

Guidance Regarding the Changes Made by the American Rescue Plan Act to the Election of Alternative Minimum Funding Standards for Community Newspaper Plans under Section 430(m)

Notice 2022-31

I. Purpose

This notice provides guidance regarding the changes made by section 9707 of the American Rescue Plan Act of 2021 (the ARP), Pub. L. 117-2, 135 Stat. 4 (March 11, 2021) to the election of alternative minimum funding standards under section 430(m) of the Internal Revenue Code (Code) for a defined benefit pension plan that is a community newspaper plan or any other plan that is sponsored by an eligible newspaper plan sponsor.

II. Background

Section 430(m) of the Code was added by section 115 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), enacted as Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019).¹ Section 430(m) provides alternative minimum funding standards that may be elected for certain community newspaper plans and other defined benefit plans sponsored by members of a controlled group that includes the sponsor of the community newspaper plan. Pursuant to section 430(m)(2), as added by the SECURE Act, any election to apply section 430(m) is to be made at such time and in such manner as prescribed by the Secretary, and once an election is made with respect to a plan year, it will apply to all subsequent plan years unless revoked with the consent of the Secretary. Under section 115(c) of the SECURE Act, section 430(m) of the Code applies to plan years ending after December 31, 2017.

Notice 2020-60, 2020-36 I.R.B. 514, provides guidance regarding the election to apply the alternative minimum funding standards of section 430(m). Notice 2020-60 also

¹ Section 115(b) of the SECURE Act also added section 303(m) to the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (88 Stat. 829), as amended (ERISA). Section 303(m) of ERISA provides rules that generally are parallel to the rules of section 430(m) of the Code, and section 9707 of the ARP includes amendments to section 303(m) of ERISA that are parallel to the amendments made to section 430(m) of the Code. Under section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., as amended, and section 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 relating to section 430 of the Code also apply for purposes of section 303 of ERISA.

provides additional flexibility to facilitate retroactive elections under section 430(m) (including deemed immaterial treatment under section 436 for changes in a plan's adjusted funding target attainment percentage due to an election to apply section 430(m)) and provides instructions for completing Schedule SB, "Single-Employer Defined Benefit Plan Actuarial Information," of Form 5500, "Annual Return/Report of Employee Benefit Plan," to reflect the election.

Section 9707 of the ARP revised section 430(m) in a number of ways, including by modifying the requirements for eligibility to make an election to apply section 430(m). Prior to the ARP, section 430(m)(1) provided that the election to apply the alternative minimum funding standards of section 430(m) was made by the plan sponsor of a community newspaper plan under which no participant has had an increase in accrued benefits after December 31, 2017 (whether because of service or compensation), and the election applied to all other defined benefit plans sponsored by any member of that plan sponsor's controlled group as of December 20, 2019 (the date of enactment of the SECURE Act). As amended by section 9707 of the ARP, section 430(m)(1) now provides that the election to apply section 430(m) is made by an eligible newspaper plan sponsor of a plan under which no participant has had an increase in accrued benefits after April 2, 2019 (whether because of service or compensation), and the election applies only to the plan for which the election is made. Section 430(m)(2)(A) was added to define an "eligible newspaper plan sponsor" as the plan sponsor of a community newspaper plan.² Under section 430(m)(2)(B), the definition of an eligible newspaper plan sponsor also includes a member of the controlled group of a plan sponsor described in the preceding sentence (determined as of December 20, 2019) if that member is in the trade or business of publishing one or more newspapers, and that member sponsored the plan for which it is making the election as of April 2, 2019. Section 430(m) as amended by the ARP is effective for plan years ending after December 31, 2017 (the same as the original effective date of section 430(m) under the SECURE Act).

III. Modifications to Notice 2020-60

In light of the changes to section 430(m) made by the ARP, this notice modifies the guidance provided in Notice 2020-60. Any guidance provided in Notice 2020-60 that is not addressed in this notice continues to apply.

