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IRS Issues Guidance on Changes to Pension Funding Stabilization Rules.

The IRS has issued guidance (Notice 2014-53) on changes to the funding stabilization rules for single-employer pension plans under the tax code and ERISA that were made by the Highway and Transportation Funding Act of 2014 (HTFA).

The interest rates used for purposes of minimum funding requirements are a set of three segment rates. Section 430(h)(2)(C)(iv) provides that each of the three segment rates for a plan year is adjusted 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 plan year's first day. For plan years beginning in 2012, each segment rate is adjusted so that it is between 90 and 110 percent of the corresponding 25-year average segment rate. Before HTFA, this range was scheduled to gradually increase for later plan years so that the segment rates for plan years beginning after 2015 would have been between 70 and 130 percent of the corresponding 25-year average segment rates.

HTFA extends the period during which the narrowest range of the 25-year average segment rates applies when determining the segment rates that are used to apply sections 430 and 436. Thus, for plan years beginning in 2012 through 2017, each segment rate is adjusted so that it is between 90 and 110 percent of the corresponding 25-year average segment rate. For later plan years, this range is scheduled to gradually increase so that the segment rates for plan years beginning after 2020 are between 70 and 130 percent of the corresponding 25-year average segment rates.

HTFA also provides that the limitation on interest rates based on the corresponding 25-year average segment rates does not apply for purposes of section 436(d)(2) regarding limitations on accelerated benefit distributions for a plan sponsored by an employer in bankruptcy. Changes to section 430(h)(2)(C)(iv) apply for plan years beginning after December 31, 2012. Under HTFA, a plan sponsor can elect not to have the changes to section 430 apply to any plan year beginning in 2013, either for all purposes or solely when determining the plan's adjusted funding target attainment percentage for that plan year.

Notice 2014-53 provides procedures for electing to defer use of the HTFA segment rates until the 2014 plan year; rules for elections and designations regarding the minimum funding requirements applicable to a plan for a plan year beginning in 2013; and the reporting requirements if the HTFA segment rates apply to the 2013 plan year. The guidance also provides special rules on the application of the benefit restrictions under section 436 and related rules for a plan year beginning after December 31, 2012, and before October 1, 2014, for a plan for which the HTFA changes are applied when determining its adjusted funding target attainment percentage for the plan year.

Guidance on Pension Funding Stabilization under the
Highway and Transportation Funding Act of 2014 (HATFA)

I. PURPOSE

This notice provides guidance on the changes to the funding stabilization rules for single-employer pension plans under the Internal Revenue Code (Code) and the Employee Retirement Income Security Act of 1974 (ERISA)1 that were made by section 2003 of the Highway and Transportation Funding Act of 2014 (HATFA), Pub. L. No. 113-159, which was enacted on August 8, 2014.

II. BACKGROUND

Section 430 specifies the minimum funding requirements that generally apply to singleemployer defined benefit pension plans pursuant to § 412. Section 430(h)(2) specifies interest rates that are used for purposes of calculating the minimum required contribution. The interest rates that are used for this purpose 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 430(h)(2)(C)(iv), which was added by the Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21), Pub. L. No.112-141, 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. For plan years beginning in 2012, each segment rate is adjusted so that it is no less than 90% and no more than 110% of the corresponding 25-year average segment rate. Under § 430(h)(2)(C)(iv)(II) as in effect prior to its modification by HATFA, this range was scheduled to gradually increase for later plan years, so that the segment rates for plan years beginning after 2015 would have been no less than 70% and no more than 130% of the corresponding 25-year average segment rates.

Notice 2012-61, 2012-42 I.R.B. 479, provides guidance regarding the changes to the minimum funding requirements and related rules made by MAP-21. Notice 2012-61 includes general guidance relating to the application of the modified segment rates (referred to in Notice 2012-61 and this notice as the MAP-21 segment rates), measurements for which the modified segment rates do not apply, transition issues, elections, reporting, and other issues.

