INTERNAL REVENUE
BULLETIN

HIGHLIGHTS OF THIS ISSUE

Bulletin No. 2021–33
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These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

EMPLOYEE PLANS

Notice 2021-48, page 305.

This notice provides guidance on the changes to the funding rules for single-employer defined benefit pension plans under § 430 of the Internal Revenue Code that were made by §§ 9705 and 9706 of the American Rescue Plan Act of 2021.

EMPLOYEE PLANS; EMPLOYMENT TAX; EXCISE TAX

Notice 2021-46, page 303.

This notice provides additional guidance on issues relating to the application of § 9501 of the American Rescue Plan Act of 2021 (the ARP), which provides temporary premium assistance for Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) continuation coverage. This notice expands on guidance in Notice 2021-31, 2021-23 IRB 1173. The questions addressed include availability of the premium assistance to individuals eligible for an extension who had not elected it; whether premium assistance for vision or dental-only coverage ends due to eligibility for other health coverage that does not include vision or dental benefits; availability of premium assistance under a State statute that limits continuation coverage to government employees; whether employers may claim the premium assistance tax credit if the SHOP exchange requires employers to pay COBRA premiums and which party may claim the premium assistance tax credit in situations involving parties other than an insurer or former common law employer providing the COBRA coverage.

TAX CONVENTIONS

Announcement 2021-13, page 314.

The competent authorities of the United States and the United Kingdom have entered into a Competent Authority Arrangement under paragraph 3 of Article 26 (Mutual Agreement Procedure) agreeing that references to the "North American Free Trade Agreement" in paragraph 7 of Article 23 (Limitation on Benefits) of the U.S.-U.K. Income Tax Treaty shall be understood as the "United States-Mexico-Canada Agreement" ("USMCA") upon entry into force of the USMCA.

Announcement 2021-14, page 315.

The competent authorities of the United States and the United Kingdom have entered into a Competent Authority Arrangement under paragraph 3 of Article 26 (Mutual Agreement Procedure) agreeing that U.K. residents may be eligible to qualify as equivalent beneficiaries for purposes of applying the derivative benefits test in paragraph 3 of Article 23 (Limitation on Benefits) of the U.S.-U.K. Income Tax Treaty.

Finding Lists begin on page ii.

The IRS Mission

Provide America's taxpayers top-quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness to all.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions and Other Related Items, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
This part includes notices of proposed rulemakings, disbarment and suspension lists, and announcements.

The last Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis, and are published in the last Bulletin of each semiannual period.

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Part III

Premium Assistance for COBRA Benefits Part II

Notice 2021-46

This notice provides additional guidance on the application of § 9501 of the American Rescue Plan Act of 2021 (the ARP), Pub. L. 117-2, 135 Stat. 4 (March 11, 2021), relating to temporary premium assistance for Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) continuation coverage.[1]

BACKGROUND

Following enactment of the ARP, the IRS addressed issues with respect to COBRA premium assistance for COBRA continuation coverage under the ARP in Notice 2021-31, 2021-23 IRB 1173. This notice supplements Notice 2021-31 and addresses additional issues. Terms used in this notice have the same meanings as those terms have in Notice 2021-31, unless indicated otherwise.

ELIGIBILITY FOR COBRA PREMIUM ASSISTANCE – EXTENDED COVERAGE PERIODS

Q-1. Is COBRA premium assistance available for a potential Assistance Eligible Individual whose original 18-month COBRA continuation coverage period has expired, but who is entitled to notify the plan or insurer, and has not yet done so, of the intent to elect COBRA continuation coverage for an extended period due to a disability determination, second qualifying event, or an extension under State mini-COBRA, to the extent the extended period of coverage falls between April 1, 2021 and September 30, 2021?

A-1. Yes. If the original qualifying event was a reduction in hours or an involuntary termination of employment, COBRA premium assistance is available to an individual who is entitled to elect COBRA continuation coverage for an extended period due to a disability determination, second qualifying event, or an extension under State mini-COBRA, to the extent the extended period of coverage falls between April 1, 2021 and September 30, 2021, even if the individual had not notified the plan or insurer of the intent to elect extended COBRA continuation coverage before the start of that period.

Example: An individual who was provided a COBRA general notice is involuntarily terminated and elects COBRA continuation coverage effective October 1, 2019; the individual's 18-month COBRA continuation period lapses March 31, 2021. On March 1, 2020, a disability determination letter is issued by the Social Security Administration providing that the individual was disabled as of November 1, 2019. The disability determination entitles the individual to the 29-month extended COBRA continuation coverage. The individual fails to notify the plan of the disability determination by April 30, 2020, which is 60 days after the date of the issuance of the disability determination letter as required under § 4980B(f)(6)(C). However, under the Emergency Relief Notices, the individual has one year and 60 days from the issuance of the disability determination letter to notify the plan of the disability to extend COBRA continuation coverage. On April 10, 2021, the individual notifies the plan of the disability and elects ongoing coverage from April 1, 2021. Assuming the individual is not eligible for other disqualifying group health plan coverage or Medicare, the individual is an Assistance Eligible Individual and is entitled to the COBRA premium assistance.

END OF COBRA PREMIUM ASSISTANCE PERIOD – DENTAL AND VISION COVERAGE

Q-2. If an Assistance Eligible Individual previously elected COBRA continuation coverage with premium assistance for dental-only or vision-only coverage, does the individual cease to be eligible for COBRA premium assistance if the individual subsequently becomes eligible to enroll in other disqualifying group health plan coverage or Medicare that does not provide dental or vision benefits?

A-2. Yes. Eligibility for COBRA premium assistance ends when the Assistance Eligible Individual becomes eligible for coverage under any other disqualifying group health plan or Medicare, even if the other coverage does not include all of the benefits provided by the previously elected COBRA continuation coverage. For example, eligibility for Medicare, which generally does not provide vision or dental coverage, ends eligibility for premium assistance related to all previously elected COBRA continuation coverage, including previously elected dental-only or vision-only COBRA continuation coverage.

COMPARABLE STATE CONTINUATION COVERAGE – COVERAGE FOR A SUBSET OF STATE RESIDENTS

Q-3. Does a State continuation coverage program provide comparable coverage to COBRA continuation coverage for qualifying individuals if the State program covers only a subset of State residents (for example, only employees of a State or local government unit)?

A-3. Yes. A State program does not fail to provide comparable coverage to Federal COBRA continuation coverage solely because the program covers only a subset of State residents, as long as the program provides coverage otherwise comparable to Federal COBRA. For more information on comparable state continuation coverage, see Notice 2021-31, Q&A-61 and Q&A-62. Thus, a State law that provides continuation coverage only for employees of a State or local government unit may be comparable coverage that qualifies Assistance Eligible Individuals for COBRA premium assistance under the ARP.