A. Definition of a community newspaper plan

The term "community newspaper plan" means any plan to which section 430 applies that is maintained as of December 31, 2018, by an employer that satisfies the following three conditions:

² Section 430(m)(5)(A), as revised by section 9707 of the ARP, includes minor changes to the definition of community newspaper plan (which was formerly in section 430(m)(4)(A)). Section 430(m)(5)(B) defines the term "newspaper" to exclude any newspaper that: is not in general circulation, is published (on newsprint or electronically) less frequently than 3 times per week, has not ever been regularly published on newsprint, or does not have a bona fide list of paid subscribers.

- The employer maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing one or more newspapers which were published by the employer at any time during the 11-year period ending on December 20, 2019;
- The employer is either:
 - (1) Not a company the stock of which is publicly traded (on a stock exchange or in an over-the-counter market), and is not controlled, directly or indirectly, by such a company, or
 - (2) Controlled, directly or indirectly, during the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than five States; and
- The employer is controlled, directly or indirectly--
 - (1) By one or more persons residing primarily in a State in which the community newspaper has been published on newsprint or carrier-distributed,
 - (2) During the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family,
 - (3) By one or more trusts, the sole trustees of which are persons described in (1) or (2), or
 - (4) By a combination of persons described in (1), (2), or (3).

Section 430(m)(5)(C) provides a definition of “control” for purposes of these rules. Under that provision, a first person is treated as controlled by a second person if the second person possesses, directly or indirectly, the power to direct or cause the direction and management of the first person (including the power to elect a majority of the members of the board of directors of that person) through the ownership of voting securities.

B. Definition of eligible newspaper plan sponsor and applicability of election to controlled group members

The term “eligible newspaper plan sponsor” means an employer that sponsors any of the following plans:

- A community newspaper plan, or
- A defined-benefit plan sponsored by the employer as of April 2, 2019, provided that the employer is a member of the same controlled group as the plan sponsor of a community newspaper plan, and the employer is in the trade or business of publishing one or more newspapers.

Under section 430(m)(1) as originally enacted, an election to apply section 430(m) made by a plan sponsor of a community newspaper plan also applies to any plan sponsored by any member of its controlled group, and section IV.D of Notice 2020-60 provides rules for determining how long that election continues to apply to a plan

sponsored by a controlled group member. Because amended section 430(m) now requires a separate election to be made by each plan sponsor, the rules of section IV.D under Notice 2020-60 no longer apply.

If an eligible newspaper plan sponsor that is not the sponsor of a community newspaper plan elects to apply section 430(m), that election will continue to apply (unless revoked) until the plan year following the plan year in which the employer ceases to be an eligible newspaper plan sponsor. Thus, the election ceases to apply beginning with the plan year following the plan year in which the controlled group member either leaves the controlled group or is no longer in the trade or business of publishing newspapers.

Section IV.C of Notice 2020-60 provides that a sponsor of a community newspaper plan that has made an election to apply section 430(m) to its plan may request permission to revoke that election under section 430(m) using the procedures for obtaining a private letter ruling set forth in Rev. Proc. 2020-4, 2020-1 I.R.B. 148, or its successor. Pursuant to this notice, other eligible newspaper plan sponsors may request permission to revoke an election under section 430(m) using those same procedures.

C. Renumbering of paragraphs of section 430(m)

The numbering of several paragraphs of section 430(m) that are referenced in Notice 2020-60 has been changed by the enactment of the ARP. Those references in Notice 2020-60 are replaced as follows:

- The reference to section 430(m)(2) is replaced by a reference to section 430(m)(3).
- References to section 430(m)(3) are replaced by references to section 430(m)(4).
- References to section 430(m)(5) are replaced by references to section 430(m)(6).

D. Manner and content of election

Pursuant to the amendments made by the ARP, an election to apply section 430(m) that was made by a sponsor of a community newspaper plan no longer applies to other defined benefit plans sponsored by members of the sponsor's controlled group. Therefore, this notice modifies the manner of the election set forth in section IV.A of Notice 2020-60 to eliminate the requirement to notify other controlled group members of the election (so that the election need only be provided to the plan's enrolled actuary and the plan administrator).