HATFA extends the period during which the narrowest range around the 25-year average segment rates applies for purposes of determining the segment rates that are used to apply §§ 430 and 436. Under the modifications to § 430(h)(2)(C)(iv) made by HATFA, for plan years beginning in 2012 through 2017, each segment rate is adjusted so that it is no less than 90% and no more than 110% of the corresponding 25-year average segment rate. For later plan years, this range is scheduled to gradually increase, so that the segment rates for plan years beginning after 2020 are no less than 70% and no more than 130% of the corresponding 25-year average segment rates. The segment rates as modified by HATFA are referred to in this notice as the HATFA segment rates.

Section 436 sets forth a series of limitations on the accrual and payment of benefits under an underfunded plan. These limitations are applied during a plan year based on the plan's adjusted funding target attainment percentage (AFTAP). Section 2003(c) of HATFA provides that the limitation on interest rates based on the corresponding 25-year average segment rates does not apply for purposes of § 436(d)(2) (relating to limitations on accelerated benefit distributions for a plan sponsored by an employer in bankruptcy).

Section 2003(e)(1) of HATFA provides that the modifications to § 430(h)(2)(C)(iv) apply with respect to plan years beginning after December 31, 2012. Under section 2003(e)(2) of HATFA, a plan sponsor can elect not to have the modifications to § 430 apply to any plan year beginning in 2013, either for all purposes or solely for purposes of determining the plan's AFTAP for that plan year

(which is used to apply the benefit restrictions under § 436).

This notice provides guidance on certain issues relating to HATFA. Notice 2012-61 continues to apply except to the extent the statutory provisions have changed.

III. ELECTION TO DEFER USE OF HATFA SEGMENT RATES UNTIL THE 2014 PLAN YEAR

This section III sets forth the procedures for elections made pursuant to section 2003(e)(2) of HATFA that relate to a plan year beginning in 2013.

A. Procedure for electing to defer use of HATFA segment rates

Except as provided in section III.B of this notice (which provides for a deemed election to defer the use of the HATFA segment rates for purposes of both §§ 430 and 436 based on the filing of Form 5500 under some circumstances), a plan sponsor elects to defer the use of the HATFA segment rates, either for all purposes or solely for purposes of § 436, until the first plan year beginning on or after January 1, 2014, by providing written notice to the enrolled actuary for the plan and to the plan administrator. The notice must specify the name of the plan, employer identification number and plan number, and whether the use of the HATFA segment rates is deferred for all purposes or only for determination of the AFTAP used to apply benefit restrictions under § 436.

The election described in this section III.A is irrevocable, and must be made no later than the later of: (1) the deadline for filing the Form 5500, Form 5500-SF or Form 5500-EZ (including extensions) for the plan year beginning in 2013; or (2) December 31, 2014.

B. Deemed election to defer use of the HATFA segment rates for purposes of both §§ 430 and 436 through filing of Form 5500, Form 5500-SF or Form 5500-EZ

With respect to a plan year beginning in 2013, if, on or before December 31, 2014, the Form 5500, Form 5500SF or Form 5500EZ is filed and the Schedule SB reflects the MAP-21 segment rates, then an election to defer use of the HATFA segment rates for purposes of both §§ 430 and 436 until the first plan year beginning on or after January 1, 2014 is deemed made. If an election is deemed made pursuant to this section III.B, the election is permitted to be revoked by filing, no later than December 31, 2014, 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 HATFA segment rates. Alternatively, the deemed election is permitted to be revoked by either providing written notice of the revocation (which includes the name of the plan, employer identification number and plan number) to the enrolled actuary for the plan and to the plan administrator or by making the election described in section III.A of this notice to defer the use of HATFA segment rates only for purposes of § 436, but only if (1) a copy of the notice of the revocation or of the election is e-mailed to the Pension Benefit Guaranty Corporation (PBGC) at revoke.deemed.HATFA.election@pbgc.gov on or before December 31, 2014 (including in the subject line of the e-mail the plan sponsor's employer identification number, the plan number, and the name of the plan), and (2) at the time of the revocation of the deemed election, the plan sponsor is not a debtor in a case under title 11, United States Code, or similar federal or state law. If the plan sponsor revokes the deemed election using this alternative method, then an amended Form 5500, Form 5500-SF, or Form 5500-EZ2 for the plan year must be filed no later than the date on which Form 5500, Form 5500-SF or Form 5500-EZ is timely filed for the following plan year, and the revised Schedule SB must reflect the use of the HATFA segment rates.