CLAIMING THE COBRA PREMIUM ASSISTANCE CREDIT – ADDITIONAL CLARIFICATION ON THE ENTITY THAT MAY CLAIM THE CREDIT

Q-4. What is the general rule for determining which entity is the common

[1] Employer-sponsored health plans generally are required to offer an employee, spouse, or dependent child covered by the plan the opportunity to continue coverage under the plan for a specified period of time after the occurrence of certain events that otherwise would have terminated the coverage (qualifying events). These continuation of coverage requirements, and the corresponding coverage (if elected), are often referred to as "COBRA continuation coverage" or "COBRA" requirements. The COBRA requirements were enacted originally as part of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272 (April 7, 1986), and are set forth in § 4980B of the Internal Revenue Code.

law employer maintaining the plan, as described in Notice 2021-31, Q&A-72(2)?

A-4. The common law employer maintaining the plan is the current common law employer for Assistance Eligible Individuals whose hours have been reduced or the former common law employer for those individuals who have been involuntarily terminated from employment, which, in both cases, serves as the basis for the individual's eligibility for COBRA continuation coverage (collectively referred to as the common law employer). Generally, as described in Notice 2021-31, Q&A-72(2), when the requirements in § 6432(b)(2) are satisfied, the common law employer is the entity entitled to claim the credit, subject to the exceptions set forth in Notice 2021-31, Q&A-82 (as clarified in Q&A-8 of this notice), and in Q&A-9 and Q&A-10 of this notice.

Q-5. For a period of State-mandated continuation coverage that is comparable to Federal COBRA, if the plan is also subject to Federal COBRA (for example, a period of State-mandated continuation coverage that extends beyond the applicable Federal COBRA period), which entity is the premium payee entitled to claim the COBRA premium assistance credit?

A-5. For State-mandated continuation coverage that is comparable to Federal COBRA and is a group health plan subject to both Federal COBRA and the State-mandated continuation coverage, the common law employer is the premium payee entitled to claim the credit because the plan is subject to Federal COBRA. *See* Notice 2021-31, Q&A-72. Consequently, even if the State-mandated continuation coverage would require the Assistance Eligible Individual to pay the premiums directly to the insurer after the period of Federal COBRA ends, the insurer is not entitled to claim the COBRA premium assistance credit.

Q-6. If a group health plan (other than a multiemployer plan) subject to Federal COBRA covers employees of different common law employers that are members of a single controlled group, which entity is the premium payee entitled to claim the COBRA premium assistance credit?

A-6. If a plan (other than a multiemployer plan) subject to Federal COBRA covers employees of two or more members of a controlled group, each common law employer that is a member of the controlled group is the premium payee entitled to claim the COBRA premium assistance credit with respect to its employees or former employees. Although all of the members of a controlled group are treated as a single employer for employee benefit purposes, each member is a separate common law employer for employment tax purposes. Therefore, the common law employer is the premium payee, unless Notice 2021-31, Q&A-82 (as clarified in Q&A-8 of this notice) applies, or there is a business reorganization as described in Treas. Reg. § 54.4980B-9 and Q&A-9 of this notice.

Q-7. If a group health plan (other than a multiemployer plan) subject to Federal COBRA covers employees of two or more unrelated employers, which entity is the premium payee entitled to claim the COBRA premium assistance credit?

A-7. If a group health plan (other than a multiemployer plan) subject to Federal COBRA covers employees of two or more unrelated employers, the premium payee entitled to claim the premium assistance credit is the common law employer, unless Notice 2021-31, Q&A-82 (as clarified in Q&A-8 of this notice) applies or there is a business reorganization as described in § 54.4980B-9 and Q&A-9 of this notice.

Q-8. If an entity provides health benefits to employees of another entity, but it is not a third-party payer of those employees' wages, may it be treated as a third-party payer for purposes of applying Notice 2021-31, Q&A-82?

A-8. No. For purposes of Notice 2021-31, Q&A-82, a third-party payer is an entity that pays wages subject to Federal employment taxes and reports those wages and taxes on an aggregate employment tax return that it files on behalf of its client(s). As indicated in Notice 2021-31, Q&A-82, these entities are typically professional employer organizations (PEOs), certified professional employer organizations (CPEOs), or agents described in § 3504.

Example: Employer A and Employer B participate in a Multiple Employer Welfare Arrangement (MEWA) that neither pays wages subject to employment taxes nor reports wages and taxes on an aggregate employment tax return on behalf of Employer A and Employer B. Certain former employees of Employer A and Employer B are Assistance Eligible Individuals eligible for coverage provided by the MEWA. The MEWA is not the premium payee and is therefore not entitled to the COBRA premium assistance credit. Instead, as provided in Notice 2021-31, Q&A-72, and as clarified in Q&A-7 of this notice, Employer A and Employer B are the premium payees and are entitled to the COBRA premium assistance credit.

Q-9. If there is a business reorganization described in § 54.4980B–9, which entity is the premium payee entitled to claim the COBRA premium assistance credit for COBRA continuation coverage elected by Assistance Eligible Individuals who are also M&A qualified beneficiaries (as defined in § 54.4980B–9, Q&A-4) if the selling group (as defined in § 54.4980B–9, Q&A-2 or -3) remains obligated to make COBRA continuation coverage available to the M&A qualified beneficiaries?

A-9. If the selling group remains obligated under § 54.4980B–9, Q&A-8 to make COBRA continuation coverage available to M&A qualified beneficiaries after a business reorganization described in § 54.4980B–9, the entity in the selling group that maintains the group health plan is the premium payee entitled to claim the COBRA premium assistance credit. If, under § 54.4980B-9, Q&A-8, the common law employer (which may be an entity in the buying group (as defined in § 54.4980B-9, Q&A-2 or -3)) is not obligated to make COBRA continuation coverage available to Assistance Eligible Individuals, the common law employer is not entitled to the COBRA premium assistance credit after the business reorganization.

Q-10. If a group health plan maintained by an agency of a State government (State agency) that provides health coverage to employees of various agencies of the State and local governments within the State is subject to the Federal COBRA requirements under the Public Health Service Act, and Assistance Eligible Individuals would have been required to remit COBRA premiums directly to the State agency were it not for the COBRA premium assistance, which entity is the premium payee entitled to claim the COBRA premium assistance credit?

A-10. If a State agency is obligated to make COBRA continuation coverage available to employees of various agencies of the State and local governments within the State, and the Assistance Eligible Individuals would have been required to remit COBRA premium payments directly to the State agency were it not for

the COBRA premium assistance, the State agency is the premium payee entitled to claim the COBRA premium assistance credit. In this case, the common law employer (if other than the State agency) would not be entitled to the COBRA premium assistance credit.

Q-11. If a fully insured plan that is not subject to Federal COBRA is offered by an employer through a Small Business Health Options Program (SHOP), is the employer the premium payee entitled to claim the premium assistance credit?

A-11. Yes, but only in certain circumstances. If a fully insured plan that is not subject to Federal COBRA is offered by an employer through a SHOP exchange, the common law employer is treated as the premium payee and is therefore eligible to claim the premium assistance credit with respect to coverage in the plan if all of the following conditions are satisfied: (i) the employer participates in a SHOP exchange that offers multiple insurance choices to employees enrolled in the same small group health plan; (ii) the SHOP exchange provides the participating employer with a single premium invoice, aggregates all premium payments, and then allocates and pays the applicable premium amounts to the insurers; (iii) the participating employer has a contractual obligation with the SHOP exchange to pay all applicable COBRA premiums to the SHOP exchange; and (iv) the participating employer would have received the State mini-COBRA premiums directly from the Assistance Eligible Individuals were it not for the COBRA premium assistance.

