



For your information

Volume 35 | Issue 76 | September 19, 2012

MAP-21 Ready to Roll

In Notice 2012-61, the IRS provides useful guidance for retirement plan sponsors and actuaries about their options for the transition to the valuation and plan administration changes in MAP-21. Informed by this guidance, decisions can be made about assigning contributions to 2011 or 2012 plan years, using funding balances to meet 2012 funding requirements, when and how to implement funding-based benefit restrictions, and for sponsors of cash balance plans that use segment rates as a reference point for interest credits, what rate to credit now while awaiting final regulations on permitted market-related rates. Following the IRS release, the PBGC issued a technical release to explain that both its waiver of the ERISA Section 4010 filing requirement for aggregated plans with unfunded liabilities of \$15 million or less, and also the funding information that has to be reported when the waiver is not available, would be evaluated using the same liabilities and assets as for funding – determined with the stabilized MAP-21 rates.

Background

Pension funding relief in the form of increased interest rates – to determine minimum funding requirements and whether plans can pay certain types of benefit forms, continue to accrue new benefits or increase benefits with plan amendments – was provided in the Moving Ahead for Progress in the 21st Century Act (MAP-21), signed by President Obama on July 6, 2012. Our July 6, 2012 [For Your Information](#) provides an overview of the changes.

As with any new piece of legislation, particularly those with retroactive effect, questions quickly arose about the transition and ancillary effects. In mid-August, the IRS released the specific “stabilized” rates contemplated by the legislation for 2012 valuations. See our August 17, 2012 [For Your Information](#). With that guidance in hand, the key funding and administration questions remaining for plan actuaries and sponsors included:

- Could the relaxation of benefit restrictions due to an improved Adjusted Funding Target Attainment Percentage (AFTAP) certification be implemented prospectively during the 2012 plan year?
- Would cash balance plans that reference the funding segment rates to define interest rate credits be required to credit higher stabilized rates?

- Would valuation rules change for plans offering lump sums?
- Could pre-MAP-21 funding choices for using credits and contributions be changed based on the retroactive effective date of MAP-21?
- How would choices be implemented – through plan amendments, written elections, or government filings?

Notice 2012-61 Fills the Void

In [Notice 2012-61](#), the IRS addressed these questions and more.

Benefit restriction options for 2012. Plan sponsors have the option of using the MAP-21 stabilized rates for 2012 AFTAP certifications (if also used for 2012 minimum funding calculations) or holding off and first using the rates for 2013 certifications. Factors to consider in deciding when to first use the rates for AFTAP certifications include:

- ***The plan's AFTAP based on pre-MAP-21 rates:*** Plan sponsors of plans with sufficiently high pre-MAP-21 AFTAPs gain nothing from implementing MAP-21 in 2012 for benefit restriction purposes. For example, a pre-MAP-21 AFTAP of 90% or more (100% if the bankruptcy rule is a concern) allows the plan to continue accruals and pay lump sums and other prohibited payment forms. It provides a reasonably healthy margin for assessing unpredictable contingent event benefits (UCEBs) and plan amendments. Conversely, a pre-MAP-21 AFTAP in the 80% to 89% range offers similar results for 2012, but may produce problems come April 1, 2013 (for calendar year plans) when the presumption reducing the AFTAP by 10% applies to the plan. Plan sponsors that made Section 436 contributions to allow a plan amendment to go into effect may benefit from a MAP-21 AFTAP recertification so that they can redirect those contributions to their Section 430 obligation without disrupting plan operations at all.
- ***The types of benefit options available under the plan:*** Plans that do not offer lump sums that exceed the cashout limit (\$5,000) or other prohibited payment forms such as period certain annuities or Social Security Level Income options, and that do not anticipate amending the plan or that an event will trigger UCEBs, similarly have little motivation to implement the MAP-21 rates for AFTAP certifications in 2012. Conversely, a plan with a pre-MAP-21 AFTAP below 80% that does offer any of the distribution options noted above, for example, currently restricts the payment of those options and may be able to remove those restrictions by adopting MAP-21 rates for the 2012 AFTAP certification.
- ***The plan sponsor's and plan administrator's ability to quickly implement benefit distribution changes:*** If avoiding distribution modifications and re-communication of options is a high priority and it is not possible to implement changes for October 1 distributions, choosing the 2013 AFTAP applicability date might be the preferred approach. However, with such a delay, the presumptions for 2013 prior to the date of the MAP-21 AFTAP certification for 2013 will be based on the 2012 pre-MAP-21 AFTAP.

