

Part IV.--- Items of General Interest

Alternative Amortization Schedule for Single-Employer Plans under PRA 2010

Notice 2010-55

PURPOSE

This notice provides guidance on the availability of special funding rules for single-employer defined benefit plans under § 430(c)(2)(D) of the Internal Revenue Code (Code), as added by section 201(b)(1) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No.111-192, for a plan year for which the Form 5500 (and Schedule SB) has been filed. This notice also describes anticipated future guidance that will apply for sponsors of single-employer defined benefit pension plans with respect to an election to use these special funding rules.

BACKGROUND

Section 430 specifies the minimum funding requirements that apply to single-employer defined benefit pension plans pursuant to § 412. For purposes of calculating the minimum required contribution, § 430 generally requires a plan to establish a shortfall amortization base with respect to a plan year for which the value of a plan's assets is less than the amount of the plan's funding target. Prior to amendment by PRA 2010, § 430(c)(2) provides for amortization of a shortfall amortization base over 7 years.

In lieu of the otherwise applicable amortization schedule, new § 430(c)(2)(D) permits a plan sponsor to elect for certain plan years to amortize the shortfall amortization base established for the plan year under one of two alternative amortization schedules: the "2 plus 7-year" amortization schedule; and the "15-year" amortization schedule. The 2 plus 7-year amortization schedule is described in § 430(c)(2)(D)(ii) and the 15-year amortization schedule is described in § 430(c)(2)(D)(iii). Under § 430(c)(2)(D)(iv)(II), if the plan sponsor elects to use an alternative amortization schedule for two plan years, the same amortization schedule must be used for both plan years. Section 430(c)(7), which was added by section 201(b)(2) of PRA 2010, provides for an acceleration of the required installments under an alternative amortization schedule in the case of certain compensatory payments, dividends, and stock redemptions.

Under § 430(c)(2)(D)(v), an election to use an alternative amortization schedule may only be made with respect to one or two plan years that begin in 2008, 2009, 2010, or 2011. However, an election may be made with respect to a plan year only if the due date for the minimum required contribution to the plan for such plan year under § 430(j)(1) occurs on or after June 25, 2010 (the date of enactment of PRA 2010). For

example, a plan sponsor may not elect an alternative amortization schedule for a plan year beginning on October 1, 2008 and ending September 30, 2009, because the due date for contributions for that plan year was June 15, 2010. In addition, under § 430(c)(2)(D)(iv), in the case of a plan described in section 106 of the Pension Protection Act of 2006 (PPA '06), Pub. L. No. 109-280, the only plan year for which an election permissibly may be made is the plan year beginning in 2011.

Section 430(c)(2)(D)(iv)(III) provides that a plan sponsor's election under § 430(c)(2)(D) is to be made at such time and in such form and manner as is prescribed by the Secretary of the Treasury. Section 430(c)(2)(D)(iv)(III) provides further that any such election may be revoked only with the consent of the Secretary, after taking into account any comments from the Pension Benefit Guaranty Corporation (PBGC).

Pursuant to § 430(c)(2)(D)(vi), a plan sponsor that makes an election under § 430(c)(2)(D) for a plan year is required to give notice of the election to participants and beneficiaries of the plan and is also required to inform the PBGC of such election (in such form and manner as the Director of the PBGC may prescribe).

Section 202(a) of PRA 2010 amends Title I of PPA '06 to allow a plan sponsor of a plan described in sections 104 through 106 of PPA '06 to elect, for certain plan years, one of two alternative amortization schedules with respect to a portion of the plan's unfunded new liability. The schedules, set forth in sections 107(b) and 107(c) of PPA '06, as amended by PRA 2010, are generally similar to the 2 plus 7-year schedule and the 15-year schedule.

Section 303(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is parallel to § 430(c)(2) of the Code and section 201(a)(1) of PRA 2010 amends section 303(c)(2) of ERISA in a manner parallel to the amendments made to § 430(c)(2) of the Code by section 201(b)(1) of PRA 2010. Section 201(a)(2) of PRA 2010 adds section 303(c)(7) of ERISA, which is parallel to new section 430(c)(7) of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of Treasury has interpretive jurisdiction over the subject matter of this notice for purposes of ERISA as well as the Code. Thus, this notice applies for both purposes.

ELECTIONS BY PLAN SPONSOR

The Service anticipates issuing future guidance on the special funding rules under PRA 2010 for single-employer plans which may include guidance on (1) calculation of the alternative amortization schedules permitted under PRA 2010 (and the effect on funding balances), (2) the rules relating to installment acceleration amounts under § 430(c)(7), (3) the procedures for making the election to use an alternative amortization schedule, and (4) the notice requirements of § 430(c)(2)(D)(vi). In the case of a plan year that ends before the guidance is issued, the plan sponsor will be permitted to elect to use an alternative amortization schedule under PRA 2010 without regard to whether the Form 5500 (and Schedule SB) has been filed for that plan year. For example, the sponsor of a plan with a calendar year plan year will not be precluded from making the election for

2009 merely because the Form 5500 for that plan year has been filed for that plan year. Accordingly, such a plan sponsor should file the Form 5500 (and Schedule SB) in accordance with the applicable deadline, taking into account the rules for obtaining an extension. The future guidance will address reporting requirements if the plan's Form 5500 (and Schedule SB) for the plan year has been filed.

DRAFTING INFORMATION

The principal author of this notice is Carolyn Zimmerman of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via e-mail to RetirementPlanQuestions@irs.gov.