If all four of these conditions are satisfied, then the insurer of a plan that is not subject to Federal COBRA is not treated as the premium payee with respect to coverage in the plan and is, therefore, not eligible to claim the credit. However, in all other cases of a fully-insured plan subject solely to State mini-COBRA, the insurer (and not the common law employer) is the premium payee entitled to the premium assistance credit, which is the general rule set forth in Notice 2021-31, Q&A-72.

DRAFTING INFORMATION

The principal authors of this notice are Jason Sandoval and Mikhail Zhidkov of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). Other Treasury Department and IRS officials participated in its development. For further information on the provisions of this notice in general, contact Jason Sandoval at (202) 317-5500 (not a toll-free number). For further information on topics addressed in the section of this notice titled Claiming the COBRA Premium Assistance Credit – Additional Clarification on the Entity that May Claim the Credit, contact Mikhail Zhidkov at (202) 317-4774 (not a toll-free number).

Guidance on Single-Employer Defined Benefit Pension Plan Funding Changes under the American Rescue Plan Act of 2021

Notice 2021-48

I. Purpose

This notice provides guidance on the changes to the funding rules for single-employer defined benefit pension plans under § 430 of the Internal Revenue Code (Code) that were made by §§ 9705 and 9706 of the American Rescue Plan Act of 2021 (the ARP), Pub. L. No. 117-2, 135 Stat. 4 (March 11, 2021). Those changes also affect the application of the funding-based limits on benefits under § 436 of the Code.

Section 303 of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (September 2, 1974), as amended (ERISA), provides rules that are parallel to the rules of § 430 of the Code, and § 206(g) of ERISA provides rules that are parallel to the rules of § 436 of the Code. Section 303 of ERISA was amended by §§ 9705 and 9706 of the ARP. Under § 101 of Reorganization Plan No. 4 of 1978 (92 Stat. 3790, as amended by Pub. L. No. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095) 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.

II. Background

A. Minimum funding requirements under § 430 of the Code and benefit limitations under § 436 of the Code

Section 412 of the Code provides that a sponsor of a qualified defined benefit plan (other than a multiemployer plan described in § 414(f) or a CSEC plan described 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.

As part of the determination of the minimum required contribution under § 430, § 430(c) generally requires the establishment of a shortfall amortization base with respect to any plan year for which the value of a plan's assets is less than the amount of the plan's funding target. The shortfall amortization base of a plan for a plan year is equal to the funding shortfall of the plan for the plan year, minus the present value of the aggregate total of the shortfall amortization installments and waiver amortization installments that have been determined for the plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for plan years preceding the plan year. Prior to the enactment of the ARP, a plan's shortfall amortization installments generally were calculated to amortize each shortfall amortization base over 7 plan years pursuant to § 430(c)(2).

Under § 430(f), the plan sponsor of a defined benefit plan that is subject to § 430 may elect to maintain a prefunding balance and a funding standard carryover balance, representing the cumulative total of contributions in excess of the minimum required contribution. Subject to certain conditions, all or a portion of the prefunding balance or funding standard carryover balance may be used, at the plan sponsor's election, to offset the minimum required contribution for a plan year. Under § 430(f)(6)(B)(i), a plan sponsor that makes contributions in excess of the

minimum required contribution for a plan year may elect to add that excess (adjusted with interest using the effective interest rate for that 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 430(h)(2) specifies interest rates that are used to calculate the minimum required contribution under § 430. These interest rates are a set of three segment rates described in § 430(h)(2)(C)(i), (ii) and (iii), or, alternatively, a full yield curve described in § 430(h)(2)(D)(i). Section 40211(a) of The Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. No.112-141, 126 Stat. 405 (July 6, 2012), added § 430(h)(2)(C)(iv) to the Code, which provides that each of the three segment rates described in § 430(h)(2)(C)(i), (ii), and (iii) for a plan year is adjusted as necessary to fall within a specified range that is determined based on an average of the corresponding segment rates for the 25-year period ending on September 30 of the calendar year preceding the first day of that plan year. Notice 2012-61, 2012-42 I.R.B. 479, provides guidance regarding the application of the adjusted segment rates.

Section 436 provides limits on benefits and benefit accruals under a single-employer defined benefit pension plan (other than a CSEC plan), which are applied based on the plan's adjusted funding target attainment percentage (AFTAP) within the meaning of § 436(j)(2) for a plan year. Under § 436(j)(2), the AFTAP for a plan year is based on the percentage determined by dividing the value of plan assets for the plan year (generally reduced by the sum of the plan's prefunding balance and funding standard carryover balance) by the funding target for the 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.

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 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 that 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 that plan year. In that 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.

Section 436(h) provides rules that apply prior to the certification of the AFTAP for a plan year by the plan's enrolled 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 plan year's AFTAP generally is presumed to be equal to the prior plan 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 4th month and ending when the plan's enrolled actuary 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.

Section 3608(a)(1) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (March 27, 2020) provides that any minimum required contribution that would otherwise be due under § 430 of the Code 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. 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. Notice 2020-61, 2020-35 I.R.B. 468 and Notice 2020-82, 2020-49 I.R.B. 1458 provide guidance regarding the application of § 3608 of the CARES Act.

B. Extension of the amortization period for shortfall amortization bases

Section 9705(a) of the ARP added § 430(c)(8) to the Code to extend the amortization period for shortfall amortization bases. Under § 430(c)(8), with respect to plan years beginning after December 31, 2021 (or, at the election of the plan sponsor, plan years beginning after December 31, 2018, December 31, 2019, or December 31, 2020), the shortfall amortization bases for all plan years preceding the first plan year to which this provision applies (and all shortfall amortization installments determined with respect to those bases) are reduced to zero, and shortfall amortization installments for all new shortfall

amortization bases are calculated to amortize each shortfall amortization base over 15 plan years.

C. Changes to the adjusted 24-month average segment rates

Prior to the enactment of the ARP, the applicable minimum and maximum percentages for the 24-month average segment rates set forth in the table in § 430(h)(2)(C)(iv)(II) of the Code were 90% to 110% for plan years beginning before January 1, 2021, 85% to 115% for plan years beginning in 2021, 80% to 120% for plan years beginning in 2022, and a wider corridor for later plan years. Section 9706(a)(1) of the ARP changed those specified ranges. As amended by the ARP, the applicable minimum and maximum percentages are 95% and 105% for plan years beginning in 2020 through 2025, and a wider corridor for later plan years. Section 9706(a)(2) of the ARP amended § 430(h)(2)(C)(iv)(I) of the Code to provide that if the average of the first, second, or third segment rate for any 25-year period is less than 5 percent, then 5 percent is substituted for that 25-year average. The adjusted 24-month average segment rates determined under § 430(h)(2)(C)(iv), taking into account the amendments made by the ARP, are referred to in this notice as the ARP segment rates (and the adjusted 24-month average segment rates determined not taking into account the amendments made by the ARP are referred to as the pre-ARP segment rates).

