

August 13, 2014

Mr. Robert Choi
Director, Employee Plans
Internal Revenue Service
999 North Capitol Street, NE
Washington, DC 20002

RE: Highway and Transportation Funding Act of 2014

Dear Mr. Choi:

The American Society of Pension Professionals & Actuaries (“ASPPA”) and the ASPPA College of Pension Actuaries (“ACOPA”) are writing to request guidance regarding the application of the funding stabilization provisions in section 2003 of the Highway and Transportation Funding Act of 2014 (“HTFA”) to plan years beginning in 2013 and 2014.

ASPPA is a national organization of more than 16,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines including consultants, administrators, actuaries, accountants, and attorneys. ASPPA is particularly focused on the issues faced by small- to medium-sized employers. ASPPA’s membership is diverse but united by a common dedication to the employer-based retirement plan system. All credentialed actuarial members of ASPPA are members of ACOPA, which has primary responsibility for the content of comment letters that involve actuarial issues.

Summary

ASPPA and ACOPA recommend that the IRS issue guidance that minimizes the additional time and expense required to comply with the new law. The following is a summary of our recommendations which are described in greater detail in the **Discussion** section that follows.

I. Completed 2013 Schedule SB. If the schedule SB for a plan year beginning in 2013 has already been filed, no supplemental or amended filing should be required.

II. Application of HTFA interest rates to 2013 and 2014 plan years. Rules similar to those in Notice 2012-61 should apply for plans that apply the extended 10% corridor to the 2013 plan year for purposes of §430 or §§430 and 436 and to all plans for 2014 plan years.

III. Funding target determination period for 2013. An election to elect out of HTFA segment rates for 2013 must not be considered an election to opt out of using the modified funding target determination period provided in section 2003(d) of HTFA.

IV. Minimum Required Contribution and AFTAP for 2014. If a plan sponsor that has already had a valuation of a plan prepared for 2014 with pre-HTFA interest rates makes a contribution that would satisfy the minimum funding requirements of a valuation that is re-done with HTFA adjusted rates, and the plan's AFTAP determined with pre-HTFA rates is at least 90%, the plan's actuary should be permitted to complete the 2014 schedule SB based on the pre-HTFA valuation results.

Discussion

I. Completed 2013 Schedule SB.

HTFA provides that the funding stabilization provisions are effective for plan years beginning in 2013 unless the plan sponsor elects not to have the provisions apply either for purposes of §430 or §§430 and 436. The schedule SB for the 2013 year has already been completed for many plans. Most plan sponsors would prefer not to incur the additional cost involved in applying HTFA segment rates to 2013. If the plan sponsor does not direct the enrolled actuary, through the plan administrator, to re-determine the MRC under HTFA, the lack of the amended filing should be considered an election not to apply the HTFA rates for 2013.

ASPPA and ACOPA recommend that if the schedule SB for a plan year beginning in 2013 is filed no later than 30 days after the date guidance is issued, no supplemental or amended filing should be required. For those plans that have filed or will file the schedule SB but choose to apply HTFA rates to 2013, the results of applying the HTFA rates should simply be reflected in the opening balance of the 2014 schedule SB. Amending the schedule SB would require the filing of an amended 5500, and would not only put an additional financial burden on the plan sponsor, but would place additional, unnecessary processing demands on the agencies.

II. Application of HTFA interest rates to 2013 and 2014 plan years.

Application of the HTFA segment rates for plan years beginning in 2013 and 2014 will raise many of the same issues as application of the funding stabilization provisions of the Moving Ahead for Progress in the 21st Century Act ("MAP-21") raised for 2012 plan years. This includes the need for an exception to the irrevocable rule for elections to reduce a credit balance, an exception to the material change in AFTAP rule and the ability to apply a change in AFTAP prospectively.

ASPPA and ACOPA recommend that rules similar to those in Notice 2012-61 should apply for plans that apply the extended 10% corridor to the 2013 plan year for purposes of §430 or §§430 and 436 and to all plans for 2014 plan years. The prospective nature of a change in the AFTAP should also be applicable to a presumed AFTAP for 2014 (whether original or inclusive) that is modified because of the revision to the 2013 AFTAP. An exception to the rule for irrevocable elections to reduce a credit balance should also be made for any burn of credit balance that occurred because of the original presumed AFTAP in 2014 if the election would not have been necessary based on the

modified presumed AFTAP for 2014; any section 436 contribution made for 2013 that is not necessary because of an election to apply HTFA retroactively should be automatically recharacterized as a section 430 contribution. Also, the deadline for the election to add excess contributions for 2013 plan years to the pre-funding balance for 2014 should be extended until at least 90 days following the issuance of guidance to enable sponsors and their advisors time to assess the impact of HTFA.

