



## Workshop 17: Defined Benefit Regulatory Update

James E. Holland, Jr., Cheiron, Inc.

Judy Miller, ACOPA/ARA



# Agenda

- 2016 Mortality Tables
- Final § 430 regulations
- Reportable Event Regulations
- PLR 201538022

3



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



# 2016 Mortality Tables

- Notice 2015-53
  - Updates the tables for 2016; continues use of RPA 2000 table
  - Proposed rules for 2017?

4



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Final § 430 Regulations

- Proposed regulations issued in April 2008
- Provide how to determine minimum required contribution (MRC) and quarterly installments
- Allow plans to rely on proposed regulations pending final rules
- Final regulations published in September 9, 2015 Federal Register
- Generally effective for 2016 plan year

5



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Final § 430 Regulations

- Generally, final rules follow proposed rules
- Important additions and changes in response to comments
- Reflects certain provisions of WRERA, CSEC Act, and HATFA
- May elect to apply before 2016 effective date

6



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Final § 430 Regulations

- §1.430(a)-1 - new section in the regulations
  - Clarifies that CSEC plans are not subject to section 430 unless election made for plan not be treated as a CSEC plan.
  - Provides no fix for circular issue where pre-funding balance is greater than the excess of plan assets over funding target. Plan sponsor can elect to reduce PFB to avoid issue.



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



7

## Final § 430 Regulations

- §1.430(a)-1(b)(2)(ii) – Short plan year rules
  - Follows proposed rules
    - Shortfall amortization installments and waiver amortization installments are pro-rated to reflect short plan year
    - Target normal cost is not pro-rated but reflects benefits expected to accrue during the short plan year



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



8

## Final § 430 Regulations

- §1.430(a)-1(b)(5) – Terminated Plans
  - Treated as short plan year ending on plan termination date (if not last day of PY).
  - Final MRC therefore due 8 ½ months from termination date (change from pre-PPA ruling).
  - If plan’s termination date precedes otherwise applicable valuation date, val date must be changed to be within the short plan year. Automatic approval per §1.430(g)-1(b)(2)(iv).



## Final § 430 Regulations

- §1.430(a)-1(f)(5) - Termination Date
  - Plan subject to title IV – termination date established under §4048(a) of ERISA
  - Plan not subject to title IV – date established by plan administrator, but not earlier than the date on which all actions necessary to effect the plan termination (other than distribution of assets) are taken
    - Assets must be distributed as soon as feasible
    - Presumed not if after 1 year; exception for time to get DL
    - Must distribute as soon as feasible after DL



## Final § 430 Regulations

- §1.430(f)-1(f)(iii) – Standing Elections for Quarterly Contributions
  - In writing to EA
  - Deemed to occur on later of last day for making required installment and the date the standing election is provided to EA
  - Amount is 25% of MRC for prior year to extent unpaid (appears to impact wording)

11



## Final § 430 Regulations

- §1.430(f)-1(f)(iii) – Standing Elections for Quarterly Contributions
  - Remains in effect for EA named in election until either revoked or named EA is no longer EA
  - However, plan sponsor may suspend application for remaining installments for a plan year by written notice to EA

12



## Final § 430 Regulations

- §1.430(f)-1(f)(iii) – Standing Elections for Quarterly Contributions
  - Once MRC is determined for plan year, plan sponsor may modify standing election for remainder of plan year with a replacement formula election to reflect contributions and earlier use elections

13



## Final § 430 Regulations

- §1.430(f)-1(f)(iii) – Standing Elections for Quarterly Contributions
  - Example of modification –
    - Prior year MRC is \$960,000 for plan with calendar plan year, with balances of \$800,000
    - April 15 standing election uses \$240,000 of balances
    - MRC determined after April 15 to be \$600,000; result is that quarterly installment is \$135,000 ( $1/4 \times 90\%$  of \$600,000)
    - Plan sponsor can modify election for remainder of year so that each of three remaining installments is \$100,000, which is  $1/3$  of the remaining \$300,000 (\$540,000 less \$240,000)

14



## Final § 430 Regulations

- New language added to
  - §1.430(f)-1(f)(2)(i), timing of elections, and §1.430(f)-1(f)(3)(i), irrevocability of elections
    - “or such later date as prescribed in guidance published in the Internal Revenue Bulletin.”
- New language added to
  - §1.436-1(h)(4)(iii)(C)(9), deemed immaterial changes
    - “Any other event prescribed in guidance published in the Internal Revenue Bulletin.”

