Part III – Administrative, Procedural and Miscellaneous

Transition Guidance for New Funding Rules and Funding-Related Benefit Limitations under PPA '06

Notice 2008-73

I. PURPOSE

This notice expands the availability of the transition relief for certain small pension plans that was originally provided in Notice 2008-21, 2008-7 I.R.B. 431.

II. BACKGROUND

Section 412 provides minimum funding requirements that generally apply for defined benefit pension plans. Section 430, which was added by the Pension Protection Act of 2006 (PPA), specifies the minimum funding requirements that apply to single employer pension plans (including multiple employer plans) pursuant to § 412. Section 430 generally applies for plan years beginning on or after January 1, 2008.

Section 430(f) provides for certain funding balances referred to as the prefunding balance and the funding standard carryover balance to be used to reduce the otherwise applicable minimum required contribution for a plan year. On August 31, 2007, proposed regulations under § 430(f) were published in the Federal Register as § 1.430(f)-1 (72 FR 50544).

Section 401(a)(29) requires that a defined benefit plan (other than a multiemployer plan) satisfy the requirements of § 436. Section 436 sets forth a series of limitations on the accrual and payment of benefits under an underfunded plan. Section 436(b) places limitations on the payment of plant shutdown benefits and other unpredictable contingent event benefits, § 436(c) places limitations on plan amendments that increase liabilities for benefits, § 436(d) places limitations on the payment of accelerated benefit distributions, and § 436(e) places limitations on benefit accruals. These limitations are applied based on the plan's adjusted funding target attainment percentage (AFTAP) for the plan year, as certified by the plan's enrolled actuary.

Section 436(j) provides definitions that are used under § 436, including the definition of a plan's AFTAP. In general, a plan's AFTAP is based on the plan's funding target attainment percentage (FTAP) under § 430(d)(2) for the plan year. However, the plan's AFTAP is determined by adding the aggregate amount of purchases of annuities for employees other than highly compensated employees (within the meaning of § 414(q)) made by the plan during the two preceding plan years to the numerator and the denominator of the fraction used to determine the FTAP.

Section 436(h) sets forth a series of presumptions that apply during the portion of the plan year that is before the plan's enrolled actuary has certified the plan's AFTAP for the year. Under § 436(h)(3), if any of the § 436 limitations did not apply to the plan for the preceding year, but the AFTAP of the plan for the preceding year was not more than 10 percentage points greater than the percentage that would have caused a limitation to apply to the plan for the preceding year and, as of the first day of the 4th month of the current plan year, the enrolled actuary of the plan has not certified the actual AFTAP for the current plan year, then, until the enrolled actuary certifies the plan's actual AFTAP for the current plan year, the plan's AFTAP for the current plan year is presumed to be equal to 10 percentage points less than the AFTAP of the plan for the preceding plan year. Under § 436(h)(2), if the plan's enrolled actuary has not certified the plan's AFTAP by the first day of the 10th month of the current plan year, the plan's AFTAP for the current plan year is conclusively presumed to be less than 60 percent as of that day.

Section 430(g)(1) provides that all determinations made under § 430 for a plan year (including the determination of a plan's FTAP and AFTAP) must be made as of the plan's valuation date. Section 430(g)(2) provides that, other than for small plans with 100 or fewer participants (determined as provided in § 430(g)(2)(B) and (C)), the valuation date for a plan year must be the first day of the plan year.

Section 436(k) provides that, for purposes of § 436, in the case of plan years beginning in 2008, the FTAP for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

The House of Representatives and the Senate have both passed similar but not identical bills containing technical corrections to PPA (H.R. 6382, passed by the House of Representatives on July 8, 2008, and S. 1974, passed by the Senate on December 19, 2007). Both of these bills would grant the Treasury Department authority to develop special rules under § 436 with respect to plans with valuation dates other than the first day of the plan year.

Proposed regulations under § 436 were published as § 1.436-1 on August 31, 2007 (72 FR 50544)).[1] Section 1.436-1(j)(2) and (3) of the proposed regulations would provide rules for determining the FTAP and AFTAP for purposes of applying the § 436 benefit limitations. Section 1.436-1(j)(3)(iii)(B) provides that, for purposes of determining the plan's AFTAP for the first year § 436 applies to the plan, the adjusted funding target is equal to the current liability determined pursuant to § 412(l)(7) as of the plan's valuation date for the plan year that precedes the first plan year for which § 436 applies to the plan, increased by the aggregate amount of purchases of annuities for employees other than highly compensated employees (as defined in § 414(q)) which were made by the plan during the preceding 2 plan years.

