

Outline of Issues for the Public Hearing on Proposed Regulations Relating to Measurement of Assets and Liabilities for Pension Funding Purposes

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Department of Treasury
Internal Revenue Service
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Issues to be discussed:

I. Amendment Issues Including Coordination with §436 (four minutes)

- A. **Double-counting of liability for benefit increases enabled by §436 contributions.** A sponsor of a plan that is less than 80% funded must pay for the increase in funding target that would result from an amendment for the amendment to take effect. The funding target for MRC purposes must also reflect the amendment if a §412(d)(2) election is made. Unless the assets for §430 purposes reflect the §436 contributions, the funding target increase attributable to the amendment will be funded twice.

ASPPA recommends that final regulations include the discounted value of any §436 contribution made as a result of a plan amendment [for which a §412(d)(2) election is made] in the market value of assets for purposes of §430. A similar double-counting problem exists when a plan sponsor makes a §436 contribution to a plan that is less than 60% funded to enable benefit accruals. Final regulations should also include the discounted value of §436(e) contributions in the market value of assets for purposes of §430.

- B. **Recognition of §436 restrictions for purposes of §430.** Restrictions under §436 can be permanent or fleeting. For example, the restriction on accelerated distributions is lifted when the AFTAP exceeds 80%, so it is appropriate to ignore this restriction in the §430 valuation. A plan may provide that a restriction on benefit accruals is permanent, or that accruals resume prospectively when the AFTAP climbs above 60%. In either case, the restriction permanently eliminates

accruals for the current year, and should be ignored in the §430 valuation. On the other hand, if the plan provides for retroactive restoration of benefit accruals when the plan becomes adequately funded, the restriction is fleeting and should be ignored. In the case of a restriction on an amendment increasing benefits, whether the result is permanent or fleeting (in the absence of specific plan language) is not clear.

ASPPA recommends that final regulations provide that fleeting restrictions are not recognized, and permanent restrictions are recognized for §430 valuation purposes. Final regulations should also provide examples of how a restricted amendment applies when a plan's AFTAP exceeds 80% several years after the amendment's adoption and effective dates.

- C. **§430 recognition of mandatory changes during transitional relief period.** In light of PPA §1107, many plan sponsors will not adopt changes to the new segment rates or other PPA requirements (such as changes to the rules for hybrid plans) until the end of the 2009 plan year. A §412(d)(2) election will not be available for 2008 because the amendment would be adopted more than two and a half months after the end of the plan year.

ASPPA recommends that the final regulations align funding interest and mortality rates with the operational rates used by the plan and specifically carve out an exception in §1.430(d)-1(f)(4)(iii)(C) for temporary minimum benefits. PPA changes, other than interest and mortality that can be implemented operationally, should be treated as if adopted within the §412(d)(2) timeframe.

- D. **§430 recognition of remedial amendments.** Remedial amendments can be adopted years after the effective date of the amendment. Final regulations should address how these amendments are handled under §§ 430 and 436.

ASPPA recommends that the final regulations under §§ 430 and 436 confirm that remedial amendments are subject to §412(d)(2) and illustrate the interplay with §436(c). Final regulations should confirm that remedial and corrective amendments reaching back prior to PPA are not subject to §436(c) while such amendments for benefit improvements that are subject to §436(c) are evaluated as of the date adopted.

II. Insured Plans (one minute)

- A. **Value of insurance contracts.** Final regulations should clarify, if only by reference to other guidance, how the "value" of an insurance contract is determined for §430 valuation purposes.
- B. **Irrevocable contracts.** Final regulations should clarify that if the plan trustees have the right to surrender insurance contracts for cash; the contracts are not eligible for the special funding exceptions available to irrevocable contracts. Otherwise, the regulations may appear to sanction "split-funding".

III. §417(e) Benefits (two minutes)

- A. **Safe harbor for valuing accelerated forms of payment.** The Proposed Regulations provide that the valuation interest rates under §430(h)(2) are to be used to value §417(e) benefits. The rationale is that the yield curve represents the best estimate of future interest rates. However, we all know that when a benefit is payable 30 years from now, all three segment rates will not be the same, and won't be equal to today's third segment rate. The availability of a safe harbor is important, and the valuation segment rates are an appropriate safe harbor. However, the actuary should be able to use other interest assumptions if, in the actuary's judgment, alternative assumptions would be more reasonable.

ASPPA recommends that final regulations provide that the use of the §430(h)(2) rates on the valuation date to value §417(e) benefits is a safe harbor, not a mandate. As experience develops, other valuation approaches may prove to be superior. Setting the valuation method in the Proposed Regulation as a safe harbor rather than a mandate will provide flexibility without the need for revisiting the regulation.

- B. **Safe harbor for projecting variable interest credits.** To satisfy the requirement to take into account lump sum payments for "applicable defined benefit plans", future interest credits or equivalent amounts must be projected "using reasonable actuarial assumptions."

ASPPA recommends that final regulations provide "reasonable assumption" safe harbors for future variable interest credits under cash balance and other hybrid plans for §430 purposes. Safe harbors should include the assumed continuation of the most recent annual interest credit rate as well as the plan termination rule (*i.e.*, the average of the five most recent annual rates).

IV. Funding Method (three minutes)

- A. **Automatic approvals for funding method changes.** The Proposed Regulations provide for automatic approval of changes in actuarial funding method which are not inconsistent with §430 in the first year in which §430 applies. This is necessary and helpful, but other changes in actuarial funding method also should be permitted without the Commissioner's approval.

ASPPA recommends that future guidance provide additional automatic approvals for funding method changes mandated by PPA, mandated by final regulations, mandated by demographic changes and due to a change in actuary.

- B. **Zero funding target AFTAP.** Final regulations should provide that in any situation in which the plan's funding target is zero, the plan's Funding Target Attainment Percentage (FTAP) is 100%.
- C. **Changes in method and assumptions.** Clear guidance is needed on how to handle changes in method and assumptions during the year.

ASPPA recommends that final regulations should:

1. Confirm that current year changes to funding method, such as the asset valuation method, do not mandate changes to the prior year determination of the Adjusted FTAP (AFTAP).
2. Allow the plan's administrator broad reliance on certifications and funding target determinations prepared by an actuary who is replaced by a second actuary who completes Schedule SB. The change in actuary may be voluntary or required by the prior actuary's death or disability. In any case, the new actuary should not be constrained by the prior actuary's work or assumptions in preparing the Schedule SB for the year.
3. Provide that, for plans not required to file Form 5500, the plan's assumptions and methods will be deemed established nine and a half months after the end of the plan year.