Participant Restrictions Under IRC §436 AFTAP Rules

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AFTAP Restrictions

- 436(b) – Shutdown Benefits and Unpredictable Contingent Event Benefits (UCEB)

- 436(c) – Restrictions on Amendment Increasing Liabilities

- 436(d) – Accelerated Benefit Payments

- 436(e) – Suspension of Benefit Accruals

Section 436 Measurement Date

- Automatic on January 1, April 1, October 1

- Any Date the Plan Actuary Certifies AFTAP

- Rules Provide Some Discretion on When Restrictions Actually Begin

Benefit Distribution Timing Issues

- Actuary/Plan Sponsor Know Restriction Will Change

- Does the Plan Sponsor Want to Start/Stop Distributions Immediately, or Delay as Long as Possible?

- Is This a Fiduciary Decision?

Benefit Distribution Timing Issues

- Is This Important?

- What's the Worst That Could Happen?

Employee Notice Timing Issues

- ERISA §101(j) Notice Required for 436(a), 436(c), and 436(d)

- Notice Required Within 30 Days After Restriction Applies

- AFTAP Can Change Before Deadline to Provide the Notice

Employee Notice Timing Issue

- Would the IRS or DOL Impose Penalties if No Notice Gets Issued After Restrictions No Longer Apply?

Bifurcation of Benefits

- AFTAP is Greater Than 60 Percent and Less Than 80 Percent

- Plan Allows Accelerated Distributions – e.g., Lump Sums

- Plan Must Split Distribution Into 'Restricted' and 'Unrestricted' Portions

Bifurcation of Benefits

1. Participant May Receive Unrestricted Benefit at Annuity Starting Date

2. Restricted Benefit May Be Started at Same Annuity Starting Date

3. Restricted Benefit May Be Deferred to Time When Restrictions May Be Lifted

Bifurcation of Benefits

- 417(e) Applies Separately to Restricted and Unrestricted Benefit Portions

- Could Other Plans Have Benefits Subject to Bifurcation Rules?

Plan Provisions Required Under §436

- Required Due to Section 401(a)(29)

- IRS Has Provided Sample Amendment

- Employer Has Some Elections Regarding Plan Provisions

- Anti-Cutback Rules

Distribution Restrictions

- Top 25 HCE Restriction – a Provision of 401(a)(4) Non-Discrimination – Not §436

- The Two Provisions Operate Independently

- Possible to Have Restriction Under One Provision But Not the Other

Revised AFTAP Issues

- Material or Immaterial Changes

- Immaterial Changes – All AFTAPs Are Ranged AFTAPs

- Material Changes – Disqualifying Events?

- Possible EPCRS Procedure

Removal of Restrictions

- Plan Document Must Specify Whether Certain Restrictions Are Automatic or Require a Plan Amendment

Presumptive Funding Target

- If Assets and PFB Are Known, the Funding Target Under a Presumed AFTAP Can Be Calculated

- Presumed FT = (Assets – PFB)/Presumed AFTAP Percentage

- Assets/PFB Do Not Include Future Elections

Presumptive FT Calculation

- Example:

- 2015 AFTAP = 88%

- On 1/1/16, Assets = $1,000,000; PFB = $100,000; AFTAP Presumed to Equal 88%

- On 4/1/16, AFTAP Presumed to Equal 78%

- Presumed FT = ($1,000,000 - $100,000) / 78% = $1,153,846

Presumptive FT Example

- $1,153,846 x 80% = $923,077

- Employer is Deemed to Waive $23,077 of PFB (Reduced to $66,923)

- New Presumed AFTAP = ($1,000,000 - $66,923) / $1,153,846 = 80%

- Plan is Under No §436 Restrictions

Presumptive FT Example

- Suppose Plan Had No PFB in 2015, and Only Added the PFB Due to Excess Contribution in 2015 Year

- Plan Sponsor Could Have Elected to Add No PFB (or Waived Existing PFB)

- Presumed FT = ($1,000,000 - $0) / 78% = $1,282,051

Presumptive FT Example

- No PFB to Reduce, So No Way to Avoid Restrictions

- By Choosing to Add to PFB, Plan Sponsor Has Made the Plan Appear to Be 80 Percent Funded Instead of 78 Percent Funded

- Is This the Intent of PPA?

Presumptive Funding Target

- Is This Important?

- What's the Worst That Could Happen?

- IRS Avoided This Ridiculous Result With Regard to Presumed AFTAP Below 60 Percent on October 1

Mid-Year Amendments

- Requires Calculation of Presumed *Inclusive* Adjusted Funding Target

- Add the Increase in FT Due to Amendment to the Presumed Adjusted Funding Target Previously Calculated

Questions?