Part IV.--- Items of General Interest

Special Funding and Benefit Limitation Rules for Single-Employer Defined Benefit Pension Plans under the CARES Act

Notice 2020-61

I. Purpose

This notice provides guidance on the special rules relating to funding of single-employer defined benefit pension plans, and related benefit limitations, under § 3608 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136 (134 Stat. 281).

II. Background

A. Minimum funding rules for single employer defined benefit plans

1. General timing requirements

Section 412 of the Internal Revenue Code (Code) provides that a sponsor of a qualified defined benefit plan (other than a multiemployer plan as defined in § 414(f) or a CSEC plan as defined in § 414(y)) must make contributions to or under the plan for the plan year that, in the aggregate, are not less than the minimum required contribution determined under § 430 for the plan year. Section 4971(a) imposes an excise tax on an employer that sponsors a plan subject to § 412 that has an unpaid minimum required contribution within the meaning of § 4971(c)(4) as of the end of the plan year.

Section 430(j)(1) provides that the due date for the payment of any minimum required contribution for a plan year is 8½ months after the close of the plan year. Section 430(j)(2) provides that any payment made on a date other than the valuation date for the plan year must be adjusted for interest accruing for the period between the valuation date and the payment date, determined using the plan's effective interest rate under § 430(h)(2)(A) for the plan year.

Section 430(j)(3) provides that if the plan had a funding shortfall (as defined in § 430(c)(4)) for the preceding plan year, then the plan sponsor must pay four quarterly installments toward the required minimum contribution for the plan year. The due dates for the installments are April 15, July 15, and October 15 of the plan year, and January 15 of the following year (adjusted for a plan year that is not a calendar year under § 1.430(j)-1(c)(6)). Section 430(j)(3)(D)(i) provides that each quarterly installment is 25 percent of the required annual payment defined in § 430(j)(3)(D)(ii). Section

430(j)(3)(A) provides that if a quarterly installment is paid after the due date for that installment, then the interest rate that applies for the period of underpayment (in lieu of the interest rate that would apply under § 430(j)(2)) is the plan's effective interest rate plus 5 percentage points.

Section 430(g)(4)(A) provides that if a plan sponsor makes a contribution to the plan after the valuation date for the plan year in which the contribution is made, and the contribution is for a preceding plan year, the contribution is taken into account as an asset of the plan for the plan year in which it is made, except that only the present value (determined as of the valuation date) of that contribution may be taken into account. For this purpose, the present value of the contribution is determined using the effective interest rate for the preceding plan year for which the contribution is made.

2. CARES Act changes

Section 3608(a)(1) of the CARES Act provides that any minimum required contribution that would otherwise be due under § 430(j) of the Code (and § 303(j) of the Employee Retirement Income Security Act, Pub. L. 93-406, as amended (ERISA)) during calendar year 2020 (including quarterly installments under § 430(j)(3) of the Code and § 303(j)(3) of ERISA) are due on January 1, 2021. Section 3608(a)(2) of the CARES Act provides that those contributions and installments are to be increased with interest accruing for the period between the original due date for the contribution or installment and the date of the payment at the effective interest rate for the plan for the plan year that includes the payment date.

B. Benefit limitations for underfunded defined benefit plans

1. General rules regarding benefit limitations

Section 436 of the Code provides limits on benefits and benefit accruals under single-employer defined benefit pension plans, which are applied based on the plan's adjusted funding target attainment percentage (AFTAP) for a plan year. Section 436(b) provides generally that unpredictable contingent event benefits resulting from an event may not be paid if, taking into account the payment of those benefits, the plan's AFTAP would be less than 60 percent. Section 436(c) provides generally that no amendment increasing liabilities may take effect if, after taking into account that amendment, the plan's AFTAP would be less than 80 percent. Section 436(d) provides generally that the plan may not pay certain accelerated forms of benefit (such as a single-sum distribution) if the plan's AFTAP is less than 80 percent. Section 436(e) provides generally that benefit accruals must cease if the plan's AFTAP is less than 60 percent.

2. CARES Act changes

Section 3608(b) of the CARES Act provides that for purposes of applying § 436 of the Code (and § 206(g) of ERISA), a plan sponsor may elect to treat the plan's

AFTAP for the last plan year ending before January 1, 2020, as the AFTAP for plan years that include calendar year 2020.

C. Other rules related to contributions and benefit limitations

Under § 430(f), the plan sponsor of a defined benefit plan that is not a multiemployer plan may elect to maintain a prefunding balance that may be used, at the plan sponsor's election, to offset the minimum required contribution for a plan year.[1] Under § 430(f)(6)(B)(i), a plan sponsor may elect to add contributions that exceed the minimum required contribution for a plan year (adjusted with interest using the effective interest rate for the plan year in accordance with § 430(f)(6)(B)(ii)) to the plan's prefunding balance. A plan sponsor may also elect to reduce the plan's prefunding balance or the funding standard carryover balance as provided in § 430(f)(5). Section 1.430(f)-1(f)(1)(i) generally provides that any election under § 430(f) by the plan sponsor must be made by providing written notification of the election to the plan's enrolled actuary and the plan administrator. Section 1.430(f)-1(f)(2)(i) generally provides that any election under § 430(f) with respect to a plan year must be made no later than the last date for making the minimum required contribution for the plan year as described in § 430(j)(1), or such later date as prescribed in guidance published in the Internal Revenue Bulletin. However, § 1.430(f)-1(f)(2)(iii) provides that any election to reduce the prefunding balance or funding standard carryover balance for a plan year (for example, in order to avoid or terminate a benefit restriction under § 436) must be made by the end of the plan year to which the election relates.