Section 9706(c)(1) of the ARP provides that the amendments made by § 9706 are effective with respect to plan years beginning after December 31, 2019.[1] However, § 9706(c)(2) provides that a plan sponsor may elect not to have the amendments made by § 9706 apply to any plan year beginning before January 1, 2022, either (as specified in the election) for all purposes or solely for purposes of determining the AFTAP for the plan year. In addition, under § 9706(c)(2), a plan is not treated as failing to meet the requirements of § 411(d)(6) of the Code solely by reason of this election.

D. Market rate of interest limitation for statutory hybrid plans

Section 1.411(b)(5)-1(d)(1)(i) provides that a statutory hybrid plan satisfies the requirement in § 411(b)(1)(H) only if the interest crediting rate under the statutory hybrid benefit formula does not exceed a market rate of return. Under § 1.411(b)(5)-1(d)(1)(iii)(A) and (d)(3), an interest crediting rate satisfies this market rate of return limitation if it is no greater than the third segment rate described in § 430(h)(2)(C)(iii), determined with or without regard to § 430(h)(2)(C)(iv). Under § 1.411(b)(5)-1(d)(1)(iii)(B) and (d)(4), an interest crediting rate satisfies the market rate of return limitation if it is no greater than the first or second segment rate described in § 430(h)(2)(C)(i) and (ii), determined with or without regard to § 430(h)(2)(C)(iv).

III. Application of § 430(c)(8) of the Code and § 9706 of the ARP

A. General guidance relating to application of § 430(c)(8) of the Code

For all plan years beginning after December 31, 2021, shortfall amortization bases are amortized over 15 years, and for all earlier plan years, all shortfall amortization bases are eliminated. However, a plan sponsor may elect to have this rule apply to plan years beginning after December 31, 2018, 2019, or 2020. If the plan sponsor elects an earlier application of § 430(c)(8), the first sentence of this section III.A is applied by substituting the December 31 of the earlier calendar year that the plan sponsor elects for December 31, 2021.

B. General guidance relating to application of § 9706 of the ARP

1. Applicability of the ARP segment rates

Q&A G-2 of Notice 2012-61 specifies the items for which the adjusted 24-month average segment rates, determined taking into account § 430(h)(2)(C)(iv), apply or do not apply. That guidance generally remains in effect following the enactment of the ARP, but is modified to reflect subsequent statutory changes and to take into account any election under § 9706(c)(2) of the ARP not to apply the ARP segment rates for a plan year.

For example, Notice 2012-61 provides that if the adjusted segment rates under § 430(h)(2)(C)(iv) apply for a plan year, then those rates apply for the purposes of determining the minimum required contribution under § 430, including the calculation of target normal cost and funding target under § 430(b) and (d) and § 1.430(d)-1, the calculation of the present value of remaining shortfall and waiver amortization installments for purposes of determining any shortfall amortization base established in the current plan year under § 430(c)(3), the determination of shortfall and waiver amortization installments under § 430(c)(2) and (e)(2), and the limitation on the assumed rate of return for purposes of determining the average value of assets under § 430(g)(3)(B), as described in section III.B. or III.C. of Notice 2009-22, 2009-14 I.R.B. 741. Therefore, for a plan year beginning in 2020, the ARP segment rates apply for these purposes unless the plan sponsor has elected under § 9706(c)(2) of the ARP to apply the pre-ARP segment rates for that plan year.

2. Effect of § 9706 of the ARP on interest adjustments with respect to certain contributions made pursuant to § 3608(a) of the CARES Act

The application of the ARP segment rates for a plan year increases the effective interest rate for the plan for that plan year, compared to the effective interest rate determined using the pre-ARP segment rates for that plan year. Although Q&A-2 of Notice 2020-61 provides that the effective interest rate for the plan year in which a contribution is made is used for certain interest adjustments with respect to a contribution that is made after the original due date for the plan year (but no later than the extended deadline under § 3608(a) of

[1] The adjusted 24-month average segment rates for months between January 2020 and March 2021, taking into account the amendments made by the ARP, are set forth in Notice 2021-27, 2021-18 I.R.B. 1125.

the CARES Act), the ARP segment rates are not used for determining that effective interest rate if the plan year for which the extended due date applies is a plan year beginning before January 1, 2020. This is because pursuant to § 9706(c)(1) of the ARP, the ARP segment rates only apply with respect to a plan year beginning after December 31, 2019.

In addition, if a contribution for a plan year beginning before January 1, 2020 is made after the original due date but no later than the extended due date under § 3608(a) of the CARES Act, then, as described in Q&A-9 of Notice 2020-61, the interest adjustment rules of Q&A-2 of Notice 2020-61 apply for purposes of determining the value of plan assets for the next plan year. Accordingly, the pre-ARP segment rates will apply to determine the effective interest rate that is used for this purpose.

3. Applying the ARP segment rates to statutory hybrid plan interest credits

If a statutory hybrid plan provides an interest crediting rate that is based on any of the three segment rates specified in § 430(h)(2)(C)(i), (ii), or (iii) of the Code determined taking into account the corridor under § 430(h)(2)(C)(iv), the enactment of the ARP will result in a change to the plan's interest crediting rate. If an election under § 9706(c)(2) of the ARP to apply the pre-ARP segment rates for a plan year beginning in 2020 or 2021 has been made, the plan's interest crediting rate for the plan year will be determined by applying § 430(h)(2)(C)(iv) of the Code without regard to the amendment by § 9706 of the ARP. In contrast, if a plan sponsor does not make an election under § 9706(c)(2) of the ARP to apply the pre-ARP rates for a plan year beginning in 2020 or 2021, then the plan's interest crediting rate for the plan year will be determined by applying § 430(h)(2)(C)(iv) of the Code taking into account its amendment by § 9706 of the ARP. In that case, the plan administrator may apply a reasonable interpretation of plan terms that reference § 430(h)(2)(C)(iv) of the Code in determining when this change in the interest crediting rate takes effect. For this purpose, it is reasonable to interpret the plan as providing for interest credits determined without taking into account the amendments made by § 9706 of the ARP for interest crediting periods that ended prior to March 11, 2021 (the date of enactment of the ARP), and to interpret the plan as providing for interest credits taking into account those amendments for all interest crediting periods that end on or after March 11, 2021.

IV. Manner and Timing of Making Elections under the ARP

A. Manner of election under § 430(c)(8) of the Code

The election under § 430(c)(8) of the Code to have the first plan year for which 15-year amortization of shortfall amortization bases applies be a plan year that starts before January 1, 2022, is made by the plan sponsor by providing written notification of this election to both the plan's enrolled actuary and the plan administrator. This election must be signed and dated by the plan sponsor, and must include the following information:

(1) The name of the plan;
(2) The plan number;
(3) The name of the plan sponsor;
(4) The plan sponsor's mailing address;
(5) The plan sponsor's employer identification number; and
(6) The first plan year for which the 15-year amortization period will apply.