If the plan sponsor opts for a 2012 MAP-21 AFTAP to allow the plan to remove 2012 distribution restrictions, Notice 2012-61 provides guidance on the options available for implementing the change. Plan sponsors have a choice of removing restrictions back to the date the pre-MAP-21 AFTAP was certified or from the earlier of October 1, 2012 or the date of the new AFTAP certification. Nothing in MAP-21 changes the presumption rules that applied in 2012 based on the 2011 AFTAP prior to the date of an updated AFTAP. And nothing changes the requirement to obtain a certification prior to the first day of the tenth month (October 1 for calendar year plans) to avoid the presumption that the AFTAP is less than 60% for the rest of the year.

INSIGHT

It is important to ensure that instructions are provided to the plan's actuary so that a pre-, or post-, MAP-21 AFTAP certification is obtained on a timely basis.

If the plan sponsor chooses the retroactive option, the AFTAP based on MAP-21 rates is applied retroactively to the date of the pre-MAP-21 AFTAP. Participants with annuity starting dates between the date of the original certification and the MAP-21 certification must be offered a corrective payment based on the payment form available at the original annuity starting date, minus the actual payments made plus suitable interest (based on principles from the Employee Plans Compliance Resolution System). Limits are modified for participants with annuity starting dates on or after the MAP-21 AFTAP certification to reflect the plan's revised status.

If the plan sponsor chooses the prospective option, restrictions imposed earlier in the year (if prior to October 1) remain in place. For participants with annuity starting dates between October 1 and the MAP-21 AFTAP certification, the plan must offer a corrective payment as described above. As above, limits are modified for participants with annuity starting dates on or after the MAP-21 AFTAP certification to reflect the plan's revised status.

There is a third option with a 2012 MAP-21 certification. If the plan specifies that participants may revisit their distribution options when the AFTAP improves (or is amended to so provide), the operating rules of the plan for handling that change would apply. Plans using this option would typically call for second elections for all participants back to prior periods rather than just for those who had been limited by the current year AFTAP. IRS regulations addressing this type of plan provision note that a participant who makes a new election under such a plan provision is treated as having a new annuity starting date for purposes of applying the minimum present value rules (Code Section 417) and the maximum benefit limitations (Code Section 415).

As noted in our August 27, 2012 [For Your Information](#) on *Evaluating Retiree Cash-out Windows*, there are many technical issues to be considered in determining and processing revised payments. Many of them will apply to all three options. These issues should be considered carefully with plan counsel.

Plan administrators will also need to consider the effect of a revised AFTAP on participant notice requirements. Although the recent guidance from the IRS on the ERISA Section 101(j) requirements is not effective until November 1, plan administrators are permitted to rely on the IRS guidance in

advance of that date. If restrictions were triggered only recently, a MAP-21 AFTAP certification may allow the plan administrator to forestall delivering some notices that would have otherwise been required. If the plan provides for second elections, that guidance also calls for ERISA Section 101(j) notices within 30 days to announce that the option has been triggered. See our July 11, 2011 [For Your Information](#) for details.

INSIGHT

For plans using the model Section 436 plan language from the IRS in [Notice 2011-96](#) to implement second elections, such elections must be made “within 90 days after the section 436 measurement date on which the limit ceases to apply or, if later, 30 days after receiving notice of the right to make such election.” Presumably, this notice of the right to make the election refers to the QJSA notice rather than to the new ERISA Section 101(j) notice because the latter did not exist when Notice 2011-96 was issued.