ASPPA and ACOPA recommend that the rules for application of re-determined AFTAPs apply prospectively unless the plan sponsor elects otherwise for 2014 as well as 2013. Although the law states that the HTFA provisions are effective for 2014 years, plans that have been operating according to their terms and in compliance with existing law and regulations until the enactment of HTFA should not be subject to unreasonable outcomes due to the change in law.

For example, consider two calendar year plans with a 2014 AFTAP of 71%. Both will have an AFTAP of more than 80% when an AFTAP is certified using the HTFA segment rates. Plan 1 certified its 2014 AFTAP on March 31, 2014, and has applied partial restrictions all year. Plan 2 has not certified its AFTAP for 2014, and has also applied partial restrictions all year using its presumed AFTAP. If retroactive application of the AFTAP were required, Plan 1 would be required to redo its AFTAP immediately and retroactively, contacting all partially restricted participants with ASDs between March 31 and the date the AFTAP is recertified and permitting modified elections. However, Plan 2 can wait until September 30 to do its initial AFTAP certification and continue the partial restrictions in place until then with no retroactive application whatsoever. For consistency, both plans should be permitted to determine a 2014 HTFA AFTAP by September 30 and apply the recertified AFTAP prospectively. An election to apply the AFTAP retroactively should be available under rules similar to those in Notice 2012-61 Q&A T-3 (a)(1)(c), (d) and (e) and T-4.

III. Funding target determination period for 2013.

The statute provides the same effective date for the modification of the funding target determination period as for the extension of the 10% corridor, allowing an opt-out for 2013 for either all purposes, or for §436 only. Since the proposed §430 regulation defined the five years for application of the first segment rate as beginning on the valuation date, and the final regulation reserved guidance pending a technical correction, many practitioners have felt it was the reasonable interpretation to use the 5-year period measured from the valuation date since the Pension Protection Act (“PPA”) first became effective. Most end of year valuation date plans' valuations are already done for 2013 and most of those plans' sponsors will want to elect out of HTFA for 2013. However, the majority of these plans will have used the valuation date as the beginning of the 5-year period for 2013, so cannot make a single election that applies to both the interest rates and the period for applying the rates.

ASPPA and ACOPA recommend that an election to elect out of HTFA segment rates for 2013 not be considered an election to opt out of using the modified funding target determination period provided in section 2003(d) of HTFA. Therefore, for a plan that used valuation date pre-HTFA, the determination period will not change whether or not an election to defer the effect of HTFA is made. Nonetheless, a plan with an end of year valuation date that used a first day of the year determination period pre-HTFA may elect to use valuation date as the first day of the measurement period for 2013 whether or not the plan uses HTFA rates for 2013.

IV. Minimum Required Contribution and AFTAP for 2014.

The determination of the minimum required contribution (MRC) for plan years beginning in 2014 has already been completed for most plans that have a beginning of the year valuation date. HTFA segment rates must be applied for purposes of §§430 and 436 for 2014. However, the AFTAP determined under the HTFA rates will always be greater than the AFTAP determined under pre-HTFA rates, and except in rare circumstances, the MRC will be lower using HTFA rates than using pre-HTFA rates. Therefore, the minimum funding requirements of §430, as modified by HTFA, will have been met if the pre-HTFA requirements are met. The result of using the pre-HTFA rates will be a reduction in any addition to the pre-funding balance. Similarly, if the pre-HTFA AFTAP was at least 90%, there will be no impact on plan operations in 2014, or if a presumed AFTAP applies in 2015, by using the pre-HTFA AFTAP.

ASPPA and ACOPA recommend that the enrolled actuary, with the plan sponsor's consent, be permitted to complete the schedule SB for 2014 using pre-HTFA interest rates provided the AFTAP determined using the pre-HTFA rates was at least 90%. Furthermore, since there would not be a material change in AFTAP, and no recertification would be required under current regulations, an AFTAP recertification should not be required if the AFTAP determined using pre-HTFA interest rates is at least 90%. Guidance should also address the applicability of HTFA to plans that were terminated before August 8, 2014.



These comments were prepared by ASPPA's Defined Benefit Subcommittee of the Government Affairs Committee and the ASPPA College of Pension Actuaries. Please contact Judy A. Miller, MSPA, ACOPA Executive Director, at (703) 516-9300 if you have any comments or questions on the matters discussed above.

Thank you for your time and consideration.

Sincerely,

/s/
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Executive Director/CEO

/s/
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ACOPA Executive Director

/s/

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