If a Form 5500 "Annual Return/Report of Employee Benefit Plan", Form 5500-SF "Short Form Annual Return/Report of Small Employee Benefit Plan," or Form 5500-EZ "Annual Return of A One-Participant (Owners/Partners and Their Spouses) Retirement Plan or A Foreign Plan," is filed for the plan year beginning in 2019, 2020, or 2021, and the Schedule SB "Single-Employer Defined Benefit Plan Actuarial Information" reflects the 15-year amortization of shortfall amortization bases under § 430(c)(8), then the plan sponsor is deemed to have elected to apply § 430(c)(8) beginning with the first plan year for which this 15-year amortization is used.[2] For example, if an attachment to line 32 of the Schedule SB for the 2020 plan year reflects 14 years remaining in the amortization period for the shortfall amortization base for the 2019 plan year, the plan sponsor will be deemed to have elected to apply § 430(c)(8) beginning with the 2019 plan year. If instead an attachment to line 32 of the Schedule SB for the 2020 plan year reflects only one shortfall amortization base with 15 years remaining in the amortization period, the plan sponsor will be deemed to have elected to apply § 430(c)(8) beginning with the 2020 plan year.

B. Manner of election under § 9706(c)(2) of the ARP

The election not to have the amendments made by § 9706 of the ARP apply to a plan year (that is, to use the pre-ARP segment rates for the plan year) is made in the same manner as the election in section IV.A of this notice. The contents of the election must include items (1) through (5), with the following additions:

(6) If the election is made for a plan year beginning in 2020, a statement of whether the election not to have the amendments made by § 9706 of the ARP apply is being made for all purposes or solely for purposes of determining the AFTAP under § 436 of the Code for the plan year.
(7) If the election is made for a plan year beginning in 2021, a statement of whether the election not to have the amendments made by § 9706 of the ARP apply is being made for all purposes or solely for purposes of determining the AFTAP under § 436 of the Code for the plan year.

C. Election under § 9706(c) of the ARP deemed to be made by completing Schedule SB in a specified manner

If a Form 5500, Form 5500-SF or Form 5500-EZ is filed for the plan year beginning in 2020, and if line 21a of the Schedule SB reflects the segment rates determined without regard to the ARP, then the plan sponsor is deemed to have elected to apply the pre-ARP segment rates for

[2] Schedule SB is not required to be filed for plans for which Form 5500–EZ is filed and certain plans for which Form 5500–SF is filed. For these plans, the Schedule SB must be completed (including being signed by the enrolled actuary) and delivered to the plan administrator, who must retain it. With respect to these plans, references in this notice to the filing of an amended Form 5500, Form 5500-SF, or Form 5500-EZ with a revised Schedule SB are applied by substituting the completion and delivery of the revised Schedule SB for the filing of the amended form.

purposes of both §§ 430 and 436 of the Code for that plan year. If this deemed election is made by a filing on or before October 15, 2021, then the election may be revoked by filing, no later than December 31, 2021, an amended Form 5500, Form 5500-SF, or Form 5500-EZ for the plan year, with a revised Schedule SB that reflects the use of the ARP segment rates. If the plan sponsor revokes the deemed election, the plan sponsor may also elect to apply the pre-ARP segment rates only for purposes of § 436 under the rules of section IV.B of this notice.

An election that is deemed made pursuant to this section IV.C is irrevocable if it is not revoked in the time and manner set forth in this section IV.C.

D. Timing of elections under the ARP

Any plan sponsor election made in accordance with section IV.A or IV.B of this notice (other than the deemed election under section IV.A) must be made by the later of: (i) the last day of the plan year beginning in 2021, or (ii) December 31, 2021.

V. Rules for Elections under § 430(f) of the Code as a Result of the ARP and Flexibility to Redesignate Contributions Between Plan Years

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 1.430(f)-1(f)(3) provides, in general, that elections with respect to the plan's prefunding balance or funding standard carryover balance are irrevocable and must be unconditional. However, § 1.430(f)-1(f)(3)(ii) provides that an election to use the prefunding balance or funding standard carryover balance to offset the minimum required contribution for a plan year is permitted to be revoked for a plan year to the extent the amount the plan sponsor elected to use to offset the minimum required contribution exceeds the minimum required contribution for the plan year. Section 1.430(f)-1(f)(3)(ii) specifies that the method for revoking this election is to provide written notification of the revocation to the plan's enrolled actuary and the plan administrator by the deadline set forth in § 1.430(f)-1(f)(3)(iii). Under § 1.430(f)-1(f)(3)(iii), this revocation must generally be made by the end of the plan year for which the election was made (if the valuation date is the first day of the plan year) or the due date for contributions under § 430(j)(1) (if the valuation date is not the first day of the plan year).

Section 1.430(j)-1(b)(3)(ii) provides that if a contribution is made during the current plan year but before the deadline for contributions for a prior plan year, and the plan has no unpaid minimum required contribution for any plan year at the time the contribution is made, then the contribution may be designated as a contribution for either that prior plan year or the current plan year. Similarly, if a contribution made during the current plan year but before the deadline for contributions for a prior plan year is more than enough to correct a plan's unpaid minimum required contributions for all plan years, the portion of that contribution that was not used to correct unpaid minimum required contributions may be designated as a contribution for either that prior plan year or the current plan year. Under § 1.430(j)-1(b)(3)(iii)(B), the designation that a contribution is for a plan year is established by the completion (and filing, if required) of the Schedule SB for the plan year for which the contribution is designated. In addition, that designation may not be changed after the actuarial report that reflects the contribution is completed (and filed, if required) except as provided in guidance published in the Internal Revenue Bulletin.

A. Election to add to a prefunding balance

If a plan sponsor is applying the ARP for a plan year beginning in 2019, 2020, or 2021, the plan sponsor may make an election to increase the prefunding balance by an amount no greater than the amount of the increase in excess contributions for the plan year resulting from the amendments made by the ARP.

Generally, any election to add to the prefunding balance for a plan year must be made by 8½ months after the end of plan year. Pursuant to the authority under § 1.430(f)-1(f)(2)(i) to provide exceptions to this rule, an election made under this section V.A will be deemed timely if it is made by December 31, 2021. However, this extension of time does not affect the application of the rules under § 1.430(f)-1(d)(1)(ii) regarding the maximum amount of available balances or the timing requirements under § 1.430(f)-1(f) for an election to use a funding standard carryover balance or prefunding balance to offset the minimum required contribution.

B. Revocation of an election to use a prefunding balance or funding standard carryover balance

An election to use a prefunding balance or funding standard carryover balance to offset the minimum required contribution for a plan year that begins in 2019 or 2020 may be revoked to the extent of the reduction in the minimum required contribution that results from applying any of the amendments made by the ARP. This revocation is made by providing written notification of the revocation to the plan's enrolled actuary and the plan administrator and is deemed timely if it is made by December 31, 2021.

C. Revocation of an election to reduce a prefunding balance or funding standard carryover balance

An election to reduce a plan's prefunding balance or funding standard carryover balance under § 1.430(f)-1(e) as of the first day of a plan year beginning in 2020 or 2021 may be revoked in full or in part if either of the amendments made by the ARP apply for purposes of determining

the minimum required contribution for that plan year. This revocation is made by providing written notification of the revocation to the plan's enrolled actuary and the plan administrator and is timely if made by December 31, 2021.