15



## Final § 430 Regulations

- No effective date specified for new language
  - Implies retroactively effective and thus allows any elections or revocations pursuant to Notice 2012-61 (which provided guidance under MAP-21)
  - Similarly, the deemed immaterial applies to prior events pursuant to Notice 2012-61

16





## Final § 430 Regulations

- §1.430(h)(2)-1(b)(2) – Interest rates
  - First segment rate applies for benefits expected to be paid during 5-year period commencing on valuation date
  - Reflects HATFA technical correction for small plans
  - Required for plan year beginning in 2014; permissive for earlier plan years

17



## Final § 430 Regulations

- §1.430(j)-1 – new section
  - Concerns payment of MRC and quarterly installments
  - Generally, follows proposed rules but some important changes
    - New allocation rules for contributions
    - Interest on early contribution for quarterly
    - Revised liquidity shortfall rules

18



## Final § 430 Regulations

- §1.430(j)-1(b)(1) - Contribution made before 1<sup>st</sup> day of a plan year cannot be applied toward MRC for that plan year
- §1.430(j)-1(b)(3) – Allocation of Contributions
  - If plan has unpaid MRC, then any contribution is a late contribution for earliest plan year for which there is an unpaid MRC (to the extent necessary to correct it)
  - To the extent contribution exceeds amount needed to correct unpaid MRC for earliest year, then applied to next earliest year
  - Process repeated until all unpaid MRCs corrected or entire contribution has been allocated

19



## Final § 430 Regulations

- §1.430(j)-1(b)(3) – Allocation of Contributions
  - Allocation of contributions to unpaid MRCs is automatic and reported on Schedule SB for earliest year for which, as of the date of the contribution, the 8 ½ month deadline has not passed
  - Thus, if calendar PY, a contribution for unpaid MRCs
    - Made January 1 through September 15 – reported on Schedule SB for the previous plan year, and,
    - Made September 16 through December 31 - reported on Schedule SB for the current plan year

20



## Final § 430 Regulations

- §1.430(j)-1(b)(3) – Allocation of Contributions
  - Contributions that are not treated as unpaid MRCs and are made during the first 8 ½ months of a plan year can be designated as contributions for either the previous plan year or the current plan year
  - Designation is established by reporting on Schedule SB for the plan year. Once reported on Schedule SB, the contribution cannot be re-designated for either an earlier or later plan year unless allowed by guidance published in the IRB (e.g., Notice 2012-61)

## Final § 430 Regulations

- §1.430(j)-1(b)(3) – Allocation of Contributions
  - A contribution that is not treated as applied to unpaid MRCs and that is made after 8 ½ month period for a prior plan year, can only be a contribution for the plan year in which made

## Final § 430 Regulations

- §1.430(j)-1(b)(4) - Adjustment for Interest for Contributions for MRC That Are Not Made on Valuation Date
  - If made after valuation date for plan year, discount to valuation date using effective interest rate (EIR)
  - If made before valuation date for plan year (i.e., a small plan), increase with EIR to valuation date

23



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Final § 430 Regulations

- §1.430(j)-1(b)(4) - Adjustment for Interest for Contributions for Late Quarterly Payments in Applying to MRC
  - BOY valuation date – Discount at EIR plus 5% to due date, and then back to valuation date at EIR (same as in proposed regulations)
  - EOY valuation date – If due date is before the valuation date, discount at EIR plus 5% to due date and then increase to valuation date using EIR, which means higher contribution needed to meet MRC than if had paid on due date
  - Slight difference if quarterly installment includes liquidity shortfall amount