Section 436(h) provides rules that apply prior to the certification of the AFTAP for a plan year by the plan's actuary. Under § 436(h)(1), if a benefit limitation applied to a plan on the last day of the preceding plan year, then the current year's AFTAP generally is presumed to be equal to the prior year's AFTAP for the period beginning on the first day of the plan year and ending when the plan's enrolled actuary certifies the AFTAP for the current plan year. Under § 436(h)(3), if (i) the plan's enrolled actuary has not certified the AFTAP for the current plan year by the first day of the 4th month of the plan year, and (ii) the AFTAP for the prior plan year did not result in the application of a benefit limitation for that prior plan year (but would have resulted in the application of a benefit limitation had that AFTAP been 10 percentage points lower), then the AFTAP for the current plan year is presumed to be equal to 10 percentage points less than the AFTAP for the prior plan year, for the period beginning on that first day of the fourth month and ending when the enrolled actuary of the plan certifies the plan's AFTAP for the current plan year. Under § 436(h)(2), if no certification of the AFTAP for the current plan year is made before the first day of the 10th month of that year, then the AFTAP for the current plan year is presumed to be less than 60 percent as of that first day.

Sections 436(b)(2) and (c)(2) provide rules that allow a plan sponsor to avoid or terminate benefit restrictions under § 436(b) or (c) by making an additional contribution of a certain amount to the plan. Section 1.436-1(f) provides rules for these

[1] Similar elections to maintain a funding standard carryover balance and to use that balance to offset the minimum required contribution are available to the plan sponsor.

contributions, which are referred to as § 436 contributions. Section 1.436-1(f)(2)(i)(A) provides that any § 436 contribution made by a plan sponsor on a date other than the valuation date for the plan year must be adjusted with interest at the plan's effective interest rate for the plan year. If the plan's effective interest rate for the plan year has not been determined at the time of the contribution, then this interest adjustment must be made using the highest of the three segment rates as applicable for the plan year. In such a case, if the effective interest rate for the plan year is subsequently determined to be less than that highest rate, the excess is recharacterized as an employer contribution taken into account under § 430 for the current plan year.

The regulations under § 436 address the calculation of a plan's AFTAP. Section 1.436-1(h)(4)(iii) provides rules relating to changes in a plan's AFTAP after it has been certified, and the effect of such a change depends on whether the change is material (within the meaning of § 1.436-1(h)(4)(iii)(B)) or immaterial (within the meaning of § 1.436-1(h)(4)(iii)(C)). In general, a material change in AFTAP is defined as a change under which plan operations would have been different based on the subsequent AFTAP determination, and an immaterial change in AFTAP is defined as a change that is not material. Under § 1.436-1(h)(4)(iv)(A), a material change in a plan's AFTAP will cause a plan to fail to comply with § 401(a).

Section 1.436-1(h)(4)(iii)(C) provides a special rule that, subject to certain conditions, deems a change in a plan's AFTAP to be immaterial (even if the change would otherwise be material) if the change results from an event specified in § 1.436-1(h)(4)(iii)(C)(*1*) through (*8*). Section 1.436-1(h)(4)(iii)(C)(*9*) provides authority for the expansion of the list of events for which a resulting change in AFTAP may be deemed immaterial through publication of guidance in the Internal Revenue Bulletin. Deemed immaterial treatment under § 1.436-1(h)(4)(iii)(C) with respect to an event that results in a change in AFTAP is conditioned on the AFTAP being recertified as soon as reasonably practicable after the event. The effect of this deemed immaterial treatment is that the change in the plan's AFTAP will not cause the plan to fail to comply with § 401(a) merely because of the change, provided that the plan administrator reflects the new AFTAP in plan operations on a prospective basis beginning with the date of the recertification.

Section 404 provides rules regarding the deductibility of employer contributions to an employees' trust or annuity plan and compensation under a deferred payment plan. Under § 404(a)(1)(A), contributions paid to the trust of a qualified defined benefit pension plan are deductible in the taxable year when paid, subject to the applicable limits. Under § 404(a)(6), a taxpayer making a contribution in a taxable year is deemed to have made the contribution on the last day of the preceding taxable year if the payment is on account of that preceding taxable year and is made not later than the time prescribed by law for filing the return for that preceding taxable year (including extensions thereof).

Under § 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and § 3002(c) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject

matter addressed in this notice for purposes of ERISA, as well as the Code. Thus, the provisions of this notice pertaining to §§ 430 and 436 of the Code also apply for purposes of §§ 303 and 206(g) of ERISA.

III. Questions & Answers

The following questions and answers provide guidance regarding § 3608 of the CARES Act. To the extent the instructions for Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information" of Form 5500, "Annual Return/Report of Employee Benefit Plan" are inconsistent with this guidance, this guidance supersedes those instructions.

A. Extended deadline for contributions and interest adjustments

Q-1: To which plans does the extended contribution due date of January 1, 2021, under § 3608(a)(1) of the CARES Act, apply?

A-1: The extended contribution due date of January 1, 2021, applies to a defined benefit plan for which the minimum required contribution is determined under § 430. Thus, this extended contribution due date of January 1, 2021, does not apply to a multiemployer plan, a CSEC plan, a fully-insured plan described in § 412(e)(3), or a money purchase pension plan.

Q-2: How is a contribution adjusted for interest between the valuation date and the payment date for the contribution, taking into account the interest adjustment rules of § 3608(a)(2) of the CARES Act?