D. Redesignation of plan year for contributions

Pursuant to the authority under § 1.430(j)-1(b)(3)(iii)(B) to permit a contribution that has been designated for a plan year to be redesignated for a different plan year, a plan sponsor may choose to redesignate all or a portion of a contribution that was originally designated as applying for the plan year beginning in 2019 or 2020 as a contribution for the immediately succeeding plan year. Any redesignation made under this section V.D applies only if the contribution could have been designated as made for that immediately succeeding plan year. For example, redesignation is not permitted if the redesignation would conflict with the requirement in § 1.430(j)-1(b)(3)(i) (related to allocations to satisfy unpaid minimum required contributions). Similarly, if a contribution that was designated for one plan year is being redesignated for the next plan year, the contribution must have been made within that next plan year (or after the end of that next plan year and no later than the deadline for contributions for that next plan year). A redesignation of a contribution for a plan year to the next plan year is available only if the original designation was made on a Schedule SB filed on or before October 15, 2021. Plan sponsors should note that the redesignation of a contribution to the next plan year will have an impact on the asset value for various purposes, including the determination of variable-rate premiums payable to the Pension Benefit Guaranty Corporation.

For example, assume that for a calendar year plan, a plan sponsor elects to apply the 15-year amortization schedule under § 430(c)(8) of the Code for shortfall amortization bases for the 2019 plan year, which lowers the plan's minimum required contribution for 2019 and increases the amount of excess contributions for that plan year. Assume that, for the 2020 plan year, the plan's prior plan year funding ratio is below the threshold for use of the prefunding balance or funding standard carryover balance for the 2020 plan year under § 430(f)(3)(C). In that case, although the plan sponsor could elect to add the additional excess contributions to the prefunding balance, the plan sponsor would then not be able to use that addition to the prefunding balance toward the 2020 minimum required contribution. Instead, the plan sponsor may elect to redesignate the excess contributions made in 2020 that were originally designated for the 2019 plan year as contributions for the 2020 plan year.

VI. Changes in AFTAP under § 436 of the Code as a Result of the ARP

The regulations under § 436 of the Code 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 a material change. 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*). 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 event. Section 1.436-1(h)(4)(iii)(C)(9) permits 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.

A. Prospective application of change in benefit restrictions reflecting amendments made by the ARP

If the plan's AFTAP has been certified for a plan year, then any subsequent change to that AFTAP (including a change that results from the changes in the minimum funding requirements made by the ARP and any related elections made as described in this notice) is subject to the rules regarding a change in AFTAP set forth in § 1.436-1(h)(4)(iii) and (iv).

A change in a plan's AFTAP is treated as a deemed immaterial change if (1) the plan's AFTAP has been certified for a plan year beginning in 2020 or 2021 based on the minimum funding requirements not reflecting the amendments made by the ARP, (2) subsequently, but no later than December 31, 2021, a revised certification of the AFTAP for that plan year is made taking into account those changes to the minimum funding requirements and any related elections made as described in this notice, and (3) the plan sponsor does not elect to apply the change in AFTAP retroactively as described in section VI.B of this notice. The event that gives rise to this deemed immaterial change is the revised AFTAP certification. Accordingly, the plan must be operated in accordance with the revised AFTAP certification on a prospective basis.

B. Retroactive application of change in benefit restrictions reflecting changes under the ARP

A change in a plan's AFTAP is also treated as a deemed immaterial change if (1) the plan's AFTAP has been certified for a plan year beginning in 2020 or 2021 based on the minimum funding requirements not reflecting the amendments made by the ARP, (2) subsequently, but no later than December 31, 2021, a revised certification of the AFTAP for that plan year is made taking into account those changes to the minimum funding requirements and any related elections made as

described in this notice, and (3) the plan sponsor elects to apply the AFTAP determined taking into account those amendments and elections retroactively. In that case, the operations of the plan must be conformed to that updated AFTAP for the period beginning when the AFTAP for the plan year was originally certified. For example, if the amendments made by the ARP were applied for purposes of determining the AFTAP for the plan year beginning in 2020, then operations of the plan for the 2021 plan year must be conformed to apply the rules of § 1.436-1(g) and (h) using the redetermined 2020 AFTAP as the AFTAP for the preceding plan year prior to the date of certification of the AFTAP for the 2021 plan year.

C. Rules with respect to elections under § 3608(b) of the CARES Act

If an election under § 3608(b) of the CARES Act applies for a plan year beginning in 2020, then any application of the changes in the minimum funding rules made by the ARP for that plan year will not affect the application of § 436 of the Code for that plan year. However, if the changes made by the ARP apply for purposes of determining the AFTAP for the plan year beginning in 2020, then pursuant to Q&A-18 of Notice 2020-61, those changes will affect the presumed AFTAP that applies for the plan year that follows the last plan year for which an election under § 3608(b) of the CARES Act was made. In that case, the plan sponsor may apply the rules of either paragraph A or B of this section VI with respect to the redetermined AFTAP for the plan year beginning in 2020 that applies for a portion of the next plan year.

If an election under § 3608(b) of the CARES Act applies for a plan year beginning in 2020 and the plan sponsor does not elect to apply the pre-ARP segment rates for that plan year (including for purposes of § 436 of the Code), then the plan sponsor may no longer wish to retain the election under § 3608(b) of the CARES Act for that plan year. Pursuant to Q&A-16 of Notice 2020-61, the election under § 3608(b) may be revoked. Notwithstanding Q&A-16 of Notice 2020-61, the new AFTAP arising from the revocation of the election under § 3608(b) of the CARES Act and the application of the amendments made by the ARP will be eligible to be treated as a deemed immaterial change pursuant to paragraph A or B of this section VI.

D. Recharacterization of contributions made to avoid benefit limitations pursuant to § 436 of the Code

Pursuant to this notice, a contribution that was designated pursuant to §1.436(f)-1(f)(2)(ii)(B) as a contribution made to terminate or avoid the application of a § 436 limitation for a plan year beginning in 2020 or 2021 may be redesignated as an employer contribution that is taken into account under § 430 to the extent that contribution is not needed to terminate or avoid the application of that benefit restriction as a result of the application of the amendments made by the ARP.

E. Corrections

Once a plan's AFTAP for a plan year has been certified taking into account the amendments made by the ARP, the plan administrator must take any corrective actions necessary to conform plan operations to this certified AFTAP, if applying this certified AFTAP would have changed the application of the § 436 restrictions for the period (1) beginning with the date of the immaterial event described in section VI.A of this notice (if the AFTAP certification applying the ARP segment rates applies prospectively under section VI.A of this notice) or (2) beginning with the date the AFTAP for the year was first certified, as applicable (if the AFTAP certification applying the ARP segment rates applies retroactively under section VI.B of this notice). If the AFTAP for a plan year beginning in 2020 has been changed, the period for potential correction also includes the period during the 2021 plan year before the AFTAP for that plan year beginning in 2021 was originally certified.

If the corrective actions described in this section VI.E are taken to reflect the application of the new certified AFTAP, then the plan's operations are treated as having been consistent with the provisions of the plan document relative to the requirements of § 436. For this purpose, the provisions of the Employee Plans Compliance Resolution System (EPCRS) apply, as set forth in Rev. Proc. 2021-30, 2021-31 I.R.B. 172, except that a plan is eligible for self-correction under sections 7, 8, and 9 of Rev. Proc. 2021-30 without regard to the requirements of sections 4.03 (requiring a favorable IRS determination letter) and 4.04 (requiring certain established practices and procedures) of that revenue procedure.

