EAR

The *Enrolled Actuaries Report* is a quarterly publication of the American Academy of Actuaries.
www.actuary.org

ENROLLED ACTUARIES REPORT

VOL.35 NO.1 SPRING 2010

Joint Board Hears Academy Committee's Testimony

ACADEMY PENSION COMMITTEE CHAIRPERSON JOHN MOORE discussed professionalism issues during a hearing Feb. 25 before the Joint Board for the Enrollment of Actuaries. The hearing was held in connection with proposed changes to the Joint Board regulations for the performance of actuarial services under the Employee Retirement Income Security Act.

Much of Moore's testimony highlighted existing actuarial standards of practice promulgated by the Actuarial Standards Board and the Code of Professional Conduct and U.S. Qualification Standards promulgated by the Academy, which are applicable to actuaries who are members of the five U.S.-based actuarial organizations. He specifically expressed a desire for the Joint Board to use those existing codes and standards from which to base performance standards for enrolled actuaries.

"We would like to see the regulations, to the extent they can, leverage off of the Code of [Professional] Conduct that applies to all members of the professional societies," said Moore, chief actuary for JPMorgan Compensation and Benefit Strategies in Denver.

One highlighted difference between the U.S. Qualification Standards and the Joint Board's proposed regulations is the treatment of webcasts and audiocasts for continuing education credit. Under the Qualification Standards' continuing education requirements, live attendance for webcasts and audiocasts qualifies those events as "organized activities" for the purposes of JOINT BOARD HEARING, PAGE 5 ›

John Moore testified Feb. 25 to the Joint Board for the Enrollment of Actuaries. Moore, who took part in his first federal hearing on behalf of the Academy, participated in the Academy's media training program (pictured) in May 2008.

Inside this issue

2 Automatic Approval Clarification

3 Defending Irrevocable Commitment Purchases

6 Valuing Plans in 2010

8 Multiemployer Guidance Finalized

9 ASB Addresses Mortality Improvement

JEFFREY LITWIN

Pension Committee Comments on Final Regulations

THE ACADEMY'S Pension Committee sent **comments** to the Department of the Treasury and the Internal Revenue Service on March 25 concerning the final regulations on pension funding and benefit restrictions under Internal Revenue Code Sections 430 and 436.

The final regulations released last October provided much-needed guidance regarding the new complex rules in the Pension Protection Act of 2006 (PPA). The regulations were final, so the committee limited its comments to several items where it believes the regulations may be producing incorrect or unintended results.

The committee commented on these issues:

➜ **Unpredictable contingent event benefits** – The regulations require that the actuary include a liability for future unpredictable contingent event benefits if there is more than a *de minimis* probability of the event occurring

FINAL REGULATIONS, PAGE 7 ›

E A R

ENROLLED ACTUARIES REPORT

EDITOR
Ethan Kra

CONTRIBUTING EDITORS
Andrew Eisner
Bruce Gaffney
James Kenney
Hal Tepfer
Frank Todisco
James Turpin

MANAGING EDITOR
Tim Dougherty
editor@actuary.org

MARKETING AND PUBLICATIONS PRODUCTION MANAGER
Cindy Johns

PUBLICATION DESIGN AND PRODUCTION
BonoTom Studio Inc.

AMERICAN ACADEMY OF ACTUARIES

PRESIDENT
Ken Hohman

PRESIDENT-ELECT
Mary Frances Miller

SECRETARY
Andrea Sweeny

TREASURER
John Schubert

VICE PRESIDENTS
Al Bingham
Gary Josephson
Ethan Kra
Art Panighetti
Kathleen Riley
Henry Siegel

EXECUTIVE DIRECTOR
Mary Downs

DIRECTOR OF COMMUNICATIONS
Mark Cohen

ASSISTANT DIRECTOR FOR PUBLICATIONS
Linda Mallon

©2010 The American Academy of Actuaries, 1850 M Street, Suite 300, Washington, DC 20036, 202-223-8196 (phone), 202-872-1948 (fax), www.actuary.org. Statements of fact and opinion in this publication, including editorials and letters to the editor, are made on the responsibility of the authors alone and do not necessarily imply or represent the position of the American Academy of Actuaries, the editor, or the members of the Academy.