If the plan sponsor revokes the deemed election, the plan sponsor can also elect to defer use of the HATFA segment rates only for purposes of § 436 under the rules of section III.A of this notice. An

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

IV. SECTION 430 ELECTIONS AND REDESIGNATIONS AVAILABLE FOR THE 2013 PLAN YEAR

This section IV sets forth rules regarding elections and designations relating to the minimum funding requirements applicable to the plan for the plan year beginning in 2013. Any action otherwise permitted in this section IV is not permitted to the extent it (1) would result in the imposition of benefit restrictions under § 436 for the plan year beginning in 2013 or 2014 that would otherwise not be imposed, or (2) would result in an unpaid minimum required contribution for any plan year beginning before 2014. The procedural and timing rules governing the acts permitted under this section IV are in section IV.E of this notice.

A. Reversal of an election to reduce funding balances

A plan sponsor is permitted to elect to reverse all or part of any election under § 1.430(f)-1(e) to reduce the plan's funding standard carryover balance or prefunding balance as of the first day of a plan year beginning in 2013 if (i) the HATFA segment rates apply for purposes of determining the minimum required contribution for that plan year, and (ii) the reduction election was made on or before September 30, 2014. It is expected that the regulations under § 430(f) will be revised to permit this exception to the general rule that any election to reduce the plan's funding standard carryover balance or prefunding balance is irrevocable.

Under § 1.436-1(a)(5), there may have been deemed elections to reduce the funding standard carryover balance or prefunding balance to avoid or remove benefit restrictions under § 436 for the plan year beginning in 2013. If the HATFA segment rates are applied retroactively for purposes of § 436 for a plan year beginning in 2013, the election to reverse a reduction under this section IV.A also applies to such a deemed election that was made in conjunction with a certification of the plan's AFTAP for the plan year. However, 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 the 2013 plan year cannot be reversed even if the HATFA segment rates apply retroactively for purposes of § 436 for the plan year. This is because the AFTAP based on the HATFA segment rates will not apply to that portion of the plan year and therefore the reversal 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.

B. Late elections to add excess contributions for the 2013 plan year to the prefunding balance

If the HATFA segment rates apply for purposes of determining the minimum required contribution for a plan year beginning in 2013, the plan sponsor is permitted to make (or increase) the election under § 1.430(f)-1(b)(1)(ii) to add excess contributions for that plan year to the plan's prefunding balance as of the first day of the following plan year. It is expected that the regulations under § 430(f) will be revised to permit this extension of time to make this election.

C. Redesignation of a section 436 contribution

If the HATFA segment rates are applied retroactively for purposes of § 436 for a plan year beginning in 2013, any section 436 contribution within the meaning of § 1.436-1(j)(7) that was made in connection with the certified AFTAP for that plan year is applied toward the minimum required contribution for that plan year to the extent the contribution is no longer required to avoid or remove the benefit restriction. However, no change is permitted with respect to section 436 contributions that were made in connection with a presumed AFTAP before the AFTAP was certified

for the plan year.

