

NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS

815 16th Street, N.W., Washington, DC 20006 ← Phone 202-737-5315 ← Fax 202-737-1308



Edward C. Sullivan
Chairman

Randy G. DeFrehn
Executive Director
E-Mail: RDEFREHN@NCCMP.COM

**VIA E-MAIL AND
REGULAR MAIL**

October 26, 2001

Paul T. Shultz
IRS:TEGE:EP:RA
Room 6526
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Postponement of GUST Amendment/Submission Deadline Due to Problems Resulting from Terrorist Attacks

Dear Mr. Shultz:

We understand that the Treasury and IRS are considering whether to postpone the deadline for qualified plans to be amended to comply with the series of recent laws and regulations collectively known as “GUST” and the deadline for submission to the IRS for a determination that the plan language complies with legal requirements. For most plans, which operate on a calendar year, that deadline is currently December 31, 2001.¹

The National Coordinating Committee for Multiemployer Plans (NCCMP)² strongly urges that you extend both the amendment and the submission deadlines to a date no earlier than March 31, 2002. Although the need for extra time stems from the reverberations of the September 11 tragedies, we recommend that this be a blanket extension, available to all plans that may need it without a requirement for individual showings of hardship directly related to the terrorist attacks.

¹ Of course, given the notice requirements associated with a determination letter request, as a practical matter all of the plan and submission documentation must be completed by mid-December.

² The NCCMP is the only national organization devoted exclusively to advocating for the interests of the approximately ten million workers, retirees, and their families who rely on multiemployer plans for retirement, health and other benefits. The NCCMP’s mission is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The roughly 200 Affiliate and Associate Affiliate members of the NCCMP include plans and plan sponsors in every major segment of the multiemployer plan universe. The NCCMP is a nonprofit organization.

Multiemployer plans cover service employees in a multitude of industries, hotel and restaurant workers, people working in retail establishments, construction trades, truck drivers and other transportation workers, and numerous other industries directly and indirectly affected by the recent events. Problems that multiemployer plans, their participants and their contributing employers are facing, due to the terrorist attacks and their aftermath, are so varied and widespread that we believe there would be little to be gained by making each of them go through the paces of describing their problems. Indeed, that would just substitute one process for another – the time spent documenting hardship would be better spent making the necessary decisions about plan provisions.

Here are some of the reasons why a delay, even one as brief as 90 days, would be helpful:

Disruptions in Trustee Meeting Schedules. The sponsor of a multiemployer plan is its labor-management board of trustees. Plan amendments can only be made by these boards (or, in rare cases, through formal collective bargaining). Depending on the size and geographic scope of the plan, the boards may meet as often as monthly or as infrequently as three or four times a year. Some trustees and plan professional advisors may need to travel to take part in board meetings. Because of the disruption in transportation and continuing safety concerns, some multiemployer trustees' meetings at which GUST and related amendments would have been considered have had to be cancelled or postponed, which will make it harder to complete the review and approval process by year-end.

Disruptions in Agendas and Priorities. For many multiemployer plans, events since early September have created new and urgent issues for trustees' consideration, pushing finalization of compliance amendments lower down their list of priorities. In particular, at recent and upcoming meetings significant time is being devoted to reviewing plan investments and considering strategic options – including possible benefit discipline – for dealing with the decline in equity values. Many trustees have also been focusing on providing support and relief for participants affected by the September 11 events and the dramatic slowdown in the economy since then.

On the retirement plan side, these may include matters such as protection from breaks in service, added surviving-family benefits, the addition of special distribution options for the newly unemployed. Very frequently, the health and welfare funds covering multiemployer plan participants are run as companions to the pension plans, with the same individuals serving as their trustees. They meet as boards of the various funds at the same gatherings. The boards of many health and welfare funds are looking at ways to extend health and other welfare coverage for displaced workers and their families, a challenge that consumes much of the time they and their advisors might otherwise be spending on GUST compliance issues.

Administrative Disruptions. In the locations most directly affected by the terrorist attacks, plan operations, record-keeping and file retrieval, have been disrupted, in some cases because of damage to fund offices. Communications capabilities have been compromised, well beyond the New York and Northern Virginia areas. Plans operating in the industries most affected (travel, hospitality and tourism support, for example, or certain skilled construction trades) have faced severe stress on claims administration and participant service systems, as well as obvious personal stress on the people running the plans and interacting with the affected participants and

their families. They are running out of stamina and the ability to focus on the procedural technicalities of many of the issues raised by the GUST amendment process.

Disruptions in the Availability of Professional Assistance. Of course, multiemployer plan trustees and their administrative staff are not alone in encountering extra logistical and other difficulties due to recent events. In many cases the consultants, lawyers, accountants and other professionals on whom they rely (probably to a greater extent than corporations with benefit programs of similar size, because the plans do not have in-house Human Resources staff) are themselves stumbling to catch up since September 11. For example, in the case of one consulting/actuarial firm serving a significant number of multiemployer plans, the communications center supporting e-mail connections between the National Office compliance staff and the rest of the firm and its clients is in lower Manhattan, and was knocked out on September 11.

New Issues for Plan Drafting. The aftermath of the September 11 events has given new prominence to some benefits issues that many plans had dealt with in a fairly perfunctory way. A prime example is USERRA. In many cases plan amendments to comply with USERRA, drafted and adopted a while ago, largely parrot statutory language. Now that the military call-up of measurable numbers of plan participants is a reality, professionals and administrators are asking detailed questions about how a returning veteran's benefit rights will be restored, how will the person's deemed hours of covered service be measured, who will pay for the makeup benefits,³ what kinds of notice can and should be required, etc. These are issues that trustees would like to resolve through plan language, and to include in the plan document that they make available to participants in connection with the GUST submission.

Many multiemployer plans completed the GUST amendment process a while ago, or are in its final stages. They will be submitted on time, even if there is no extension. However, in most cases the language and the design need a careful final review, with new developments and concerns in mind. The elements needed to support the IRS submission are, typically, yet to be assembled, and that can be done either hastily or with care. We see a lot to be gained, both for the plans and for the IRS reviewers, from giving retirement plans the extra time needed to "get it right". We urge you to grant us that extra time.

³ The great majority of multiemployer defined contribution plans, even those with 401(k) features, are largely or fully funded by negotiated employer contributions allocated to all accounts rather than matching contributions made only when a participant defers pay into an account. USERRA gives multiemployer plans the right to assign the liability for a returning veteran's make-up benefits to a particular employer, or to meet the cost out of the plan's general assets.

Please feel free to call me with any questions, or if there is any additional information the NCCMP can provide to help with your consideration of this matter.

Sincerely,

Randy G. DeFrehn
Executive Director

RGD/mmt