

February 8, 2005

By E-Mail

CC: PA: LPD:PR(REG—114726-04)  
Couriers Desk  
Internal Revenue Service  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

<http://www.irs.gov/regs>

Dear Sir or Madam:

These comments are filed by the National Coordinating Committee for Multiemployer Plans (NCCMP) in response to the request for public comments on the Proposed Regulations concerning distributions from a pension plan under a phased retirement program issued in November, 2004. These comments address clarifications that are needed to enable multiemployer plans to apply these regulations. The NCCMP may submit supplementary comments concerning substantive issues in the proposed regulations.

The NCCMP is the only national organization devoted exclusively to protecting the interests of the approximately ten million workers, retirees, and their families who rely on multiemployer plans for retirement, health and other benefits. Our purposes is to assure an environment in which multiemployer plans can continue their vital role in providing benefits to working men and women. The NCCMP is a nonprofit organization, with members, plans and plan sponsors in every major segment of the multiemployer plan universe, including in the building and construction, retail food, trucking and service and entertainment industries.

### **Adoption of Phased Retirement Program**

Multiemployer plans have been established primarily in industries characterized by work of relatively short duration and for many different employers. Where multiemployer plans have been established, the individual employers do not establish the rules governing the payment of benefits. These rules are adopted by the Board of Trustees or Plan Committee that is the plan sponsor. Therefore, the regulations should clarify that the written phased retirement program may be adopted by the employer or the plan sponsor in the case of multiemployer and multiple employer plans.

## **Relationship to Suspension of Benefit Rules**

The proposed regulations adopt what is characterized in the Preamble as the “pro rata approach” in which an employee who elects a phased retirement arrangement would maintain a dual status—partially retired and partially in service. If this is the case, it would seem that existing rules, including the suspension of benefit rules, would continue to apply to each status. This is not clear in the proposed regulations.

Unlike single employer plans, multiemployer plans may suspend retirement benefits if the participant is employed in the same industry, the same trade or craft and in the same geographic area covered by the plan. Therefore, work that meets this criteria would result in a benefit suspension even if that work were not for employers maintaining the plan. In industries in which multiemployer plans are common, employees often do not work regularly for one employer. Instead, employees’ hours for all participating employers are reported to the plan and aggregated to earn plan credit. The proposed regulations provide that if an employee elects phased retirement and then actually works more hours for the employer than was reasonably under the phased retirement arrangement, then the phased retirement benefit is reduced prospectively. Please clarify whether the reduction of the phased retirement benefit or suspension of the phased retirement benefit is the remedy in the situation where the employee works under the phased retirement arrangement more hours than expected for employers maintaining the plan.

However, the regulations do not address what action should be taken by the plan, if an employee receiving phased retirement benefits works entirely or partially for an employer not maintaining the plan. It is not uncommon for employees participating in multiemployer plans to also work for employers who do not maintain the plan. If an employee who has elected phased retirement, works all or a portion of his or her hours for a non-participating employer in the same industry, same trade or craft and same geographic area covered by the plan, we would expect that this could result in the suspension of the pro rata retirement benefit. If an employee is receiving a pro rata phased retirement benefit, is the number of hours required for suspension of the phased retirement benefit also proportional? For example, after normal retirement age, a benefit may be suspended if the employee works 40 or more hours in the same industry, same trade or craft and same geographic area covered by the plan. If an employee is receiving a pro rata phased retirement benefit, is the number of hours required for suspension of the phased retirement benefit also proportional?

## **Phased Retirement Limited to Full-Time Employees**

The proposed regulations provide that phased retirement benefits can only be made available to an employee who prior to the phased retirement period, normally maintains a full-time work schedule. As discussed below, it is unclear what constitutes a full-time work schedule in some of the industries in which multiemployer plans are common. For example, in the construction industry, work may vary from year to year, month to month or week to week. There is no single standard of what constitutes full-time. Data concerning hours worked by employees are collected by the plans (unless an equivalency not based on hours is used as permitted by the regulations) and plans may be able to determine the average hours worked by employees for the plan as whole or for the area in which an individual employee is located. Therefore, the regulations should clarify that whether an employee is “full-time” may be determined by reference to the employment patterns in the industry in which the employee works.

## What Constitutes a Reduction in Hours

The proposed regulations require a reduction in hours as the basis for receiving phased retirement benefits. In fact, the regulations require that the reduction must be at least 20%. In order to determine if the employee's hours have been reduced by 20%, the reduced hours must be compared to something. This comparison can be done when an employee works for a single employer or when the employee has a fixed work schedule with a regular number of hours worked. However, in industries in which multiemployer plans are common, the hours an employee works may vary considerably from year to year while an employee is actively working and without any reduction in hours under a phased retirement program. An employee may work 2000 one year and 1000 hours the next year and 1500 the following year without any intent to reduce his/her hours. The regulations should be clarified that in industries in which work is characterized by short term employment and the levels of work fluctuate, the plan can determine what is full-time employment (see comment above) by reference to the employment patterns in the industry in which the employee works.

The regulations also provide that the Plan must provide for an annual comparison between the number of hours actually worked by the employee and the number of hours the employee was reasonably expected to work. The regulations should be clarified that in industries in which work is characterized by short term employment and the levels of work fluctuate, this comparison can be made between the number of hours worked by the employee and the number of hours the employee is reasonably expected to work based on employment patterns in the industry in which the employee works.

With our expertise concerning multiemployer plans, we welcome the opportunity to meet and work with the Service to develop workable phased retirement rules for multiemployer plans.

Sincerely,

*Randy G. DeFrehn*

Randy G. DeFrehn  
Executive Director