Clarifying Automatic Approvals Under Final Regulations

Editor's Note: James Kenney's article in the winter 2009 EAR *on Internal Revenue Service (IRS) final regulations for Internal Revenue Code Sections 430 and 436, "**Final Regulations Provide Answers, Prompt Questions**," likewise seemed to provide some answers but left some readers with questions. To clear up any confusion, the following article elaborates on automatic approval rules under the final regulations.*

ACCORDING TO AN ARTICLE IN THE WINTER 2009 EAR on IRS final regulations for Sections 430 and 436 to the Internal Revenue Code, a plan's funding method can only be changed with automatic approval twice in a three-year period for 2008 to 2010 plan years, and an election to change an asset funding method due to a software change could prevent someone from receiving automatic approval for making the changes needed to comply with the final regulations.

However, automatic approval is given for changes in the asset method separately from changes in calculating the funding target—so a change in asset method does not interfere with automatic approval for a change in the calculation of the funding target. In addition, automatic approval is given for 2009 to comply with the allocation of benefits not directly related to a participant's accrued benefit.

Outside of those considerations, as the author indicated, the regulations would require an "all-or-nothing" approach to comply with the final regulations. This means that, in general, plan sponsors can't cherry-pick which provisions of the regulations they will comply with in 2009; they will have to elect whether to incorporate the provisions of the regulations in 2009 or 2010. However, they could change the allocation method in 2009 and make the rest of the required changes in 2010—all with automatic approval.

As the author mentioned, elections must be made if a credit balance is used to offset quarterly installments, and the election must specify the amount of the quarterly contribution reflecting any adjustment for the effective interest rate. This is true for the time being, although as indicated in the preamble to the final regulations, the IRS expects to address this in future regulations. However, it's also worth noting that the final regulations did provide several "looseners," including:

- The availability of standing elections for the minimum required contribution and for adding excess contributions to the prefunding balance;
- The ability to revoke an election to use the credit balance if it is larger than the amount needed to cover the minimum required contribution; and
- The ability to "replenish" a credit balance that was used to offset the minimum required contribution.

Software Changes Approved

Shortly after the publication of the winter *EAR*, the IRS published Announcement 2010-3 on Dec. 28, 2009. The announcement indicated that certain funding changes made by single-employer defined benefit plans will receive automatic approval from the IRS. For plan years beginning on or after Jan. 1, 2009, the IRS will allow automatic approvals for generally applicable changes in software if the resulting changes in funding target, target normal cost, and (for years beginning on or after Jan. 1, 2011) plan assets are within 2 percent of the old results (subject to certain conditions).

The announcement also grants automatic approval (subject to certain conditions) if a change in funding method is the result of a change in the enrolled actuary and the business organization providing actuarial services to the plan (i.e., a takeover plan). It came in response to actuaries and plan sponsors who continue to modify valuation software in order to implement changes to the funding rules made by the Pension Protection Act of 2006, the Worker, Retiree and Employer Recovery Act of 2008, and subsequent guidance.

Academy Defends Use of Irrevocable Commitment Purchases

THE ACADEMY'S PENSION COMMITTEE responded on Jan. 25 to a Pension Benefit Guaranty Corp. (PBGC) request for comment concerning the purchase of irrevocable commitments prior to initiating a standard plan termination under Section 4041 of the Employee Retirement Income Security Act (ERISA).

The Pension Committee indicated that it understands that the PBGC's intent is to limit the use of irrevocable commitment purchases prior to the initiation of a standard termination as a method of circumventing participant rights and protections afforded by the PBGC's standard termination regulations. However, in its letter, the committee said that it believes plan sponsors generally make use of irrevocable commitments as a means of legitimately managing the risk and financial health of their defined benefit plans.

"The PBGC's concerns are likely the result of focus on bad actions on the part of a few employers, rather than a broad intention to evade the PBGC regulations and endanger the benefit security of plan participants," the letter said. The committee encouraged the PBGC to weigh the potential benefits to plan participants and sponsors in determining its future stance on annuity purchases outside the standard termination process.

The Pension Committee's comments fell into three categories:

- Benefits to plan sponsors and participants in allowing the continued use of irrevocable commitments prior to standard termination, since plan sponsors may use the purchase as a tool for managing the risks associated with sponsoring a defined benefit plan or for other legitimate business purposes;
- Issues related to establishing a rebuttable presumption that irrevocable commitments prior to initiating a standard termination are related to the standard termination; and
- Recommendations to address the PBGC's concerns regarding circumvention of the statutory and regulatory protections afforded plan participants in a standard termination and the potential for the purchase of an irrevocable commitment to lead to a distress termination.