Consistent with § 1.436-1(a)(4)(iii), if unpredictable contingent event benefits due to an event occurring during a plan year beginning in 2020 are not permitted to be paid because of restrictions under § 436(b), but are later permitted to be paid as a result of a new certification of the AFTAP for the plan year reflecting the amendments made by the ARP, then those unpredictable contingent event benefits must become payable, retroactive to the period those benefits would have been payable under the terms of the plan (other than plan terms implementing the requirements of § 436(b)).

Consistent with § 1.436-1(a)(4)(iv), if a plan amendment with an effective date during a plan year beginning in 2020 does not take effect because of the limitations of § 436(c), but is later permitted to take effect as a result of a new certification of the AFTAP for the plan year reflecting the amendments made by the ARP, then the plan amendment must automatically take effect as of the first day of that plan year (or, if later, the original effective date of the amendment).

For any prohibited payment that was not permitted to be paid during a plan year beginning in 2020 because of the restrictions under § 436(d), but is permitted to be paid as a result of a new certification of the AFTAP reflecting the amendments made by the ARP, the plan has taken adequate corrective action if it makes the prohibited payment available to participants or beneficiaries who would have been eligible for the prohibited payment (including a prohibited payment that is available on a restricted basis under § 436(d)(3)) on or after the dates described in the first paragraph of this section VI.E.

For any accruals that were not permitted during a plan year beginning in 2020 because of restrictions under § 436(c), but are permitted as a result of a new certification of the AFTAP reflecting the amend-

ments made by the ARP, the plan has taken adequate corrective action if it restores benefits that accrue during the period that begins on the date described in the first paragraph of this section VI.E.

In the case of a participant or beneficiary who, as a result of any of the changes described in this section VI is entitled to increased benefits, to benefits payable at a special early retirement date, or to benefits payable in a different form of payment (and who elects such different form of payment, with spousal consent, if applicable), the corrective action is to provide the benefit payments in the increased amount or other form of payment commencing with a new prospective annuity starting date. However, if payments have already commenced, the corrective action is to provide the participant or beneficiary with (1) future benefit payments that are paid in the same manner and amount as if the participant or beneficiary had begun receiving the corrected payment at the time payments originally commenced, and (2) a make-up payment for past underpayments. The make-up payment for past underpayments (1) is equal to the aggregate difference between the past payments actually received and the amounts that would have been received by the participant or beneficiary had the benefit commenced in the correct form of payment at the original commencement date, plus interest to the date of the correction (in accordance with EPCRS), and (2) may be paid as either (i) a single-sum payment, or (ii) an actuarially equivalent increase in the amount of future benefit payments.

VII. Limitations on Actions Described in this Notice

Any action described in this notice is not permitted to the extent it would result in the imposition of benefit restrictions under § 436 of the Code that would otherwise not be imposed. For example, for a plan year beginning in 2020, any reduction election that was made to avoid or remove benefit restrictions under § 436 during the period before the date of the original AFTAP certification for that plan year may not be revoked. This is because the AFTAP based on the elections under the ARP will not apply to that portion of the plan year and therefore the revocation of any reduction election that was made to avoid or remove benefit restrictions under § 436 during that period would result in the imposition of new restrictions. Similarly, for a plan year beginning in 2021, no change is permitted with respect to § 436 contributions that were made in connection with a presumed AFTAP before the AFTAP was certified for the plan year.

As another example, assume that a plan has excess contributions for the 2020 plan year due to a reduction of the minimum required contribution for the 2019 plan year. If adding these excess contributions to the prefunding balance as described in section V.A of this notice would cause the AFTAP to fall below 80 percent, then the contributions may not be added to the prefunding balance to the extent that addition results in imposition of benefit restrictions under § 436.

VIII. Reporting Requirements for Changes for the 2019 Plan Year

A. Revised minimum required contributions, excess contributions, unpaid minimum required contributions, and redesignated contributions

The amendments made by the ARP may affect the plan's minimum required contribution for the plan year beginning in 2019 if the election to use the 15-year amortization is made for that plan year. If that election is made for the 2019 plan year, and it changes the minimum required contribution already reported on a 2019 Schedule SB, then the 2020 Schedule SB should reflect the revised minimum required contribution for the 2019 plan year. For example:

> The reporting of excess contributions for the 2019 plan year on line 11a and 11b of the Schedule SB for the 2020 plan year should reflect the revised minimum required contribution, even if those excess contributions are different than the amounts reported on Lines 38a and 38b of the Schedule SB filed for the 2019 plan year.
>
> The reporting of the unpaid minimum required contribution for all prior plan years on line 28 of the Schedule SB for the 2020 plan year should reflect the revised unpaid minimum required contribution for the 2019 plan year, even if the unpaid minimum required contribution for all prior plan years is different than the amount reported on Line 40 of the Schedule SB for that plan year.

Alternatively, an amended Form 5500, Form 5500-SF, or Form 5500-EZ, for the 2019 plan year, with a revised Schedule SB, may be filed.

If any contributions originally designated as applying for the 2019 or 2020 plan years are redesignated as for a different year, an amended Form 5500, Form 5500-SF or Form 5500-EZ with an amended Schedule SB must be filed for both the plan year for which the contributions are redesignated, and the year for which the contributions were originally designated.

B. Changes in elections to use a prefunding balance or funding standard carryover balance

If, as described in section V.B of this notice, a plan sponsor makes an election to revoke some or all of an earlier election to use the prefunding balance or funding standard carryover balance to offset a minimum required contribution for the 2019 plan year, then the reporting of the amount of the prefunding balance or funding standard carryover balance used for the 2019 plan year entered on line 8 of the Schedule SB for the 2020 plan year should take into account the revocation, even if the amount of the prefunding balance or funding standard carryover balance used to offset the minimum required contribution for the 2019 plan year is different than the amount entered on line 35 of the Schedule SB for that plan year.

C. Reporting changes in excise tax on unpaid minimum required contributions

If a plan sponsor reported an unpaid minimum required contribution on a Schedule SB, the plan sponsor filed a Form 5330 to report and pay the excise tax under § 4971 of the Code, and the unpaid minimum required contribution is subsequently reduced or eliminated as described in section VIII.A of this notice, then the plan sponsor may file an amended Form 5330 to obtain a refund of the overpayment of the excise tax.

If a plan sponsor expects that an unpaid minimum required contribution shown on the Schedule SB for the 2019 plan year will be eliminated by the amendments made by the ARP, Form 5330 should not be filed. However, when a Schedule SB showing an unpaid minimum required contribution is filed, and the plan sponsor does not timely file a Form 5330 to pay the associated excise tax under § 4971 of the Code, the Internal Revenue Service (IRS) normally will send a notice that informs the plan sponsor that the Form 5330 and the excise tax are due. In this case, the plan sponsor should respond to the notice, advising the IRS that the reported unpaid minimum required contribution will be eliminated by the amendments made by the ARP and providing supporting evidence thereof.