D. Redesignation of a contribution originally designated for 2013

Despite the general position of the IRS that a contribution designated for a particular plan year cannot be redesignated to apply for another plan year after the Schedule SB is filed, the plan sponsor may choose to redesignate all or a portion of a contribution that was originally designated as applying to the plan year beginning in 2013 to apply to a plan year that begins in 2014. This rule applies only to contributions made after the end of the 2013 plan year and on or before September 30, 2014 and applies only if the original designation is on a Schedule SB for the 2013 plan year that is filed on or before December 31, 2014.3

E. Procedural and timing rules

Any reversal of an election, election made after the generally applicable deadline, or redesignation of contributions under this section IV is made by the plan sponsor by providing written notification to the plan's enrolled actuary and plan administrator, and must be made no later than the last day of the plan year beginning in 2014. The written notification must specify the name of the plan, the employer identification number and plan number, and must set forth the relevant details, including the specific dollar amount involved. A conditional or formula-based election does not satisfy this requirement.

V. REPORTING REQUIREMENTS IF THE HATFA SEGMENT RATES APPLY TO THE 2013 PLAN YEAR

With respect to the plan year beginning in 2013, if the plan uses the segment rates and the plan sponsor has not elected to defer the use of the HATFA segment rates in accordance with section III.A or III.B of this notice, then the Schedule SB for that plan year must reflect the use of the HATFA segment rates.

VI. APPLICATION OF § 436 AND RELATED RULES FOR A PLAN YEAR BEGINNING AFTER DECEMBER 31, 2012 AND BEFORE OCTOBER 1, 2014

This notice provides special rules relating to the application of the benefit restrictions under § 436 and related rules for a plan year beginning after December 31, 2012 and before October 1, 2014 for a plan for which the modifications made by HATFA to § 430(h)(2)(C)(iv) are applied for purposes of determining the plan's AFTAP for the plan year. A plan year to which this section VI applies is referred to in this section VI as an applicable plan year.

A. Presumptions apply based on prior year AFTAP

The benefit restrictions under § 436 for an applicable plan year are applied based on the presumed AFTAP before the date, if any, that the AFTAP is certified for that applicable plan year. Thus, the application of the HATFA segment rates does not affect the application of the presumption rules under § 436(h) for the first plan year for which those rates apply to the plan for purposes of § 436 (but affects the application of those presumption rules for the subsequent plan year).

B. Rules if first certification uses HATFA segment rates

If the first AFTAP certification for an applicable plan year (which may be a range certification pursuant to § 1.436-1(h)(4)(ii)) is made using the HATFA segment rates, the benefit restrictions under § 436 apply based on that AFTAP in accordance with the rules of §§ 1.4361(g) and (h).

C. Rules if first certification uses MAP-21 segment rates

If, on or before September 30, 2014, the AFTAP for an applicable plan year is certified using the MAP-21 segment rates, the AFTAP for that applicable plan year must be determined using the HATFA segment rates. If the change in the AFTAP using the HATFA segment rates rather than the MAP-21 segment rates results in a material change to the AFTAP, then the AFTAP must be recertified. In such a case, the plan sponsor can choose to apply any resulting change in the application of the benefit restrictions under § 436 either (i) prospectively, as described in section VI.D of this notice or (ii) retroactively to the date that the AFTAP was originally certified, as described in section VI.E of this notice. If the HATFA segment rates are applied to determine the certified AFTAP for the plan year beginning in 2013, then the option to apply any change in the application of § 436 as a result of recertification of the AFTAP using the HATFA segment rates prospectively is not available for the plan year beginning in 2014. For the first plan year for which the HATFA segment rates apply for purposes of § 436, if the AFTAP using the HATFA segment rates is certified before the end of the plan year, then in the absence of an affirmative election to apply the changes retroactively as described in section VI.E of this notice, the plan sponsor will be treated as having elected to apply any changes prospectively as described in section VI.D of this notice. All plan operations and elections must be consistent with this choice of whether to apply the AFTAP using the HATFA segment rates retroactively or prospectively, and any plan operations that were inconsistent with this choice must be corrected as described in section VI.F of this notice.

If any AFTAP certification for an applicable plan year using the MAP-21 segment rates is made after September 30, 2014, then the rules regarding a change in the AFTAP set forth in § 1.436-1(h)(4)(iii) and (iv) apply with respect to the determination of the AFTAP for that plan year that must be made using the HATFA segment rates.