The guidance in Notice 2012-61 dealing with benefit distribution restrictions does not adjust the October 1, 2012 dates mentioned for various purposes simply because the plan is not on a calendar year basis. And the guidance uses a September 30, 2012 cutoff for pre-MAP-21 AFTAPs for certain purposes and a December 31, 2012 deadline for MAP-21 AFTAP certifications when using the prospective rule. Presumably, the IRS expects that plan sponsors and their actuaries will have no reason to develop pre-MAP-21 certifications outside this framework. These deadlines are of little concern, however, if the pre-MAP-21 AFTAP would not disrupt normal plan operations with the only benefit of a MAP-21 AFTAP being to increase the presumed AFTAP for the fourth month of the 2013 plan year (for example, a 2012 pre-MAP-21 AFTAP of 85% that is improved to 95% with MAP-21).

Cash balance market rate of return. Since the enactment of the Pension Protection Act of 2006 (PPA), cash balance plans (a.k.a. statutory hybrid plans) have had to limit participant interest credits to a rate not in excess of a “market rate of return”. Although PPA regulations for cash balance plans have been proposed and some portions finalized, the market-rate-of-return guidance has not been finalized. Currently, the guidance includes the Section 430 segment rates as acceptable rates for meeting the market-rate-of-return requirement. Because MAP-21 modifies those rates, some questioned whether plans should use segment rates with or without the MAP-21 adjustments. Use of the higher MAP-21 rates would create a real cost increase for these plans, contrary to the objective of MAP-21 to hold the line on current funding obligations.

Notice 2012-61 states that plan administrators could reasonably interpret a plan that references the segment rates as either the MAP-21 rates or the pre-MAP-21 rates. Their interpretation can be reflected in plan amendments that are adopted along with other changes to meet final regulatory requirements at a future date. No notice of a reduction in future benefit accruals under ERISA Section 204(h) is required.

The IRS and Department of the Treasury have not yet decided whether MAP-21 segment rates will be acceptable under the final market-rate-of-return rules. If their final regulations do not permit plans to use the MAP-21 rates, transition rules in the regulations will require a change in the rates in accordance with applicable transition rules that will apply in general to plans that have a rate in excess of the permitted rates.

Notice 2012-61 states that a plan interpreted to provide the higher MAP-21 segment rates can provide that rate beginning as of the first day of the 2012 plan year without regard to the choice made about using the rates for funding purposes. The plan can also be interpreted to adjust the rate to the MAP-21 basis coincident with the 2013 plan year if the plan sponsor delays using MAP-21 for Section 430 funding until that year. Once the plan is interpreted to provide the higher rate, a change in interpretation is treated as an amendment that is protected by the anticutback rule except to the extent future guidance provides otherwise.

Interestingly, the Notice states that the final cash balance regulations will not be effective for plan years beginning before January 1, 2014 – a year later than previously communicated in IRS [Notice 2011-85](#).

Valuation rules. Shortly after MAP-21 was enacted, questions arose about whether any of the current regulatory requirements specified for funding would be changed. Concerns centered on whether there would be a change to the annuity substitution rule that instructs plan actuaries to value benefits based on the promised annuity rather than on the corresponding lump sum option to the extent the lump sum is defined using the applicable interest rate in Section 417(e). The applicable interest rates and funding segment rates are drawn from the same data, but the funding rates reflect a 24-month average and the applicable interest rates do not. With the introduction of 25-year averages in MAP-21, the difference in rates is larger. But if not permitted to use the substitution rule, much of the expected cost reduction under MAP-21 would not be available to sponsors of plans that offer lump sum distributions calculated using the interest and mortality rates in Section 417(e).

In Notice 2012-61, the IRS confirms that plan actuaries should continue to use the annuity substitution rule when determining the minimum required contribution under Section 430. Notice 2012-61 also confirms that the MAP-21 stabilized third segment rate should be used for current liability calculations for plans that continue to be subject to a delayed effective date under the PPA funding rules.

