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# Outline of Issues for the Public Hearing on Proposed Regulations Relating to Determination of Minimum Required Pension Contributions

## August 4, 2008

**Department of Treasury**
**Internal Revenue Service**
**26 CFR Part 1**
**[REG-108508-08]**

Issues to be discussed:

**I. Use of Credit Balances (6 minutes)**

a. The proposed regulation's requirement that only contributions in excess of the MRC (unreduced by any contribution applied to satisfy the minimum contribution requirement) are to be credited to the PFB is counter-intuitive, and not required by the statute.

IRC§430(f)(3) provides that the MRC for the year is "reduced" by the PFB or COB the employer elects to apply for that year. In other words, the minimum required contribution for a year for purposes of §430(f) varies depending on whether or not an election is made to apply some of the credit balance to that contribution. Logically, it is this reduced MRC in (f)(3) that is the MRC referenced in IRC§430(f)(6)(B)(i)(II), that is used to determine the contributions, if any, that are added to the PFB as of the first day of the following year.

Ignoring interest for purposes of this example, assume the MRC for the year for the plan described in Subsection II(a) above, is $1 million. Assume further that the employer makes a contribution for the plan year, after the fourth quarterly payment is due, equal to $1 million (plus interest). Because the reduced MRC for the year is $200,000 after considering the election to reduce the credit balance, $800,000 of the $1 million contribution exceeds the reduced MRC [as defined by

§430(f)(3)] for the year and can be added to the prefunding balance. Thus, the PFB will remain at $2 million.

***ASPPA recommends*** that final regulations provide that the MRC is reduced by any credit balance the employer has elected to apply for the year, as required under §430(f)(3), in determining if there are contributions in excess of the MRC that the employer may elect to add to the prefunding balance.

b. The proposed regulations provide that, for purposes of determining whether or not a shortfall amortization base must be established, the PFB is subtracted from the value of assets only if a portion of the PFB will be used to satisfy the MRC requirement. In practice, if the plan also has a COB, there can be situations where the MRC determined after subtracting the PFB is less than the COB, so the COB will cover the MRC and there can be no actual application of the PFB to cover the MRC.

   ASPPA recommends final regulations provide that, for purposes of whether or not a shortfall amortization base must be established, the PFB may be treated as used to satisfy the minimum funding requirement if the resulting minimum funding requirement is less than the COB and is fully offset by the COB.

## II. Contribution Issues (3 minutes)

Final regulations should clarify that a contribution made in the current year for a prior year to avoid a §436 problem in the current year is included in assets for the current year, and thus is considered in determining the current year's minimum required contribution (and, in turn, the minimum quarterly contribution requirement).

For example, consider an employer who intended to make a $100,000 contribution for 2009, but makes an additional contribution on April 30, 2010 of $200,000 for 2009 so as to avoid limits on accelerated distributions from that date forward. Since it is for 2009, it is a receivable that is included in December 31, 2009 assets and reduces the January 1, 2010 unfunded as well as the January 1, 2010 minimum and the resulting quarterly requirement that had already gone in for April 15, 2010.

***ASPPA recommends*** that final regulations clarify that a contribution made in the current year for a prior year, including a contribution made to avoid a §436 problem, is included in assets for the current year. This comment is consistent with ASPPA's earlier comments on proposed 430 and 436 regulations regarding the coordination of the adjustments for each purpose.

## III. Consistent Definitions (1 minute)

Inconsistent definitions of terms are confusing, and hinder compliance. It would be helpful if a term were defined relative to a standard definition, then any modifications required for a specific application noted. For example:

a. The definition of funding shortfall in 1.430(a)-1 is not consistent with the 1.430(j)-1(e)(4) definition.

b. The period of underpayment used to determine the additional interest charge is different for the required quarterly contributions (payment date) and the liquidity requirement (end of quarter including the payment date) in the statue and proposed regulations. Examples in the proposed regulations illustrate the difference. However, the proposed regulations include a specific “period of underpayment” definition for the liquidity requirement, but not for the quarterly requirement which can lead to confusion.

***ASPPA recommends*** that final regulations minimize confusion by using consistent definitions and noting necessary adjustments.