

Notice 2015-16

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May 15, 2015

**Submitted electronically to:**  
[Notice.comments@irs.counsel.treas.gov](mailto:Notice.comments@irs.counsel.treas.gov)

CC:PA:LPD:PR (Notice 2015-16)  
Room 5203  
Internal Revenue Service  
PO Box 7604  
Ben Franklin Station  
Washington, DC 20044

**Re: Notice 2015-16  
Request for Comments**

Dear Department of Treasury and Internal Revenue Service:

Please accept the following Comment on behalf of the Transport Workers Union Health & Welfare Fund ("TWU H&W" or "Fund") in response to the Request for Comments concerning Notice 2015-16 which addresses Section 4980I of the Internal Revenue Code ("Code") – Excise Tax on High Cost Employer-Sponsored Health Coverage.

The TWU H&W is a national, multiemployer Taft-Hartley welfare benefit fund that provides, among other benefits, medical and prescription drug coverage to its participants, and their dependents, who primarily work for private sector employers who provide services for the United States Government or at United States Government facilities. The TWU H&W is self-insured. As of January 2015, there were 65 participants in the TWU H&W plan and their spouses and dependent children.

The TWU H&W strongly urges the Department of Treasury to adopt regulations that will apply the age and gender adjustments set forth in Section 4980I(b)(3)(C)(iii) to multiemployer plans based on the characteristics of the participants in the multiemployer plan. There are several reasons for doing so. Initially, the TWU H&W would not have information about the age and gender characteristics of the employer's entire workforce, only about those participants who participate in the Fund. Additionally, the portion of a participating employer's workforce that participates in the TWU H&W is often a small subset of the employer's entire workforce. The workers that participate in the TWU H&W tend to be older than their employer's workforce as a whole. Accordingly, it would be unfair and skew the age and gender characteristics of the TWU

H&W, if the age and gender characteristics of the entire workforce for each employer participating in the Fund were utilized to calculate the adjustment to the dollar limit thresholds for the excise tax on the TWU H&W, instead of only that portion of a participating employer's workforce that actually participates in the TWU H&W.

When looking at the population of the TWU H&W, there is 1 participant age 18-24; 6 participants ages 35-44, 26 participants ages 45-54; 23 participants ages 55-64; and 9 participants ages 65 or older. The U.S. Bureau of Labor Statistics calculated the median age of the labor force in the United States in 2012 to be 41.9 years old and projected the median age of the labor force in the United States in 2022 to be 42.6 years old.  
[http://www.bls.gov/emp/ep\\_table\\_306.htm](http://www.bls.gov/emp/ep_table_306.htm).

The age of spouses and dependent children should not be factored into the average age of the multiemployer plan's workforce because the comparison is to the age of the characteristics of the national workforce. It would unfairly skew a multiemployer plan's age characteristics as compared to the age characteristics of the national workforce if the age of any participants other than the age of the member participants was used to calculate the age characteristics of the multiemployer plan.

Similarly, when calculating the gender characteristics of the multiemployer plan, only the gender of the participants, and not the gender of dependent spouses and children, should be considered. Of the 65 participants in the TWU H&W medical coverage plan, 22 are male and 43 are female. This compares to a national workforce comprised of 47% women in 2010 and a national workforce projected to be comprised of 51% women between 2008 and 2019.  
<http://www.dol.gov/wb/factsheets/Qf-laborforce-10.htm>.

The TWU H&W supports the creation of safe harbor tables for this purpose of appropriately and easily adjusting dollar limit thresholds for multiemployer populations with age and gender characteristics that differ from those of the national workforce. Such tables should be updated annually. For the age adjustment, Treasury and the IRS should construct the tables in yearly increments so that a plan would get a higher adjustment on its excise tax for each year that the average age of its member participants is greater than the average age of the national workforce. For example, a plan with an average age of 53 would get a higher adjustment than a plan with an average age of 52. Age of plan participants would be determined as of a specific date (e.g., the last day of the plan year or of the taxable year). The US Bureau of Labor Standards would provide Treasury and the IRS with the average age (or projected average age) of the United States workforce on an annual basis.

Similarly, for the gender adjustment, Treasury and the IRS should construct the tables in 5% increments so that the plan would get a higher adjustment on its excise tax for every 5% difference in the gender characteristics of its participants compared to the gender characteristics of the national workforce. Gender of plan participants would be determined as of a specific date (e.g., the last day of the plan year or of the taxable year). The US Bureau of Labor Standards would provide Treasury and the IRS with the gender characteristics (or projected gender

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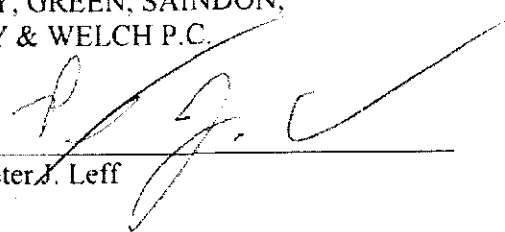
characteristics) of the United States workforce on an annual basis.

The TWU H&W greatly appreciates the opportunity to comment in advance of rule-making on issues relating to multiemployer plans and the excise tax under § 4980I. Because plan participants will ultimately bear the burden of this tax, it is particularly important that it be implemented fairly so as to reduce needless burdens and in a manner that truly captures the cost of the plan in the context of the age and gender of plan participants. The TWU H&W would be more than happy to discuss any questions you may have regarding these comments and related issues. Thank you for your consideration.

Very truly yours,

MOONEY, GREEN, SAINDON,  
MURPHY & WELCH P.C.

By:

  
Peter J. Leff

cc: Board of Trustees  
Joe Swann, Plan Administrator  
Ernie Naegele, Plan Consultant