A-2: To determine the portion of the minimum required contribution for a plan year that is satisfied by a contribution, § 430(j)(2) of the Code and § 1.430(j)-1(b)(4)(i) provide that the contribution is adjusted for interest for the period between the valuation date for the plan year and the payment date for the contribution, at the plan's effective interest rate for the plan year. Under § 3608(a)(2) of the CARES Act, any payment that is made after the original due date for the contribution and by the extended due date under § 3608(a)(1) must be increased for the period between the original due date and the payment date at the effective interest rate for the plan year that includes the payment date. Thus, if a contribution for a plan year were to be made during this period, the amount of the contribution must be larger to account for interest (determined using the plan's effective interest rate for the plan year that includes the payment date) for the period between the original due date and the payment date in order to satisfy the minimum required contribution for the plan year to the same extent as a contribution made on the original due date. The following example illustrates the application of the interest adjustment described in this A-2:

(a) Plan A has a plan year that is the calendar year and has a 2019 minimum required contribution, calculated as of the January 1, 2019, valuation date, of $1,000,000. The effective interest rate for the 2019 plan year is 5.75%, and the

effective interest rate for the 2020 plan year is 5.65%. Plan A had no funding shortfall for 2018 (so there are no quarterly installment requirements for 2019), and the plan sponsor made no contributions for 2019 (and no elections to use a funding standard carryover balance or prefunding balance) before September 15, 2020. The actuary takes into account February 29, 2020, in counting the number of days in 2020 for purposes of calculating interest.

(b) In the absence of § 3608(a) of the CARES Act, the final contribution for the 2019 plan year would have been due on September 15, 2020. A final contribution of $1,100,009 made on September 15, 2020, would satisfy the 2019 minimum required contribution. This is because a contribution of $1,100,009 made on that date, discounted using the 2019 effective interest rate to January 1, 2019, would equal the $1,000,000 minimum required contribution ($1,100,009 $\div 1.0575^{(258/366 + 365/365)}$ = $1,000,000).

(c) Pursuant to § 3608(a)(1) of the CARES Act, the plan sponsor has until January 1, 2021, to satisfy the 2019 minimum required contribution for Plan A. If, on December 31, 2020, the plan sponsor were to make a single contribution necessary to satisfy the 2019 minimum required contribution for Plan A, the contribution would be $1,117,827. This is because a contribution of $1,117,827 made on December 31, 2020, discounted using the 2020 effective interest rate back to September 15, 2020, and the 2019 effective interest rate from September 15, 2020, to January 1, 2019, would equal the $1,000,000 minimum required contribution ($1,117,827 $\div 1.0565^{(107/366)} \div 1.0575^{(258/366 + 365/365)}$ = $1,000,000).

Q-3: What is the result if the contribution that the plan sponsor makes is less than the amount that was due on the original due date for the minimum required contribution, as increased with interest pursuant to § 3608(a)(2) of the CARES Act?

A-3: If, after the original due date for the minimum required contribution for a plan year, the plan sponsor makes a contribution that is less than the amount that was due on that date, as adjusted for additional interest to account for the period between the original due date and the date of payment of the contribution (at the effective interest rate for the plan year in which the payment is made), then a portion of the minimum required contribution for that plan year would remain unpaid. The unpaid portion of the minimum required contribution, determined as of the valuation date and based on contributions made on or before January 1, 2021, with the contributions discounted for interest to the valuation date as described in A-2 of this notice, would give rise to an unpaid minimum required contribution within the meaning of § 4971(c)(4) of the Code that would be subject to an excise tax under § 4971(a). Furthermore, a contribution made after January 1, 2021, to satisfy that unpaid minimum required contribution must be adjusted for interest for the period between the date that the contribution is made and the valuation date at the effective interest rate for the plan year for which the contribution is made (with additional interest as required to reflect any late quarterly installments for the plan year). The following example illustrates the situation described in this A-3:

The facts are the same as in the example in A-2 of this notice, except that the plan sponsor makes a contribution of $1,100,009 on December 31, 2020, and makes no other contributions by January 1, 2021. The $1,100,009 contribution is discounted using the 2020 effective interest rate back to September 15, 2020, and the 2019 effective interest rate from September 15, 2020, to January 1, 2019, resulting in $984,061 toward satisfaction of the 2019 plan year minimum required contribution ($1,100,009 ÷ $1.0565^{(107/366)}$ ÷ $1.0575^{(258/366 + 365/365)}$ = $984,061). Because the contribution is discounted for a longer period, this amount of the discounted contribution is not enough to satisfy the minimum required contribution of $1,000,000 as of January 1, 2019, resulting in an unpaid minimum required contribution of $15,939 ($1,000,000 - $984,061= $15,939). The $15,939 unpaid minimum required contribution is subject to excise tax under § 4971(a).

Q-4: Does the extended due date under § 3608(a) of the CARES Act apply to contributions in excess of the amount needed to satisfy the minimum required contribution?

A-4: Yes, if the contribution deadline under § 430(j)(1) of the Code for a plan year is during 2020, a contribution in excess of the amount needed to satisfy the minimum required contribution for the plan year that is made by January 1, 2021, may be designated as a contribution for that plan year. The present value of the excess contributions for a plan year, which can be used to increase the prefunding balance, is determined using the interest rate adjustment described in A-2 of this notice. In accordance with § 1.430(f)-1(b)(1)(iv)(A), this present value is increased for interest for the period between the valuation date for the plan year and the first day of the next plan year. In general, this increase for interest is made using the plan's effective interest rate for the plan year for which the contributions are made. However, pursuant to § 1.430(f)-1(b)(3)(iii), this present value is instead adjusted using the plan's investment experience to the extent that the excess results from the use of a funding balance to offset the minimum required contribution.

