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IRS Issues HATFA Guidance for Pension Funding and Benefit Restrictions

The IRS has released Notice 2014-53 that contains information necessary for pension plan sponsors and their advisors to comply with provisions of the Highway and Transportation Funding Act of 2014. Because the pension provisions in the law have retroactive effect, the guidance provides procedures for how elections that were specifically included in the legislation may be made and how elections made under prior law may be reversed. For many plans, action will be needed by the end of 2014 to take advantage of the special options under the notice.

Background

On August 8, President Barack Obama signed into law the [Highway and Transportation Funding Act of 2014](#) (HATFA). (See our [August 1, 2014 For Your Information](#).) In addition to continued funding of the Highway Trust Fund, the legislation extends the Moving Ahead for Progress in the 21st Century Act (MAP-21) interest rate smoothing for pension plans. MAP-21 had achieved smoothing by averaging the interest rates that employers use to determine minimum funding requirements over a 25-year period. The 25-year average rates were constrained to a specified percentage corridor. Under MAP-21, the corridor started at 90 to 110% for 2012 and began annual 10% expansions starting in 2013. In addition to trimming the minimum contributions employers are obligated to pay, the MAP-21 rates reduced liabilities used to determine benefit distribution restrictions for underfunded plans.

HATFA resets the 90 to 110% for 2013, and then extends it after 2013 as follows:

Plan Year Beginning in	MAP-21 Corridor Range	HATFA Corridor Range			
2012	90 to 110%	90 to 110%			
2013	85 to 115%				
2014	80 to 120%				
2015	75 to 125%				
2016	70 to 130%				
2017		85 to 115%			
2018			80 to 120%		
2019				75 to 125%	
2020					70 to 130%
2021 and later					

Given the late date of enactment in 2014, many employers and industry groups suggested to IRS that prospective application be permitted, especially for applying the section 436 benefit restrictions. Questions had also been raised about what options are available for unwinding previous funding balance elections in light of the retroactive nature of the HATFA change and fast approaching deadlines for contribution deposits and 2013 Schedule SB filings.

IRS Responds with ...

In [Notice 2014-53](#) the IRS provides answers to many of the questions from plan sponsors and their advisors.

Generally, elections pursuant to the new guidance are made by providing a written notice to the plan's Enrolled Actuary (EA) and Plan Administrator (PA) specifying the sponsor's EIN and the Plan Name and Number. Descriptions of the elections and the associated requirements appear below and can apply provided that neither new benefit restrictions nor an unpaid minimum required contribution will result. Some of these deadlines are based on the applicable plan year and others are fixed calendar dates that are shown below and do not vary based on plan year.

Elections to delay using HATFA rates. A written election must specify whether the delay applies for benefit restrictions (AFTAP) only or also for funding purposes. Such election is irrevocable and must be made by no later than December 31, 2014, or the filing deadline for the 2013 Form 5500, if later.

Alternatively, the notice provides a deemed election to delay using HATFA rates for both funding and AFTAP purposes. This deemed election occurs when a Schedule SB is filed for 2013 that uses the MAP-21 rates, no later than December 31, 2014. Unlike the written election, the deemed election may be revoked by filing an amended 2013 Form 5500 with Schedule SB using HATFA rates no later than December 31, 2014. Provided that the sponsor is not in bankruptcy, the deemed election may also be revoked by (1) providing a written notice to the EA and PA of the revocation or indicating that the delay should only apply for benefit restrictions, (2) emailing a copy of the revocation to PBGC on or before December 31, 2014, and (3) filing an amended 2013 Form 5500 with an SB using HATFA rates no later than the filing date for the 2014 plan year.

Late election to add excess 2013 contributions to prefunding balance. If HATFA rates are used for funding purposes for 2013, the notice extends the deadline for making an election to add the value of contributions made in excess of the minimum required amount to the prefunding balance at the beginning of 2014, from the last date for making contributions for 2013 to the last day of the 2014 plan year (i.e., from September 15, 2014 to December 31, 2014 for calendar year plans).