In the recommendation section of the letter, the Pension Committee suggested requiring plan administrators to notify the PBGC when a portion (or all) of the benefits under a plan are to be secured by the purchase of annuities, provided:

- The portion settled exceeds 5 percent of the total benefit obligation (as smaller purchases should not put the plan at significant risk);
- The plan's funded level after the annuity purchase, as measured by the target liability funded ratio using Internal Revenue Code Section 430 funding target assumptions and market value of assets, but without offset by the carryover and prefunding balances, is under 80 percent;
- The report is required to be rendered within 60 days after the event;
- Plans settling only the highest ERISA Section 4044 priority categories of plan benefits are exempted; and
- Plan sponsors subject to reporting are required to report only information already available (e.g., plan assets, funding target liability for the plan and the group being settled, and the amount of the settlement) rather than having to incur additional cost to produce information not already determined in the course of plan operations.

The committee also recommended that plan administrators provide a Notice of Annuity Information and Notice of State Guaranty Association Coverage of Annuities to all affected plan participants and to the PBGC in advance of the irrevocable commitment purchase. In the context of a standard plan termination, such notices are required 45 days in advance of the annuity purchase. However, since the requirement may present a significant challenge to a plan sponsor attempting to capture a favorable pricing scenario for a segment of its participant population, the committee recommended a shorter advance notification period if the annuity purchase is prior to the standard termination (e.g., 15 days in advance of final payment on the contract).

"Providing these notices to participants and the PBGC could constitute the type of safe harbor that the PBGC has contemplated in its request for comments," the letter said.

Finally, the committee suggested that when a plan sponsor purchases an irrevocable commitment it also be required to demonstrate that the purchase complies with the Department of Labor Interpretive Bulletin 95-1 standard (i.e., that the plan sponsor purchased the safest available annuity).

The committee noted that any or all of its suggestions would benefit plan participants and provide the PBGC with the information necessary to distinguish irrevocable commitment purchases that are meant to circumvent the participant protections afforded by the statute and regulations from those that are made for legitimate business reasons.

—JESSICA THOMAS

Commenting on Reportable Event Regulations

THE ACADEMY'S PENSION COMMITTEE submitted a comment letter Jan. 22 to the Pension Benefit Guaranty Corp. (PBGC) regarding its proposed regulations concerning reportable events under Section 4043 of the Employee Retirement Income Security Act.

Reportable events may in some situations be indicative of financial distress, and timely reporting to the PBGC increases the opportunities for protecting participants and the pension insurance system. However, in its letter the Pension Committee expressed concern regarding the proposed regulations, primarily as they relate to the balance between the value of the additional reporting—particularly given the existence of, for example, the annual funding notice and Section 4010 reporting—and the increased administrative burden placed on defined benefit plan sponsors that could deter plan sponsorship.

The committee suggested that the PBGC reconsider providing reporting waivers when an otherwise reportable event poses minimal risk to the system, and it offered several examples for consideration.

"Most notably, the information received with respect to a well-funded plan is not of sufficient value to require the sponsor to bear the administrative cost associated with ensuring compliance with the proposed reportable event rules," the letter said. "An exemption from those rules for well-funded plans should be provided. Certainly there should be some level of funding (measured by assets as a percentage of liabilities rather than a specific dollar amount) beyond which the occurrence of a reportable event creates little additional risk to plan participants and the pension insurance system."

The committee also made the point that the elimination of many of the extensions of the 30-day reporting deadline when waivers do not apply will create difficulties, particularly for events that are not necessarily planned. For example, some plan sponsors do not have a system for tracking participant counts on a monthly basis to be able to report a significant active participant reduction within 30 days. They generally only do a complete count in connection with preparing the Form 5500 and PBGC premium filings. Plan sponsors will know the number of active participants who terminate employment in connection with a significant event, such as a workforce reduction, and would be able to estimate the impact of such an event shortly after the event. However, the committee acknowledged that normal voluntary and involuntary terminations of employment could play a material role in certain companies.

"We believe that further increasing the administrative burdens of maintaining defined benefit plans will deter the sponsorship of those plans and are concerned that in many cases, such as with well-funded plans, the additional reporting under the proposed PBGC regulations does not provide sufficient value to the system to justify the added cost," the letter said.

—JESSICA THOMAS

Academy Seeks Clarity on Schedule SB Signature Issue

THE PENSION PROTECTION ACT of 2006 requires plan administrators to electronically submit their annual Form 5500 reports for plan years beginning on or after Jan. 1, 2009—to be stored online on a public disclosure page on the Department of Labor's (DOL) website. Posting will occur within 24 hours of receipt by the DOL. For 2008 plan year Form 5500 filings, only the Schedule SB/MB is subject to posting on the DOL website. Posting of the scanned Schedule SB/MB generally took place within 90 days of receipt by the DOL.

