

# National Coordinating Committee for Multiemployer Plans

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By Facsimile (202) 927-1993

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Couriers Desk

Internal Revenue Service

1111 Constitution Avenue, N.W.

Washington, DC 20224

[http://www.irs.gov/tax\\_\\_regs/regslst.html](http://www.irs.gov/tax__regs/regslst.html)

Dear Madam or Sir,

These comments are filed by the National Coordinating Committee for Multiemployer plans (NCCMP) in response to the request for public comments on the proposed regulation on Required Distributions from Retirement Plans under Internal Revenue Code §401(a)(9), which was published in the Federal Register of January 17, 2001 (66 Fed. Reg. 3928).

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 purpose 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.

Our comment on the proposed regulation is addressed to one point where there is a change from the earlier proposal on these issues. It is an omission, pointed out in the Preamble to the proposal and explained as follows:

The proposed regulations do not set forth the special rule relieving a plan from disqualification for isolated instances of failure to satisfy section 401(a)(9) because all failures for qualified plans and section 403(b) accounts under section 401(a)(9) are now permitted to be corrected through the Employee Plans Compliance Resolution System (EPCRS).

For many multiemployer plans it will never be possible to be certain that the plan can start making minimum required distributions to every terminated vested participant or participant's beneficiary on that person's Required Beginning Date under §401(a)(9), regardless of how careful plans' procedures may be.

Multiemployer plans are administered separately from each contributing employer, and must rely on outside information sources for participants' addresses and birth dates. Therefore, a multiemployer plan may not be able to contact the employee to verify a birth date because the address is not correct. And, since many multiemployer plans cover trucking, the construction trades and other industries where workers are highly mobile, addresses that were once correct may not be by the time the participant has reaches age 70-1/2.

Moreover, multiemployer plans tend to have a much higher number of terminated vested participants with small benefits that the participants themselves might have overlooked. That is because multiemployer plans typically do not automatically cash out participants with small benefits when they leave covered service, because there is always the chance that the individual will return at a later point or will continue to earn service credit as a result of work another multiemployer plan, pursuant to a reciprocity agreement.

Multiemployer plans' difficulties in locating participants and determining when payments to them are required to start are all the greater in the case of death benefits payable to participants' beneficiaries, particularly when the beneficiary is not the participant's spouse.

While the correction programs included in the IRS's EPCRS do offer substantial flexibility for multiemployer plans to correct the inevitable errors that will occur under §401(a)(9), they may not provide the full shelter that even the most diligent of plans will need. For example, a missed Required Distribution Date may come to light in the course of an IRS examination of the plan, at which point it may no longer be eligible for correction without going through a formal program that involves payment of penalties or fees, in addition to the expenses incurred to make the submission.

Accordingly, we recommend that the final regulation continue to acknowledge that plans will not be disqualified for an occasional failure to meet the §401(a)(9) requirements, as long as the plans have reasonable compliance procedures. We also request that the final regulation, or its Preamble, specifically state that a plan will not be disqualified for failure to make payments as of the Required Beginning Date to a participant or beneficiary who cannot be located, following a reasonable effort by the plan to do so.

If you need any further information or have any questions concerning this matter, please be in touch with me at (202) 756-4644, or by e-mail at [rdefrehn@nccmp.org](mailto:rdefrehn@nccmp.org).

Respectfully submitted,

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