Q-5: How is the amount of a quarterly installment determined, if the extended due date under § 3608(a) of the CARES Act applies to the installment?

A-5: Section 3608(a)(2) of the CARES Act specifies that, to determine the amount of a quarterly installment due by the extended due date under § 3608(a)(1) of the CARES Act of January 1, 2021, the amount of that installment is increased from the installment's original due date to the payment date at the effective interest rate for the plan year that includes the date the quarterly installment is paid. Section 1.430(j)-1(c)(3)(ii) provides that if a contribution is made before the due date for the required installment to which it is allocated, then the amount credited toward that installment includes interest on the contribution from the date of the contribution to the due date for the installment (at the plan's effective interest rate for the plan year for which the installment is paid). The following example illustrates the application of the interest adjustment described in this A-5:

(a) The facts are the same as in the example in A-2 of this notice. In addition, for 2020, Plan A has required quarterly installments of $250,000.

(b) In the absence of § 3608(a)(1) of the CARES Act, the first quarterly installment for the 2020 plan year would be due on April 15, 2020. Under § 3608(a)(1) of the CARES Act, the plan sponsor's deadline for satisfying this quarterly installment is January 1, 2021. If the contribution is made on December 31, 2020, then the amount necessary to satisfy the first quarterly installment under § 3608(a)(2) of the CARES Act is $259,954 ($250,000 × $1.0565^{(260/366)}$ = $259,954).

(c) Under the extended deadline of § 3608(a) of the CARES Act, the quarterly installments for Plan A that were originally due July 15, 2020, and October 15, 2020, are also now due on January 1, 2021. The amount of these quarterly installments would be calculated in the same manner as shown in paragraph (b) of this example, except that the increase for interest would be for the period between the original due date and the payment date.

(d) If, instead of waiting until December 31, 2020, the plan sponsor makes a contribution of $400,000 on June 1, 2020, then some of that contribution will satisfy the first quarterly installment (originally due April 15, 2020) and the balance of that contribution will be applied towards the second quarterly installment (originally due July 15, 2020). The portion of the June 1 contribution that is used to satisfy the first quarterly installment is $251,771 ($250,000 × $1.0565^{(47/366)}$ = $251,771). Therefore, the balance of that contribution, which will be applied to the second quarterly installment, is $148,229 ($400,000 - $251,771 = $148,229). The remaining contribution needed to satisfy the second quarterly installment on its original due date of July 15, 2020, is $100,788 ($250,000 - $148,229 × $1.0565^{(44/366)}$ = $100,788). If the contribution necessary to satisfy that quarterly installment is not made before that due date, but is made later in the year, then the contribution necessary to satisfy the unpaid installment must be increased with interest at the effective interest rate for the plan year from July 15, 2020, until it is made.

Q-6: For a quarterly installment originally due during 2020 for which the due date is extended under § 3608(a) of the CARES Act to January 1, 2021, what is the result if a plan sponsor does not satisfy that installment?

A-6: If a plan sponsor does not satisfy a quarterly installment originally due during 2020 by the extended due date under § 3608(a) of the CARES Act of January 1, 2021, then under § 430(j)(3)(A) of the Code, the unpaid portion of that installment is subject to a higher interest rate for the period during which the installment (or a portion of the installment) remains unpaid when determining the amount of the minimum required contribution that is satisfied by a contribution. As a result of § 3608(a) of the CARES Act, the period of underpayment does not begin until January 1, 2021. The unpaid portion of the quarterly installment as of that date, if any, is re-determined as of the original due date for the installment (based on contributions made on or before January 1, 2021, and discounted for interest as described in A-5 of this notice) and then

increased from the original due date to January 1, 2021, using the effective interest rate for the plan year for which the installment is due. The following examples illustrate the application of these rules:

Example 1: (a) The facts are the same as in the example in A-5 of this notice. The plan sponsor of Plan A makes a contribution of $100,788 on July 15, 2020. As shown in paragraph (d) of the example in A-5 of this notice, the first two quarterly installments have been satisfied by their original due dates. The plan sponsor does not make any additional contributions by the extended due date of January 1, 2021. As a result, the third quarterly installment of $250,000 (originally due on October 15, 2020) remains unpaid as of that date, and this unpaid installment is increased using the effective interest rate for 2020, resulting in an unpaid installment on January 1, 2021 of $252,945 ($250,000 × $1.0565^{(78/366)}$).

(b) If the plan sponsor makes its next contribution to Plan A on February 15, 2021, the first $252,945 of that contribution will be used to satisfy the missed third quarterly installment. The interest rate used to discount the late required installment back to the due date will include the 5 percentage point increase for the period of time from February 15, 2021, to the extended due date of January 1, 2021, resulting in $249,809 as of January 1, 2021 ($252,945 ÷ $1.1065^{(45/365)}$). Therefore, the first $252,945 of that contribution that is used to satisfy the third quarterly installment would result in $236,449 toward satisfaction of the 2020 plan year minimum required contribution for Plan A ($249,809 as of January 1, 2021, divided by 1.0565).

