Workshop 17: Defined Benefit Regulatory Update

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Agenda

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

2016 Mortality Tables

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

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
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.

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
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)(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)

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
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

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 x 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)
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.”

• 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
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

• §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
Final § 430 Regulations

- §1.430(j)-1(b)(1) - Contribution made before 1st 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

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
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

• §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
Final § 430 Regulations

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

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
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)

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
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)

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
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

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
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

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

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
PBGC - Reportable Events

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

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
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)

Questions?