If the plan sponsor expects to have an unpaid minimum required contribution for the plan year once the amendments made by the ARP are reflected but did not file a Form 5330 when due, the plan sponsor should file a Form 5330 reflecting the corrected unpaid minimum required contribution and pay the excise tax under § 4971 of the Code as soon as possible in order to minimize interest and penalty charges.

IX. Reporting Requirements for Changes for the 2020 Plan Year

The amendments made by the ARP for the 2020 plan year may affect the plan's minimum required contribution for the 2020 plan year, and any elections made under the ARP that affect the minimum required contribution for the 2020 plan year should be reflected in the Schedule SB for the 2020 plan year.

The IRS expects that most Schedules SB for the 2020 plan year will not have been filed before the issuance of this notice, but some Schedules SB may have been filed. If a Schedule SB has been filed for the 2020 plan year that is inconsistent with the guidance in this notice (or if the plan sponsor makes an election pursuant to this notice that affects information reported on the Schedule SB for the 2020 plan year and that was not reflected on the filed Schedule SB), an amended Form 5500, Form 5500-SF, or Form 5500-EZ, for the 2020 plan year, with a revised Schedule SB, may be filed. If the Schedule SB that has been filed for the 2020 plan year has become inaccurate on account of the amendments made by the ARP, the guidance provided in this notice, or any elections made pursuant to this notice, then the rules of section VIII of this notice should be applied for purposes of completing the Schedule SB for the 2021 plan year, but substituting 2020 for 2019 and 2021 for 2020.

X. 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 section IV of this notice. The collections of information are required to implement the application of §§ 9705 and 9706 of the ARP. The collections of information are mandatory for those plan sponsors making an election under §§ 9705 and 9706 of the ARP.

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 of the Code.

XI. 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 number).

Part IV

U.S.-U.K. Competent Authority Arrangement

Announcement 2021-13

The following is a copy of the Competent Authority Arrangement entered into by the competent authorities of the United States and the United Kingdom under paragraph 3 of Article 26 (Mutual Agreement Procedure) in which it is agreed that references to the term "North American Free Trade Agreement" in paragraph 7 of Article 23 (Limitation on Benefits) of the Convention between the United States of America and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains signed at London on July 24, 2001, as amended by the Protocol signed on July 19, 2002, shall be understood as references to the term "United States-Mexico-Canada Agreement" ("USMCA") upon entry into force of the USMCA.

The text of the Competent Authority Arrangement is as follows:

COMPETENT AUTHORITY ARRANGEMENT

The competent authorities of the United Kingdom and the United States enter into this arrangement (the "Arrangement") regarding the interpretation of the term "North American Free Trade Agreement" referred to in subparagraph d) of paragraph 7 of Article 23 (Limitation on Benefits) of the Convention between the United States of America and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains signed at London on July 24, 2001, as amended by the Protocol signed on July 19, 2002 (the "Treaty").

Pursuant to paragraph 1 of the Protocol Replacing the North American Free Trade Agreement with the Agreement between the United States of America, the United Mexican States, and Canada, done at Buenos Aires on November 30, 2018 (the "Agreement"), as amended by the Protocol of Amendment to that Agreement, done at Mexico City on December 10, 2019 (the "Protocol of Amendment" and collectively with the Agreement, the "USMCA"), the USMCA will supersede the North American Free Trade Agreement (the "NAFTA"). The USMCA modernizes NAFTA, is entered into by the same parties, and governs the standards for trade and investment among the parties going forward.

Pursuant to paragraph 3 of Article 26 (Mutual Agreement Procedure) of the Treaty, the competent authorities of the United Kingdom and the United States agree that the references to the NAFTA in subparagraph d) of paragraph 7 of Article 23 of the Treaty shall be understood as references to the USMCA upon entry into force of the USMCA.

Agreed to by the undersigned competent authorities:

/s/ Nikole C. Flax
U.S. Competent Authority
Nikole C. Flax
Internal Revenue Service

Date: July 26, 2021

/s/ Daniel Berry
U.K. Competent Authority
Daniel Berry
HM Revenue and Customs

Date: July 21, 2021

U.S.-U.K. Competent Authority Arrangement

Announcement 2021-14

The following is a copy of the Competent Authority Arrangement entered into by the competent authorities of the United States and the United Kingdom under paragraph 3 of Article 26 (Mutual Agreement Procedure) regarding the eligibility of U.K. residents to qualify as equivalent beneficiaries for purposes of applying the derivative benefits test in paragraph 3 of Article 23 (Limitation on Benefits) of the Convention Between the United States of America and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains signed at London on July 24, 2001, as amended by the Protocol signed on July 19, 2002.

The text of the Competent Authority Arrangement is as follows:

COMPETENT AUTHORITY ARRANGEMENT

The competent authorities of the United States and the United Kingdom enter into this arrangement (the "Arrangement") under the Convention between the United States of America and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital Gains signed at London on July 24, 2001, as amended by the Protocol signed on July 19, 2002 (the "Treaty"). The Arrangement is entered into under paragraph 3 of Article 26 (Mutual Agreement Procedure) of the Treaty.

It has come to the attention of the competent authorities that the withdrawal of the United Kingdom from the European Union has created uncertainty as to whether a person resident in the United Kingdom may continue to be considered a "resident of a Member State of the European Community" for the purposes of applying the so-called "derivative benefits test" in paragraph 3 of Article 23 (Limitation on benefits) of the Treaty, including the term "equivalent beneficiary," as defined in subparagraph (d) of paragraph 7 of Article 23.

Paragraph 7(d) of Article 23 states in relevant part that "an equivalent beneficiary is a resident of a Member State of the European Community . . ." provided that such resident satisfies certain tests in Article 23.

The competent authorities agree that, for the purposes of applying paragraph 7(d) of Article 23, a "resident of a Member State of the European Community" continues to include a resident of the United Kingdom. This interpretation reflects the shared understanding of the competent authorities that residents of either Contracting State should be eligible to qualify as equivalent beneficiaries for purposes of applying the derivative benefits test in paragraph 3 of Article 23.

Agreed to by the undersigned competent authorities:

/s/ Nikole C. Flax
U.S. Competent Authority
Nikole C. Flax
Internal Revenue Service

Date: July 26, 2021

/s/ Daniel Berry
U.K. Competent Authority
Daniel Berry
HM Revenue and Customs

Date: July 21, 2021

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in laws or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in a new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case, the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contributions Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statement of Procedural Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

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[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 2021–27 through 2021–52 is in Internal Revenue Bulletin 2021–52, dated December 27, 2021.

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The Introduction at the beginning of this issue describes the purpose and content of this publication. The weekly Internal Revenue Bulletins are available at *www.irs.gov/irb/*.

We Welcome Comments About the Internal Revenue Bulletin

If you have comments concerning the format or production of the Internal Revenue Bulletin or suggestions for improving it, we would be pleased to hear from you. You can email us your suggestions or comments through the IRS Internet Home Page *www.irs.gov*) or write to the Internal Revenue Service, Publishing Division, IRB Publishing Program Desk, 1111 Constitution Ave. NW, IR-6230 Washington, DC 20224.