Example 2: (a) The facts are the same as in the first example in this A-6, except that Plan A has a plan year that began October 1, 2019, and ended September 30, 2020, and the required quarterly installments for that plan year are $200,000. In addition, Plan A's effective interest rate is 5.71% for the plan year beginning October 1, 2019, and 5.61% for the plan year beginning October 1, 2020. The first three quarterly installments for the plan year were paid by the original due dates and the fourth quarterly installment of $200,000 (originally due October 15, 2020) is not paid by January 1, 2021. Because this quarterly installment was not paid by January 1, 2021, under the rules of this A-6, the unpaid portion of the installment is increased to January 1, 2021, using the effective interest rate for the plan year beginning October 1, 2019, resulting in an unpaid installment on that date of $202,387 ($200,000 × $1.0571^{(78/365)}$).

(b) Note that if the contributions made by January 1, 2021, satisfy some, but not all, of the fourth quarterly installment, then the unpaid portion of that installment would be re-determined as of October 15, 2020, by discounting those contributions from the date of the contribution to October 15, 2020 (using the 5.61% effective interest rate for the plan year in which the contributions are made). The resulting unpaid quarterly installment is increased with interest to January 1, 2021 (using the 5.71% effective interest rate for the plan year for which the installment is due, rather than the 5.61% effective interest rate for the 2020 plan year). For example, if a contribution of $120,000 was made on December 15, 2020, then the unpaid portion of the quarterly installment

as of January 1, 2021, is $82,058 (($200,000 – ($120,000 ÷ $1.0561^{(61/365)})) × $1.0571^{(78/365)}$).

Q-7: How are the interest adjustments determined if the plan's effective interest rate for the plan year in which the contribution is made has not been determined at the time the payment is made?

A-7: If the plan's effective interest rate for the plan year in which the contribution is made has not been determined at the time the payment is made, then the rules for determining the interest rate for this adjustment are the same as the rules for determining the interest rate for the interest adjustment under § 1.436-1(f)(2)(i)(A). Thus, the interest adjustment must be made using the highest of the three segment rates for the plan year. However, if the effective interest rate for the plan year in which the contribution is made is subsequently determined to be less than the interest rate that was used under the preceding sentence, the difference in the present value of the contribution as of the valuation date may be added to the prefunding balance for the plan year. The following example illustrates the situation described in this A-7:

(a) The facts are the same as in the example in A-3 of this notice, except that the plan sponsor realizes that the December 31, 2020, contribution that was made would result in an unpaid minimum required contribution for 2019 and wishes to make a final contribution on January 1, 2021. However, the 2021 effective interest rate is not known as of the date of the contribution.

(b) Under this A-7, the amount necessary to avoid an unpaid minimum required contribution for 2019 is determined using the highest of the three segment rates for the 2021 plan year in accordance with the rules of § 1.436-1(f)(2)(i)(A). For purposes of this example, it is assumed that the highest of the three segment rates for the 2021 plan year is 5.45%. Therefore, the amount of the contribution needed to avoid an unpaid minimum required contribution if made on January 1, 2021, is $17,810 ($15,939 x $1.0575^{(258/366 + 365/365)}$ x $1.0545^{(108/366)}$).

(c) Later during 2021, the 2021 effective interest rate is determined to be 5.15%. The $17,810 contribution made on January 1, 2021, results in $15,953 ($17,810 ÷ $1.0515^{(108/366)}$ ÷ $1.0575^{(258/366 + 365/365)}$) toward the 2019 minimum required contribution. As a result, the plan sponsor has excess contributions for 2019, which have a present value as of January 1, 2019, of $14 ($15,953 - $15,939). This amount, adjusted for interest in accordance with § 1.430(f)-1(b)(1)(iv), may be added to the prefunding balance as of January 1, 2020.

Q-8: If a plan sponsor makes a contribution for a plan year after the original due date for the plan year, but on or before the extended due date under § 3608(a) of the CARES Act, how is it reported on Schedule SB of Form 5500?

A-8: Except as provided in this A-8, there are no special rules for reporting contributions that are made for a plan year after the original due date for the plan year

but on or before the extended due date under § 3608(a) of the CARES Act. Thus, a plan's actuary may not report contributions on Schedule SB of Form 5500 that will be made after the actuary signs the Schedule SB. If any contributions are made after the actuary signs the Schedule SB and the Form 5500 for a plan year has been filed but before the extended due date under § 3608(a) of the CARES Act, then the contributions may be designated as for that prior plan year only if an amended Form 5500 that includes an amended Schedule SB reflecting those contributions is filed.

In addition, if a plan sponsor makes a contribution for a plan year (including a quarterly installment) after the original due date for that contribution but on or before the extended due date under § 3608(a) of the CARES Act, the plan's actuary must attach to the Schedule SB a schedule supporting the line 19 entry for discounted employer contributions showing the dates and amounts of individual contributions, the year to which the contributions (or portion of the individual contributions) are applied, the effective interest rate or rates that apply to those contributions (including the effective rate of interest for the plan year in which a payment subject to § 3608(a) of the CARES Act occurs), the 5 percentage point increase that applies for late quarterly installments, the periods during which each such rate applies, and the interest-adjusted employer contributions for the plan year. This schedule must be attached even if the contributions were made by the due date under § 3608(a) of the CARES Act.

Q-9: Is a contribution for a plan year that is made after the original due date for the plan year (but on or before the extended due date for the plan year under § 3608(a) of the CARES Act) taken into account for purposes of determining the value of plan assets for a plan year following the plan year for which the contribution is made?