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[1] A correction notice was published with respect to this notice of proposed rulemaking in the Federal Register dated November 9, 2007 (72 FR 63528).

Proposed § 1.436-1(j)(3)(iv) provides that, in any case in which the plan's enrolled actuary has not issued a certification of the AFTAP of the plan for the plan year preceding the plan year § 436 first applies to the plan (the pre-effective plan year), the AFTAP of the plan for the plan year is presumed to be less than 60 percent until the AFTAP of the plan for that pre-effective plan year has been certified. Under the proposed regulations, this rule applies for purposes of § 1.436-1(b) and (c) at the beginning of the first plan year that § 436 applies to the plan and applies for purposes of § 1.436-1(d) and (e) as of the first day of the fourth month of the first plan year that § 436 applies to the plan. The guidance set forth in the proposed § 436 regulations with respect to application of these presumptions does not address how the rules of § 436(h) apply to a plan with a valuation date that is not the first day of the plan year. See proposed § 1.436-1(h)(5).

On December 31, 2007, proposed regulations under §§ 430(d), 430(g), 430(h), and 430(i) were published in the Federal Register (72 FR 74215). Those regulations are proposed to apply to plan years beginning on or after January 1, 2009.

On April 15, 2008, proposed regulations under §§ 430(a), 430(c), 430(e), and 430(j) were published in the Federal Register (73 FR 20203). Those regulations are proposed to apply to plan years beginning on or after January 1, 2009.

On February 19, 2008, the Service published Notice 2008-21. Part III.B of Notice 2008-21 provides a transition rule for application of § 436 benefit limitations by small plans with end of the plan year valuation dates. Under this transition rule, in the case of a plan that has a valuation date that is the last day of the plan year for each of the plan years beginning in 2006, 2007, and 2008, for purposes of applying the benefit limitations of § 436 for the plan year beginning during 2008, a certification of the plan's AFTAP for the prior plan year (the 2007 plan year) is permitted to be made by determining the FTAP for the 2007 plan year as follows:

●The FTAP for the 2007 plan year is equal to a fraction (expressed as a percentage), the numerator of which is the value of net plan assets, and the denominator of which is the plan's current liability determined pursuant to § 412(l)(7) on the valuation date for the second plan year that begins before 2008 (the 2006 plan year), including the increase in current liability for the 2006 plan year.

●For purposes of determining the FTAP for the 2007 plan year, the value of net plan assets is determined as the value of plan assets under § 412(c)(2) as in effect for the 2006 plan year, adjusted as follows: (1) contributions made for the 2006 plan year are taken into account, regardless of whether those contributions are made during the plan year or after the end of the plan year and within the period specified under § 412(c)(10); (2) the value of plan assets taking into account the amount of contributions made for the 2006 plan year is increased or decreased, as necessary, so that it is neither less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for the 2006 plan year (taking into account assets attributable to contributions for the 2006 plan year); and (3) the plan's funding standard account credit balance as of the end of the 2006 plan year is subtracted (unless the value of plan assets is greater than or equal to 90 percent of the plan's current liability determined under § 412(l)(7) on the valuation date for the 2006 plan year).

Section IV of Notice 2008-21 describes rules that the Service and the Treasury Department are considering with respect to end-of-year valuation dates in the event that technical corrections are enacted.

Additional transition relief

Because technical corrections to PPA have not yet been enacted, many small plans that would have otherwise retained end-of-year valuation dates will adopt beginning-of-year valuation dates for the 2008 plan year. This change will make those plans ineligible for the transition relief set forth in Section III.B of Notice 2008-21. Accordingly, these plans may have difficulty in complying with the timing requirements for certifying the plan's AFTAP. To address these difficulties, the transition relief of Section III.B of Notice 2008-21 is expanded to apply with respect to any plan that had an end-of-year valuation date for both the 2006 and 2007 plan years, regardless of the plan's valuation date for 2008. The Service and the Treasury Department are considering the extent to which automatic approval to change valuation dates and to make other funding method changes should be granted for the 2009 plan year.

DRAFTING INFORMATION

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