D. Prospective application of change in benefit restrictions reflecting HATFA segment rates

If the AFTAP is certified for an applicable plan year using the MAP-21 segment rates, then any subsequent change to that certification (including a certification based on the HATFA segment rates) is subject to the rules regarding a change in the AFTAP set forth in §1.436-1(h)(4)(iii) and (iv).

Section 1.436-1(h)(4)(iii) sets forth rules relating to changes in certified AFTAPs and provides a special rule that deems a change in the AFTAP attributable to certain events as “immaterial,” even if the change would otherwise be a material change. The effect of having an event for which the change in AFTAP is deemed immaterial is that a plan administrator can reflect the event on a prospective basis beginning with the date of the event, provided that the AFTAP is recertified as soon as practicable thereafter. It is expected that § 1.436-1(h)(4)(iii)(C) will be amended to provide that additional events can be added to the list of deemed immaterial events in guidance of general applicability.

If (1) on or before September 30, 2014, the AFTAP is certified for an applicable plan year using the MAP-21 segment rates, (2) a certification for that applicable year is subsequently made using the HATFA segment rates, and (3) the plan sponsor does not choose to apply any change in those restrictions retroactively as described in section VI.E of this notice; then the change in AFTAP attributable to the use of the HATFA segment rates for an applicable plan year under this section VI.D is treated as a deemed immaterial change. The date of the event is October 1, 2014 (or the date of the revised AFTAP certification, if earlier). Accordingly, if the plan sponsor chooses to apply any changes in the § 436 restrictions prospectively for an applicable plan year as described in this section VI.D, any change in benefit restrictions resulting from the updated AFTAP determination using the HATFA segment rates must be effective as of the earlier of (1) October 1, 2014, or (2) the date the AFTAP for the applicable plan year is recertified using the HATFA segment rates.

The requirement that the AFTAP be recertified to reflect the HATFA segment rates as soon as practicable after the event giving rise to the deemed immaterial change will not be satisfied if the recertification occurs later than December 31, 2014.

E. Retroactive application of change in benefit restrictions reflecting HATFA segment rates

If (1) on or before September 30, 2014, the AFTAP is certified for an applicable plan year using the MAP-21 segment rates, (2) a certification for that applicable plan year is subsequently made using the HATFA segment rates, and (3) the plan sponsor elects to apply the AFTAP determined using the HATFA segment rates retroactively as described in this section VI.E; then 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. In addition, if the HATFA segment rates apply for purposes of determining the AFTAP for the plan year beginning in 2013, then operations of the plan during the plan year beginning in 2014 must be conformed to apply the rules of § 1.436-1(g) and (h) using the redetermined 2013 AFTAP as the AFTAP for the preceding plan year, during the period beginning on the first day of the plan year beginning in 2014 and ending when the AFTAP for that plan year was originally certified.

F. Reversal of an election to reduce funding balances and redesignation of section 436 contributions for the 2014 plan year

Sections IV.A and IV.C of this notice permit the reversal of an election to reduce a funding balance and the redesignation of a section 436 contribution for an applicable plan year beginning in 2013. Under this section VI.F, a reversal of an election made on or before October 1, 2014 to reduce a funding balance or a redesignation of a section 436 contribution made on or before October 1, 2014 is permitted for the plan year beginning in 2014.

Any reversal of an election or redesignation of a section 436 contribution under this section VI.F is not permitted to the extent it would result in the imposition of benefit restrictions under § 436 for the plan year beginning in 2014 that would otherwise not be imposed. Accordingly, if the plan year beginning in 2014 is the first applicable plan year, 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 cannot be reversed. This is because the AFTAP based on the HATFA segment rates will not apply to that portion of the plan year and therefore the reversal 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, if the plan year beginning in 2014 is the first applicable plan year, no change is permitted with respect to section 436 contributions that were made in connection with a presumed AFTAP before the AFTAP was certified for the plan year.