A-9: Yes, for purposes of § 430, a contribution that is made after the original due date for a plan year (but on or before the extended due date for the plan year under § 3608(a) of the CARES Act) is taken into account as of a valuation date for a plan year after the plan year for which the contribution was made. Under § 1.430(g)-1(d)(1)(i), for purposes of determining the value of plan assets, if an employer makes a contribution to the plan after the valuation date for the current plan year and the contribution is for an earlier plan year, then the present value of the contribution determined as of that valuation date is taken into account as an asset of the plan as of the valuation date, provided the contribution is made before a specified deadline. The specified deadline is the deadline for contributions under § 430(j)(1) for the plan year immediately preceding the current plan year. However, that deadline is extended by § 3608(a)(1) of the CARES Act. Furthermore, the interest adjustment rules of § 3608(a)(2) of the CARES Act (as described in A-2 of this notice) override the discounting rules that apply generally for this purpose. Note, however, under § 1.436-1(h)(4)(i)(B), certification of the AFTAP for a plan year must not take into account contributions that are expected to be made after the certification date. The following example illustrates the application of these rules:

(a) Plan C has a plan year that begins on October 1 and ends on September 30, and a valuation date that is the first day of the plan year. A contribution of $1,000,000 is made on December 31, 2020, for the plan year beginning on October 1, 2018.

(b) As of October 1, 2019 (the valuation date for the plan year following the plan year for which the December 31, 2020, contribution was made), the present value of the contribution is included in plan assets for purposes of § 430 as a contribution receivable. That present value is determined by discounting the contribution from December 31, 2020, to June 15, 2020 (the original due date for the minimum required contribution for the plan year), at the effective interest rate for the plan year beginning October 1, 2020 (the plan year in which the contribution is made), and further discounting the contribution from June 15, 2020, to October 1, 2019, at the effective interest rate for the plan year beginning October 1, 2018 (the plan year for which the contribution is made).

(c) As of October 1, 2020 (the valuation date for the second plan year following the plan year for which the December 31, 2020, contribution was made), the present value of the contribution is included in plan assets for purposes of § 430 as a contribution receivable. That present value is determined by discounting the contribution from December 31, 2020, to October 1, 2020, at the effective interest rate for the plan year beginning October 1, 2020 (the plan year in which the contribution is made).

Q-10: Does the extended due date under § 3608(a) of the CARES Act change the date by which a plan sponsor may make an election to increase a prefunding balance or to use a prefunding balance or a funding standard carryover balance to offset the minimum funding requirement for a plan year?

A-10: Yes, if the plan year is a plan year for which the extended due date for minimum required contributions under § 3608(a) of the CARES Act applies, then the deadline for a plan sponsor's election to increase a prefunding balance or to use a prefunding balance or a funding standard carryover balance to offset the minimum required contribution for that plan year is extended to January 1, 2021.

Q-11: Does the extended due date under § 3608(a) of the CARES Act change the date by which a contribution must be made in order to be deducted for a taxable year under § 404 of the Code?

A-11: No, the extended due date under § 3608(a) of the CARES Act does not change the date by which a contribution must be made in order to be deducted for a taxable year under § 404 of the Code. Under § 404(a)(6), a taxpayer is deemed to have made a payment on the last day of the preceding taxable year if the payment is on account of that taxable year and is made no later than the time prescribed by law for filing the return for that taxable year (including extensions).

B. Use of prior year AFTAP for benefit restrictions

Q-12: May a plan sponsor make an election under § 3608(b) of the CARES Act (to apply the AFTAP for the last plan year ending before January 1, 2020) for a plan with a plan year that is not a calendar year?

A-12: Yes, a plan sponsor may make an election under § 3608(b) of the CARES Act for a plan year that includes any portion of calendar year 2020. If the election is made for such a plan year, the AFTAP that applies for the plan year pursuant to the election is the AFTAP certified for the last plan year that ends on or before December 31, 2019. For example, if a plan sponsor makes an election under § 3608(b) of the CARES Act for a plan year that runs from July 1, 2019, to June 30, 2020, then the AFTAP that applies to determine benefit limitations under § 436 of the Code for that plan year is the certified AFTAP from the plan year that ends on June 30, 2019. In addition, that plan sponsor may separately elect to use that same AFTAP for the plan year that begins on July 1, 2020.

Q-13: What procedures must a plan sponsor follow for making an election under § 3608(b) of the CARES Act?

A-13: The election described in § 3608(b) of the CARES Act must be made using the procedures that apply for elections relating to funding balances specified in § 1.430(f)-1(f)(1)(i). Thus, the plan sponsor must provide written notification of the election to the plan's actuary and the plan administrator. However, a plan sponsor's election made using a different procedure will not be treated as invalid provided that, by September 30, 2020, the plan sponsor complies with the requirement described in the first sentence of this A-13.

Q-14: If a plan's actuary has not certified the plan's AFTAP for a plan year before the plan sponsor makes an election under § 3608(b) of the CARES Act, what is the effect of the election for purposes of the presumption rules of § 436(h) of the Code?

A-14: If a plan's actuary has not certified the plan's AFTAP for a plan year before the plan sponsor makes the election under § 3608(b) of the CARES Act, then the plan sponsor's election is treated as a certification of the AFTAP for purposes of the presumption rules of § 436(h) of the Code. Thus, beginning with the date of the election, the AFTAP for the last plan year ending on or before December 31, 2019, applies for the plan year for which the election is made, rather than any presumed AFTAP determined under § 1.436-1(h)(1), (2), or (3). The following example illustrates the operation of this rule:

(a) Plan B, which is not a collectively bargained plan, has a plan year that is a calendar year. On September 30, 2019, the actuary for Plan B certified the 2019 AFTAP to be 82%. On April 30, 2020, before the actuary has certified the AFTAP for 2020, the plan sponsor makes an election under § 3608(b) of the CARES Act to apply the 2019 AFTAP to the 2020 plan year.