An election to apply section 430(m) to a plan must be made by a sponsor of that plan, and that election does not apply to other plans. The information that must be

included in the election set forth in section IV.A of Notice 2020-60 is modified by this notice. The election now must include the following:

- The name and Employer Identification Number (EIN) of the employer,
- The name and plan number of the plan,
- The first plan year for which the election applies,
- The date as of which the employer first sponsored the plan,
- The date as of which benefit accruals ceased under the plan,
- The name of the newspaper(s) published by the employer, and
- A certification that the sponsor of the community newspaper plan satisfies the trade or business standard in section 430(m)(5)(A)(i) and satisfies the ownership and control standards under section 430(m)(5)(A)(ii) and (iii).

If the employer is an eligible newspaper plan sponsor but is not the sponsor of a community newspaper plan, the election must also include the following:

- A certification that, as of December 20, 2019, the employer was a member of a controlled group that includes the sponsor of a community newspaper plan and that the employer is in the trade or business of publishing one or more newspapers, and
- The name and EIN of the employer that is the sponsor of the community newspaper plan.

If a plan sponsor made an election to apply section 430(m) on or after March 11, 2021, and that election did not comply with the requirements set forth in this section III.D, the plan sponsor must make a new election that complies with these requirements no later than September 15, 2022, in order to retain the election.

The Appendix to this notice sets forth a model for the written section 430(m) election. This model replaces the model election in Notice 2020-60.

E. Extension of time to make retroactive section 430(m) elections and associated funding balance elections

Section VI of Notice 2020-60 provides flexibility in several areas to facilitate retroactive section 430(m) elections in light of the retroactive effective date of section 430(m). Section VI.A of Notice 2020-60 provides an exception to the general timing rule restricting changes in actuarial assumptions after they have been established for a plan year, to allow an election to apply section 430(m) to be made for a plan year for which Schedule SB has already been filed. In order to fully reflect the impact of the reduced minimum funding requirement resulting from a retroactive section 430(m) election, section VI.B of Notice 2020-60 provides an extended period of time for certain plan sponsor elections to increase the plan's prefunding balance and to revoke an election to use the plan's prefunding balance or funding standard carryover balance (or reduce the portion of that balance to which an election applied). Pursuant to section VI of Notice 2020-60, the extended deadline for the actions was December 31, 2020.

Like the original provisions of section 430(m) of the Code, the provisions of section 430(m), as revised by section 9707 of the ARP, apply to plan years ending after December 31, 2017. As a result of the changes made to section 430(m) of the Code by the ARP, some plan sponsors that publish newspapers and that were not previously eligible to make an election to apply section 430(m) may now be eligible. In addition, some plan sponsors that were eligible to elect to apply section 430(m) may not have made that election because of the effect of the election on other controlled group members and may now wish to do so. To facilitate retroactive section 430(m) elections and to fully reflect the impact of the reduced minimum funding requirement resulting from a retroactive section 430(m) election, the guidance in section VI of Notice 2020-60 is modified by substituting September 15, 2022, for December 31, 2020, as the extended deadline for the actions specified in that section.

IV. Plan Sponsors That Applied the Pre-ARP Provisions of Section 430(m)

Under section 430(m) prior to the amendments made by the ARP, if an election to apply section 430(m) was made by a plan sponsor of a community newspaper plan, that election also applied to all other defined benefit plans sponsored by members of the controlled group. However, after the amendments made by the ARP, the election to apply section 430(m) is made separately for each plan and is available only to a plan sponsor that is in the trade or business of publishing one or more newspapers.

If the sponsor of a community newspaper plan made an election to apply section 430(m) prior to the enactment of the ARP (that is, prior to March 11, 2021), and a plan sponsored by a member of that sponsor's controlled group is eligible for an election to apply section 430(m) after the amendments made by the ARP, that member will be deemed to have made an election to apply section 430(m) after the amendments made by the ARP. Thus, if that member wishes to continue applying section 430(m) for its plan, it does not need to make a new election. However, if that member does not wish to apply section 430(m) for its plan, then this notice grants automatic approval to revoke that deemed election retroactively for all previous plan years for which the election applied, provided that the plan sponsor provides written notice of the revocation to the plan's actuary and plan administrator no later than September 15, 2022, and, for all plan years for which the election has been revoked, amended Forms 5500 with the revocation reflected on revised Schedules SB are filed no later than October 17, 2022. For a member that revokes this deemed section 430(m) election for all years for which it applies, the elections described in section IV of Notice 2021-48, 2021-33 I.R.B. 305 (relating to timing of implementation of certain statutory changes made by the ARP) are considered timely if they are made no later than October 17, 2022, and the actions described in sections V.A through V.C of Notice 2021-48 (permitting an extended time for certain changes relating to a plan's funding balances) are considered timely if they are completed by that date.

