements, so that funding issues facing these plans can be addressed through the regular collective bargaining process.

While our task force has reviewed areas of the law that might be appropriate for recommending change, the timing of the situation leads us to focus more on the regulations and relief within the Treasury Department's purview. We have identified four areas where immediate relief could be provided. To assist the multiemployer plan community in the current environment, we request that you provide guidance on the qualifying criteria and procedures for plans to use based on the following approaches for extending the minimum funding obligation. The areas for your consideration are:

1. Promulgating an automatic approval of the shortfall method, and preferably one that would not restrict the ability of the plan to adopt any other change in funding method within the next 5 years.
2. Establishing specific criteria necessary to get an approval for an extension of an amortization period under Section 412(e) of the Internal Revenue Code.
3. Providing special guidance for minimum funding waivers for multiemployer plans that require substantially less disclosure of individual employer financial conditions and business plans.
4. Extending the automatic approval of asset valuation methods to (a) spread adjustments over a period greater than 5 years, potentially up to 10 years and, (b) specifically for multiemployer plans, allow use of the 85%/115% corridor around IRS average value as currently permitted under the regulations for these plans.

We would be delighted to meet with you and other IRS representatives to discuss how each of these four alternative approaches can be used by multiemployer plans to address their financial issues.

Our next meeting is scheduled for January 21, 2003, and we would appreciate the opportunity to meet with you at that time. The timing for relief is critical. Our hope and anticipation is that we can work together to identify means by which the current regulations and laws can be used to provide funding relief for multiemployer plans, and in a manner that would limit the amount of work for the agency in reviewing a substantial increase in the number of applications for funding relief.

Thank you in advance for your consideration of these issues.

Sincerely,

James J. McKeogh
Chair, Multi-Employer Task Force
American Academy of Actuaries

Cc: James Holland
Diane Bloom
Martin Pippins
Bill Kerr