Election to redesignate excess 2013 contributions to 2014. Usually the plan year to which a contribution relates is fixed when it first appears on a Schedule SB filed for the year. However, the notice permits an election made not later than the last day of the 2014 plan year to redesignate to 2014 a specified amount of contributions made after the end of the 2013 plan year but on or before September 30, 2014 and that first appear on a 2013 SB filed by December 31, 2014.

Election to apply excess 436 contributions for 2013 to 2013 minimum. If HATFA rates are used for 2013, an election may be made to treat special contributions that were previously made after the original 2013 AFTAP was certified to avoid benefit restrictions in 2013 but which are no longer needed to avoid restrictions based on HATFA results as contributions to satisfy the 2013 minimum funding requirement. This election must be made by the last day of the 2014 plan year.

Reverse election (including deemed election) to reduce funding balances for 2013. An election to reduce funding balances at the beginning of 2013 made before September 30, 2014 may generally be reversed if HATFA rates are used for 2013 and notice is given on or before the last day of the 2014 plan year that specifies the amount involved. This also allows elections that apply prefunding balances to 2013 minimum funding requirements to be reversed.

Reverse election (including deemed election) to reduce funding balances for 2014 or election to redesignate unneeded 436 contributions for 2014 minimum. An election to reduce funding balances at the beginning of 2014 that was made before September 30, 2014 or to redesignate 436 contributions made to avoid benefit restrictions based on the MAP-21 AFTAP but are not needed based on the recertified HATFA AFTAP may be reversed if notice is given on or before the last day of the 2014 plan year that specifies the amounts involved.

Benefit restriction rules. The rules concerning changes in AFTAP in years for which HATFA results apply for benefit restriction purposes are similar to those provided under MAP-21 guidance. In the first year for which HATFA is used for benefit restrictions, the HATFA AFTAP does not affect plan operations during the period when the AFTAP for the preceding year was used. So 436 contributions or reductions in funding balances made during this period to avoid restrictions under the presumption rules cannot be redesignated or reversed. If the first AFTAP certification (including a range certification) for that first year reflects HATFA, subsequent determinations of benefit restrictions are based on the HATFA AFTAP.

If the first AFTAP certification (including range) for the first year is made before October 1, 2014 and uses MAP-21 rates, the AFTAP must be recalculated using HATFA. If the plan's operations would have been different if the HATFA AFTAP were used, the AFTAP must be recertified. As was the case for the implementation of MAP-21, changes in restrictions can generally be applied prospectively from the date of the new recertification or retroactively to the date of the first certified AFTAP for the year. However if the first plan year for HATFA is 2013, prospective application for 2014 is not available.

The change noted above in the certified AFTAP may create a material change (i.e., plan operations would have been different using the new AFTAP) that may result in the need for extensive correction procedures or possible plan disqualification. However, changes, including those that could be material resulting from certain specified events, are deemed immaterial so that the change can be applied prospectively from the date the AFTAP is changed. The change to apply HATFA rates will be treated as a deemed immaterial event as of October 1, 2014 (or the date of the HATFA AFTAP certification, if earlier) if the HATFA recertification is issued no later than December 31, 2014. Thus, prospective application is permitted, but must be in place for October 1, else corrections retroactive to October 1, 2014 will be required when the AFTAP is known at a later date (by December 31, 2014).

If the first AFTAP certification using MAP-21 rates is made after September 30, 2014, no relief is available from the possible effects of the change in AFTAP resulting from using HATFA rates.

What's not provided? Plan sponsors had lobbied for an extended deadline for filing the 2013 Form 5500, and the ability to file 2014 Form 5500 using MAP-21 rates. Neither is provided.

In Closing

With the release of Notice 2014-53, plan sponsors and their advisors can decide on the appropriate elections to make under the rules for funding and benefit restrictions that are impacted by the enactment of HATFA.

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