24



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## Final § 430 Regulations

- §4971(c) regulations –
  - Final rules provide definitions for most part
  - Applies to statutory effective date of 2008



25

## PBGC - Reportable Events

- Final regulation issued 9/11/2015 under section 4043 of ERISA
- Effective for reportable events occurring on or after January 1, 2016
- Three types of event reporting
  - Post-event notices
  - Advance notice
  - Notice of failure to make required contributions



26

## PBGC - Reportable Events

- Key items in new regulations –
  - PBGC will issue reportable events forms and put on website; must use forms
  - PBGC may ask for additional info (possible short time period of 30 days or 7 days)



27

## PBGC - Reportable Events

- Key items in new regulations –
  - Waivers and extensions (more below)
  - Multiemployer plans have all reporting waived
  - Terminating plans – waived once all assets distributed; or trustee appointed for distress termination



28

## PBGC - Reportable Events

- Key items in new regulations –
  - Well-funded plan safe harbor – no variable rate premium was required for the plan year preceding the event year
  - Low-default risk safe harbor – complicated definition based upon company having adequate capacity to meet its obligations based on enumerated financial tests (see § 4043.9(e) of regulation)

29



## PBGC - Reportable Events

- Waivers for all plans –
  - Disqualification and DOL determination of non-compliance with title I
  - Amendment decreasing benefits
  - Termination or partial termination (IRS determ.)
  - Section 414(l) merger or spin-off

30



## PBGC - Reportable Events

- Waivers for small plans – 100 or fewer participants for whom flat-rate premiums payable for plan year preceding the event year
- Apply to post-event reporting

31



## PBGC - Reportable Events

- List of small plan waivers
  - Active participant reduction
  - Failure to make quarterly contribution timely
  - Change in contributing sponsor or controlled group
  - Extraordinary dividend or stock redemption
  - Transfer of benefit liabilities

32





## PBGC - Reportable Events

- Waivers for well-funded plans (no VRP), low default risk, or public company (if puts on 8K)
  - Active participant reduction
  - Change in contributing sponsor or controlled group
  - Extraordinary dividend or stock redemption
  - Transfer of benefit liabilities
  - Distribution to substantial owner

33



## PBGC - Reportable Events

- De minimis (not more than 10%) waivers for
  - Extraordinary dividend or stock redemption
  - Change in contributing sponsor or controlled group
  - Insolvency
  - Liquidation
  - Loan default

34



## PBGC - Reportable Events

- Failure to make MRC (4043.25 of regs.)
  - Waived if made within 30 days of due date
  - Waived if due solely because of plan sponsor's failure to timely make a funding balance election
  - Filing of Form 200 satisfies notice requirement of this section

35



## PBGC - Reportable Events

- Distribution to substantial owners (4043.27)
  - No small plan exemption
  - 10% ownership threshold (from law)
  - Total exceeds \$10,000 in one year,
  - Unfunded nonforfeitable benefits afterwards,
  - Not by reason of death, and either
  - Total is more than 1%, or total for all such owners is more than 5%, of year end assets for each of 2 preceding years

36



## PBGC - Reportable Events

- Application for funding waiver (4043.68)
  - Extended to 10 days after event has occurred (application is made)

37



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## PBGC - Reportable Events

- Failure to Make Required Contributions (4043.81)
  - Form 200 by contributing sponsor and ultimate parent within 10 days
  - If unpaid amounts exceed \$1,000,000
  - Note separate event from 4043.25

38



AHEAD  
OF THE  
CURVE

2015 ASPPA ANNUAL  
CONFERENCE



## PLR 201538022

- Concerns plan termination of plan of tax-exempt organization
- Return of excess assets does not violate exclusive benefit rule
- No excise tax on reversion despite UBI
- Cites and follows tax court decision in Research Corporation v. Commissioner of Internal Revenue, 138 T.C. No. 7 (2012)

39



## Questions?

40