Changing funding elections. Under the PPA funding and benefit restriction rules, plan sponsors are permitted to grow funding balances that can serve as a cushion for covering future costs depending on cash flow needs. The balances grow when the plan sponsor contributes more than the minimum required. The balances shrink when tapped to cover contribution requirements or to improve the plan's funding ratio when it dips below stated thresholds. Some of the balance adjustments are automatic; some are made through voluntary elections. With lowered liabilities determined by the MAP-21 rates for the current year, some wondered if it is possible to modify adjustments and elections that had been made earlier in the year based on pre-MAP-21 rates. Notice 2012-61 says some adjustments are possible – with the following conditions:

- **Contribution covered by funding balances.** Plan sponsors are not permitted to reverse an election to use balances to cover a minimum required contribution for 2012 even if required quarterly contributions are reduced because of MAP-21. However, current regulations allow a plan sponsor to revoke an election to use balances to cover contributions to the extent the amount elected exceeds the minimum required contribution for the entire plan year.
- **Election to reduce balances.** Plan sponsors can choose to reduce balances so that the plan's funding ratio improves. This may be desirable to avoid a benefit restriction, to avoid at-risk funding requirements, or to allow for the use of remaining balances to cover contribution obligations. Ordinarily these elections are irrevocable, but in Notice 2012-61, the IRS says this type of election made in the 2012 plan year on or before September 30, 2012 may be reversed if the MAP-21 rates apply for the plan year. However, any reversal is prohibited to the extent it would result in imposing additional benefit restrictions under Section 436 for the 2012 plan year or would result in an unpaid minimum required contribution for any plan year.
- **Redesignating contributions.** Ordinarily, plan sponsors cannot change the year for which a contribution is used once it is designated on the Schedule SB for that year. In Notice 2012-61, the IRS says that plan sponsors can redesignate contributions made on or before September 30, 2012 that were designated for 2011 as contributions for the 2012 plan year. However, any redesignation is prohibited to the extent it would result in additional benefit restrictions under Section 436 for the 2012 plan year or would result in an unpaid minimum required contribution for any plan year.
- **Reversing voluntary and deemed elections to avoid benefit restrictions.** Ordinarily, plan sponsors cannot reverse funding balance reductions that were made to avoid or remove benefit restrictions. Notice 2012-61 permits reversals for 2012 elections made on or before September 30, 2012 if they were made in conjunction with a pre-MAP-21 AFTAP certification and the plan sponsor uses the option to reverse previously imposed benefit restrictions retroactive to the date of the original AFTAP certification. This option is not available if the plan sponsor uses the prospective AFTAP method and also is not available to undo any reduction triggered by one of the presumptions for 2012. In addition, any reversal is prohibited to the extent it would result in additional benefit restrictions under Section 436 for the 2012 plan year or would result in an unpaid minimum required contribution for any plan year.
- **Recharacterizing Section 436 contributions.** As with elections to avoid benefit restrictions as described above, Notice 2012-61 states that any Section 436 contribution made before MAP-21 to avoid benefit restrictions is applied to meet the minimum required contribution to the extent it is no longer needed to remove the restriction. This option is not available to undo any reduction triggered by one of the presumptions for 2012.

Memorializing choices. Plan sponsors will need to provide written instructions to the plan's actuary and administrator about the various options described above. Notice 2012-61 defines default choices to address silence and explains suitable content for written directions. Each notice must include the name of the plan, employer identification number, and plan number. Further content and instructions include:

- **MAP-21 rates for funding and AFTAP certifications.** The default for plans currently using segment rates is to use the MAP-21 rates beginning with 2012 valuations. The plan sponsor may make a written election to defer the use of MAP-21 to the plan's 2013 valuation for both purposes or to defer the use of MAP-21 rates just for the AFTAP certification. The election is irrevocable, but can be made as late as the Form 5500 deadline for the 2012 plan year (or the date filed, if earlier). As a practical matter, the plan sponsor will want to communicate these decisions at the time 2012 valuation work is under way to avoid revisions and possible compliance problems at a later date. A MAP-21 AFTAP must be certified by December 31, 2012 when using the prospective rule for benefit restrictions, for example.
- **Revocation of election to use the full yield curve.** The MAP-21 interest rate adjustments only apply to plan valuations that use segment rates. Plan sponsors that previously elected (by July 6, 2012) to use the full yield curve for valuation purposes can switch to segment rates without obtaining specific approval from the Secretary of the Treasury. The applicable years for the switch will correspond to the elections above for funding and AFTAP certifications. The written election, which may not be changed once made, should specify the first year the yield curve election is revoked and the lookback month to be used with the segment rates (if applicable) and must be made no later than July 5, 2013.
- **Retroactive benefit restrictions.** As noted above, plan sponsors can choose to apply the MAP-21 AFTAP prospectively or retroactively to the date of the original 2012 pre-MAP-21 AFTAP certification. Prospective application is the default. Any written election to apply the improved AFTAP retroactively is irrevocable, must be made by the Form 5500 deadline for the 2012 plan year (or the date filed, if earlier), and should state the date as of which the retroactive election applies.
- **Balance and contribution changes.** Elections to reverse balance reductions made before October 1, 2012 must be made by the last day of the 2012 plan year. Elections to redesignate a pre-October 1, 2012 contribution as a 2012 rather than a 2011 contribution must be made by the Form 5500 deadline for the 2012 plan year (or the date filed, if earlier). The written notice must state the specific dollar amounts involved in the elections.