If the sponsor of a community newspaper plan made an election to apply section 430(m) prior to the enactment of the ARP (that is, prior to March 11, 2021), and a plan

sponsored by a member of that sponsor's controlled group is not eligible for an election to apply section 430(m) after the amendments made by the ARP (for example, the sponsor of that plan is not in the trade or business of publishing a newspaper, or a participant accrued a benefit under that plan after April 2, 2019, and before the original election to apply section 430(m) was made), then the plan's minimum required contribution under section 430 must be redetermined, and the plan may not be compliant with section 436. However, the IRS will not treat such a plan as failing to satisfy qualification requirements or minimum funding requirements merely because the plan sponsor does not apply the changes made to section 430(m) by the ARP until the first plan year that begins after March 11, 2021.

V. Effect on Other Documents

Notice 2020-60 is modified.

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 the Appendix of this notice. The collections of information are required for a plan sponsor to elect to apply the alternative minimum funding standards under section 430(m). The collections of information are mandatory for those plan sponsors making a new election to apply section 430(m) to a plan.

The likely respondents are sponsors of defined benefit plans whose eligibility to apply section 430(m) was affected by the enactment of the ARP or who have become eligible not to apply a section 430(m) election that was made by a controlled group member prior to the enactment of the ARP.

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 section 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).

Appendix

Model election

As an officer of the employer sponsoring a community newspaper plan as defined in section 430(m)(5) of the Internal Revenue Code, or an officer of another eligible newspaper plan sponsor as defined in section 430(m)(2)(B), I hereby elect to apply the alternative minimum funding standards under section 430(m)(4), beginning with the plan year beginning _____. I also provide the following information about the employer and plan and hereby certify that the plan sponsor of the community newspaper plan meets the trade or business standard described in section 430(m)(5)(A)(i) and the ownership and control standards under section 430(m)(5)(A)(ii) and (iii) as set forth below:

Information about the employer and plan:

- Name of employer
- Employer Identification Number (EIN) of employer
- Name of plan for which election is made
- Plan number
- Date as of which employer first sponsored the plan
- Date as of which benefit accruals ceased
- Name of newspapers published by the employer
- Name and EIN of the sponsor of the community newspaper plan (if the election is being made by an eligible newspaper plan sponsor described in section 430(m)(2)(B))

Certifications relating to trade or business, ownership, and control:

- For an employer that sponsors a community newspaper plan:
 - The employer maintains the plan on behalf of participants and beneficiaries with respect to employment in the trade or business of publishing one or more newspapers which were published by the employer at any time during the 11-year period ending on December 20, 2019;
 - The employer sponsoring the community newspaper plan is (indicate all that apply):
 - (1) Not publicly traded, and is not controlled, directly or indirectly, by a publicly traded company _____, or
 - (2) Controlled, directly or indirectly, during the entire 30-year period ending on December 20, 2019, by individuals who are members of the same family, and does not publish or distribute a daily newspaper that is carrier-distributed in printed form in more than five States _____; and
 - The employer is controlled directly or indirectly (indicate all that apply):
 - (1) By one or more persons residing primarily in the state in which the community newspaper is published or carrier-distributed _____

(2) For not less than the 30-year period ending on December 20, 2019, by individuals who are members of the same family _____

(3) By one or more trusts, the sole trustees of which are persons described in (1) or (2) _____

(4) By a combination of persons described in (1), (2), or (3) _____

- For an eligible newspaper plan sponsor described in section 430(m)(2)(B):
 - As of December 20, 2019, the employer is a member of a controlled group that includes the sponsor of a community newspaper plan
 - The employer is in the trade or business of publishing one or more newspapers

Signature of employer _____ Date _____

Name _____ Title _____