G. Corrections

Once a plan's AFTAP for an applicable plan year has been certified using the HATFA segment rates, 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.D of this notice (if the AFTAP certification applying the HATFA segment rates applies prospectively under section VI.D) or (2) beginning with the date the AFTAP for the year was first certified, as applicable (if the AFTAP certification applying the HATFA segment rates applies retroactively under section VI.E). If the plan year beginning in 2013 is an applicable plan year, the period for potential correction also includes the period during the 2014 plan year before the AFTAP for that plan year beginning in 2014 was originally certified.

If the corrective actions described in this section VI.G 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), as set forth in Rev. Proc. 2013-12, 2013-4 I.R.B. 313, apply, except that a plan is eligible for self-correction under sections 7, 8, and 9 of Rev. Proc. 2013-12 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 2013 or 2014 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 HATFA segment rates, 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 2013 or 2014 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 HATFA segment rates, 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 2013 or 2014 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 HATFA segment rates, 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.G.

For any accruals that were not permitted to accrue during a plan year beginning in 2013 or 2014 because of restrictions under § 436(e), but are permitted to accrue as a result of a new certification of the AFTAP reflecting the HATFA segment rates, 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.G.

In the case of a participant or beneficiary who, as a result of any of the changes described in this section VI.G 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 required correction 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 correction is to provide the participant with (1) future benefit payments that are paid in the same manner and amount as if the participant had begun receiving the corrected payment at his or her original annuity starting date, and (2) a make-up for past underpayments. The make-up for past underpayments is equal to the aggregate difference between the past payments actually received and the amounts that would have been received had the benefit commenced in the correct form of payment at the participant's original annuity starting date, plus interest to the date of the correction (in accordance with EPCRS), and may be paid as either (i) a single-sum payment, or (ii) an actuarially equivalent increase in the amount of future benefit payments.

VII. 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 sections III, IV, and VI of this notice. The collections of information are required to implement the application of the funding relief under section 2003 of HATFA. The collections of information are mandatory for those plan sponsors making various elections when applying the amendments made by HATFA to a plan and any plan sponsor of a plan for which the 2014 AFTAP was certified using MAP-21 segment rates.

For the collections in section III of this notice (relating to the election and possible amendment of Schedule SB for the 2013 plan year), the estimated total number of respondents is 39,600 plans. The estimated annual burden per respondent varies from 15 minutes to 1 hour and 45 minutes, depending on individual circumstances, with an estimated average of 23 minutes. The estimated total annual reporting and/or recordkeeping burden is 15,200 hours.

For the collections in sections IV and VI of this notice (relating to elections regarding the application of benefit restrictions under § 436), the estimated total number of respondents is 37,000 plans. The estimated annual burden per respondent varies from 15 minutes to 45 minutes, depending on individual circumstances, with an estimated average of 37 minutes. The estimated total annual reporting and/or recordkeeping burden is 22,800 hours.

Estimates of the annualized cost to respondents are not relevant, because each collection of information in this notice is a one-time collection.

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.

VIII. DRAFTING INFORMATION

The principal authors of this notice are Tonya B. Manning and Carolyn E. Zimmerman of the Employee Plans, Tax Exempt and Government Entities Division. For further information regarding this notice, please contact the Employee Plans taxpayer assistance answering service at 1-877-8-9-5500 (a toll free number) or e-mail Ms. Manning or Ms. Zimmerman at RetirementPlanQuestions@irs.gov.

FOOTNOTES

1 Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 3002(c) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in this notice for purposes of ERISA, as well as the Code. Thus, the provisions of this notice pertaining to §§ 430 and 436 of the Code also apply for purposes of sections 303 and 206(g) of ERISA.

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 section III.B of 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.

3 With respect to a plan for which the Schedule SB need not be filed, as described in footnote 2 of this notice, the reference to filing of the Schedule SB is replaced by the completion and delivery of the Schedule SB.

END OF FOOTNOTES

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