“High-25” Options Not Addressed

Treasury regulations dealing with the nondiscrimination rules for qualified defined benefit plans restrict the payment of accelerated forms of benefits such as lump sum distributions to the plan sponsor's 25 highest-paid highly compensated employees unless certain funding thresholds are met. The funding thresholds were developed on the basis of pre-PPA “current liability” under the Code Section 412 rules that applied at that time. Many plans use the third segment rate to calculate this value, taking their lead from the current liability substitution used for plans that are not yet subject to the PPA funding rules. Notice 2012-61 confirms that plans not yet subject to the PPA funding rules would use the MAP-21 stabilized third segment rate, but it does not offer any instruction for using that rate for the “high-25” rule.

ERISA Section 4010 Reporting Obligations

Sponsors of PBGC-covered plans must file annual information with the PBGC on all controlled group plans if any controlled group plan is less than 80% funded under the PPA rules (“80% gateway test”). The PBGC waives this filing requirement if the aggregate controlled group 4010 funding shortfall is less than \$15 million. The funding shortfall for this purpose ignores overfunded plans and ignores credit balance adjustments. The PBGC also exempts individual plans from reporting actuarial information if, among other things, its shortfall is less than \$15 million.

MAP-21 specifically provided that the stabilized MAP-21 rates would not apply for purposes of determining the liabilities to be reported to the PBGC. Some wondered whether this meant that the MAP-21 rates would not be used in determining whether or not a waiver based on the \$15 million threshold is satisfied.

In [Technical Update 12-2](#), released at the same time as Notice 2012-61, the PBGC states that the funding ratio for the 80% gateway test is determined using pre-MAP-21 rates. However, for the \$15 million thresholds, the funding shortfall is determined using the same values as those used for Code Section 430 minimum funding – which will include the MAP-21 rates if used by the plan for minimum funding. The PBGC also confirmed that the actuarial information to be reported in an ERISA 4010 filing because of a regulatory requirement is the information used to determine the minimum funding requirements. Accordingly, the values reported would reflect the MAP-21 rates if those rates are used for developing the plan’s minimum funding requirement.

In Closing

It is expected that most plan sponsors and their actuaries held discussions about the MAP-21 changes before the latest releases from the IRS and PBGC. With the details in this guidance, they can now quickly finalize funding decisions such as what contribution to attribute to 2011 so as to allow access to credit balances while avoiding ERISA 4010 filings and at-risk minimum funding requirements. AFTAP certifications can be finalized by the appropriate deadlines and benefit restriction procedures revised, if applicable.

Some questions remain, such as those on the “high-25” options. In addition, further guidance is needed on the data and method to be used for future year stabilized rates so that reasonably accurate cost projections for future years can be made. But, clearly, MAP-21 implementation is on the road for a good start.

Buck Can Help

- Determine whether it is beneficial to apply MAP-21 rates beginning with 2012 or 2013 valuations
- Finalize 2012 valuation and AFTAP work
- Determine steps for implementing changes in 2012 benefit restrictions retroactively or prospectively
- Prepare participant notices and election forms
- Prepare plan amendments for review by counsel