(b) Section 1.436-1(h)(2) applies to the plan (because, as of April 1, 2020, the plan's actuary has not certified the plan's AFTAP for 2020 and the AFTAP for 2019 was at least 80 percent and less than 90 percent). Accordingly, under § 1.436-1(h)(2)(iii), the presumed AFTAP for 2020 is reduced to 72 percent beginning on April 1, 2020.

(c) The plan sponsor's election under § 3608(b) of the CARES Act is treated as a certification of the plan's AFTAP for the plan year. Accordingly, under § 1.436-1(h)(2)(v), the 2019 AFTAP of 82 percent is used for the plan beginning April 30, 2020.

Q-15: Is a plan's actuary required to certify the plan's AFTAP for a plan year for which the plan sponsor makes the election under § 3608(b) of the CARES Act?

A-15: A plan's actuary generally is required to certify the plan's AFTAP for a plan year for which the plan sponsor makes the election under § 3608(b) of the CARES Act. This is because, as provided in A-18 of this notice, the certified AFTAP generally is relevant for the next plan year. However, if the plan sponsor makes the election under § 3608(b) of the CARES Act for a plan year that begins in 2019 and ends in 2020 and also makes an election for the next plan year, then the actuary is not required to certify the plan's AFTAP for the plan year that begins in 2019.

If the plan's actuary has certified an AFTAP for a plan year, then the Schedule SB of Form 5500 for that plan year should reflect the certified AFTAP. Without regard to whether the plan's actuary has certified an AFTAP for a plan year, if the plan sponsor made an election under § 3608(b) of the CARES Act, then the plan's actuary should attach to the Schedule SB a statement relating to the line 15 entry stating that the plan sponsor made that election, the date of that election, and the AFTAP that applied for the plan year pursuant to the election.

Q-16: If a plan's actuary certified the plan's AFTAP for a plan year for which the plan sponsor later makes the election under § 3608(b) of the CARES Act, what is the effect of that certification?

A-16: If a plan's actuary certified the plan's AFTAP for a plan year before the plan sponsor makes the election under § 3608(b) of the CARES Act, then the plan sponsor's election is treated as a subsequent determination of the AFTAP for that plan year. However, pursuant to § 1.436-1(h)(4)(iii)(C)(*9*) and this notice, the plan sponsor's election is eligible for deemed immaterial treatment (and for purposes of § 1.436-1(h)(4)(iii)(C), the plan sponsor's election is treated as the recertification on the part of the actuary that is otherwise required for deemed immaterial treatment pursuant to § 1.436-1(h)(4)(v)(D)). Thus, the AFTAP that applies pursuant to the plan sponsor's election is applied on a prospective basis beginning with the date of the election.

If a plan's actuary certifies the plan's AFTAP for a plan year after the plan sponsor makes the election under § 3608(b) of the CARES Act for that plan year, then that certified AFTAP does not apply for that plan year unless the plan sponsor revokes the election. Any revocation must be made using the same procedures as the election,

and, in that case, the certified AFTAP is treated as a subsequent determination of the AFTAP that is not eligible for deemed immaterial treatment under § 1.436-1(h)(4)(iii)(C).

Q-17: How does the restriction on plan amendments and unpredictable contingent event benefits apply if the AFTAP that applies is pursuant to a plan sponsor's election under § 3608(b) of the CARES Act?

A-17: If the AFTAP that applies is pursuant to a plan sponsor's election under § 3608(b) of the CARES Act, then the restriction on plan amendments and unpredictable contingent event benefits is applied using the rules of § 1.436-1(g)(2) through (4) (which apply for the period in a plan year during which a § 436(h) presumption applies), except that the AFTAP that applies pursuant to the plan sponsor's election is substituted for the presumed AFTAP. Thus, for example, the AFTAP that applies pursuant to the plan sponsor's election will be used to calculate a presumed adjusted funding target pursuant to § 1.436-1(g)(2)(ii) and an inclusive presumed AFTAP as described in § 1.436-1(g)(2)(iii). The following example illustrates the application of the rules described in this A-17:

(a) The facts are the same as in the example in A-14 of this notice. Additionally, as of January 1, 2020, Plan B has assets of $8,600,000, and a prefunding balance of $400,000. During the period January 1, 2020, through June 30, 2020, the plan's actuary did not certify the plan's AFTAP for 2020, no contributions were made for 2019, no § 436 contributions were made, and the plan sponsor made no elections under § 430(f). Plan B's sponsor amends the plan to increase benefits effective on July 1, 2020. The amendment would increase Plan B's funding target as of January 1, 2020, by $500,000.

(b) The determination of whether the amendment is permitted to take effect is made by applying the rules of § 1.436-1(g)(2) through (4) but substituting the elected AFTAP of 82% for the presumed AFTAP. Thus, this determination is made based on a comparison of the presumed adjusted funding target (calculated using an AFTAP of 82%) with the updated interim value of adjusted plan assets.

(c) Plan B's interim value of adjusted plan assets as of the valuation date is $8,200,000 (that is, $8,600,000 minus the prefunding balance of $400,000). Because there were no events that must be reflected in an update to the interim value of adjusted plan assets under the rules of § 1.436-1(g)(2)(iii)(A), the updated interim value of adjusted plan assets remains $8,200,000. Prior to reflecting the amendment, Plan B's presumed adjusted funding target as of January 1, 2020, is $10,000,000 ($8,200,000, divided by the AFTAP of 82%). Increasing Plan B's presumed adjusted funding target by $500,000 to reflect the amendment results in an inclusive presumed adjusted funding target of $10,500,00 and would result in an AFTAP of 78% (that is, the updated interim value of adjusted plan assets as of January 1, 2020, of $8,200,000 divided by the inclusive presumed adjusted funding target of $10,500,000).

(d) Because Plan B's AFTAP was over 80% prior to taking the amendment into account but would be less than 80% if the amendment were taken into account, § 436(c) prohibits the plan amendment from taking effect unless the updated interim value of adjusted plan assets is increased so that the AFTAP would equal 80%. This would require an increase of $200,000 (that is, 80% of the presumed adjusted funding target of $10,500,000 less the interim value of adjusted plan assets of $8,200,000). Therefore, the plan sponsor may either elect to reduce Plan B's prefunding balance as of January 1, 2020, by $200,000, or make a $200,000 § 436 contribution (with interest to the date of payment) in order to increase the AFTAP to 80% (that is, an updated interim value of adjusted plan assets as of January 1, 2020, of $8,400,000 divided by the inclusive presumed adjusted funding target of $10,500,000).

Q-18: Does the AFTAP that applies pursuant to a plan sponsor's election for a plan year apply for purposes of the presumptions under § 436(h) used in a subsequent plan year?

A-18: The AFTAP that applies pursuant to a plan sponsor's election for a plan year generally will not apply for purposes of the presumptions under § 436(h) used in a subsequent plan year. Instead, the actual AFTAP for the plan year that was certified by the plan's actuary generally is used for purposes of applying the presumption rules under § 436(h) for the subsequent plan year.

If, taking into account an election made under § 3608(b) of the CARES Act for a plan year, no benefit limitation applied to a plan on the last day of the plan year, then there is no presumption of continued underfunding under § 1.436-1(h)(1) as of the beginning of the subsequent plan year and the rules of § 1.436-1(g)(3) apply. Under those rules, no benefit limitation would apply under § 436(d) and (e) during the first three months of the subsequent plan year. However, under § 1.436-1(g)(3)(ii), the limitations on unpredictable contingent event benefits and plan amendments that increase benefit liabilities must be applied during that period, based on the inclusive presumed adjusted funding target determined using the prior plan year's certified AFTAP (as opposed to the AFTAP that applied for that prior plan year pursuant to an election under § 3608(b) of the CARES Act).

If a benefit limitation applied to a plan on the last day of the plan year for which an election under § 3608(b) of the CARES Act is made, then the rules providing a presumption of continued underfunding under § 1.436-1(h)(1) apply. Thus, as of the beginning of the subsequent plan year, the benefit limitations are applied based on a presumed AFTAP that is equal to the certified AFTAP for the plan year for which the election was made (rather than the AFTAP that applied for that plan year pursuant to an election under § 3608(b) of the CARES Act). This presumed AFTAP is used until the earliest of the four events specified in § 1.436-1(h)(1)(iv)(A) through (D). See A-14 of this notice for the rule that treats the plan sponsor's election under § 3608(b) of the CARES Act as a certification described in § 1.436-1(h)(1)(iv)(D).

Without regard to whether a benefit limitation applied to a plan on the last day of the plan year for which an election under § 3608(b) of the CARES Act is made, if a plan's actuary has not certified an AFTAP for the subsequent plan year before the first day of the fourth month of that year (and the plan sponsor has not made an election under § 3608(b) of the CARES Act for that plan year by that date), then the rules under § 1.436-1(h)(2) are applied based on the certified AFTAP for the plan year for which the election was made (rather than the AFTAP that applied for the plan year pursuant to an election under § 3608(b) of the CARES Act). For example, if for a calendar year plan year, the plan sponsor made an election under § 3608(b) of the CARES Act to use the 2019 AFTAP of 82% for 2020, but the plan actuary certified the AFTAP for 2020 at 81%, then under § 1.436-1(h)(2)(i), the plan will be subject to limitations of § 1.436-1(d)(3) beginning April 1, 2021, based on a presumed AFTAP of 71% for 2020 (the certified AFTAP for 2020 reduced by 10 percentage points), unless the actuary has certified an AFTAP for 2021 by that date.

In order to properly reflect § 436(h)(3) in light of the CARES Act, the plan year following a plan year for which an election under § 3608(b) of the CARES Act is made must be treated as the first effective plan year, so that the special rule of § 1.436-1(h)(2)(ii) applies. Thus, if in the example in the preceding paragraph of this A-18, the plan's actuary certified an AFTAP for 2020 of 78%, then beginning April 1, 2021, the plan will be subject to the limitations of § 1.436-1(d)(3) based on a presumed AFTAP of 68% (the certified AFTAP for 2020 reduced by 10 percentage points), unless the plan's actuary has certified an AFTAP for 2021 by that date.

Paperwork Reduction Act

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2095.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in A-13 of this notice. The collections of information are required to implement the application of § 3608 of the CARES Act. The collections of information are mandatory for those plan sponsors making an election under § 3608 of the CARES Act.

The likely respondents are sponsors of single-employer defined benefit plans.

Any potential changes on burden will be reported through the renewal of the current OMB approval numbers.

Estimates of the annualized cost to respondents are not available at this time.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

Drafting information

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan or Linda Marshall at 202-317-6700 (not a toll-free call).