Preliminary 2009 Form 5500 filing instructions indicated that the Schedule SB/MB must include an electronic image of the form that includes the enrolled actuary's "wet signature." Due to the considerations of privacy and protection against identity theft, the Academy's Pension Committee sent a letter to the DOL's Office of Regulations and Interpretations to express its concern that the actuary's physical signature would be publicly posted on the Internet. The committee sent the letter Dec. 9, 2009, prior to the time when the 2008 Schedule SB/MB for plans with October 2009 filing dates would be required to be posted online.

In addition to highlighting personal identity concerns, the committee warned the DOL against potential professional identity theft. "We believe the public posting of the [enrolled actuary's] signature makes it even easier to actually falsify submissions to the DOL by reproducing the EA's signature and falsifying other Schedule SB/MB filings as said EA," the letter said.

The committee cited precedents with Form 5500 information available online through commercial databases that discloses only the enrolled actuary's identifying information, including date signed, but not the actual signature. For those plans that already submitted filings, the committee recommended removing the scanned Schedule SB/MB from the DOL website, replacing them with new versions with signatures redacted, or permitting enrolled actuaries to submit a scanned copy without the signature. It also suggested submitting a signed version, as well as a version for online posting.

To alleviate the concerns cited by the committee and others, on Jan. 1, the Internal Revenue Service issued instructions for the 2009 Schedule SB/MB allowing the form to be filed using the enrolled actuary's typed name along with handwritten initials for the document to be submitted online. The actuary must still provide the completed and signed actuarial schedule to the plan administrator to be retained with the plan records.

‹JOINT BOARD HEARING, FROM PAGE 1

meeting the required six continuing education credit hours of organized activity. In contrast, the Joint Board proposes to require enrolled actuaries to obtain at least one-third of their overall continuing professional education credit during a cycle from "formal programs," which excludes remote-access multimedia events (such as webcasts and audiocasts) and requires "physical attendance" at an event to qualify.

"I would suggest (audiocasts and webcasts) are the primary form of continuing education training," Moore said. "Annual meetings that we have are also very good—a lot of content. But things move faster than that, so the audiocasts and webcasts are vital."

While Moore understands the desire to set accountability controls in the regulations, he said that the issues the proposed regulations seek to solve aren't prevented by requiring someone's physical presence at a large meeting.

While the proposed regulations don't recognize audiocasts and webcasts as formal programs, they can consider them as "qualifying" programs eligible for non-formal credit—but only if they include a sign-on/sign-off capacity to provide a means for measuring completion. One Joint Board panelist asked Moore whether providers of audiocasts and webcasts could tailor their setups to meet the board's requirement. Although organizations' webcasts can provide interactive features such as submitting and answering questions during events, Moore said that the individual registration issue is considerably harder to solve. It isn't practical, he said, for many companies that commonly provide one or, at most, several sign-in stations for a large group of actuaries—a system the companies often have in place to train many actuaries at the same time across the U.S.

In his testimony, Moore also clarified the requirements in the Code of Professional Conduct regarding the reporting of material violations by another actuary. Under the Joint Board's proposed standard, actuaries would be required to report directly to the board any knowledge of poor-quality work or bad conduct by their peers. He expressed support for the need to report known violations, as is required by the U.S. Code of Professional Conduct. But he also explained the value in the code's encouragement to resolve potential issues directly with the actuary whose work is in question prior to being required to report that actuary to the Actuarial Board for Counseling and Discipline.

"Most things that appear to be violations on the surface often just result from a difference of opinion, and they can be worked through between professionals," Moore said. "I think that's a very useful part of our self-policing tool within the profession."

He also warned that, as recognized by Precept 13 in the Code of Professional Conduct, issues related to client confidentiality also might produce a barrier to reporting requirements—one of the reasons why directly discussing potential violations with the actuary is encouraged. But, as Moore stressed, absent conflicts of client confidentiality, the principle behind the governance rules of the overall profession is to compel the actuary to turn a case over when it is clear that an unresolved material violation has taken place.

Moore's comments were drawn largely from the Pension Committee's written comments that it submitted Nov. 20, 2009.

Six other Academy members testified during the hearing on behalf of their employers, themselves, or the American Society of Pension Professionals and Actuaries. They included Academy Pension Practice Council Vice President Ethan Kra, Eric Klieber, Karen Smith, Douglas German, Paul Zeisler, and Carl Shalit.

Labor, Treasury Review Lifetime Income Options

THE LABOR AND TREASURY DEPARTMENTS issued a request for information in February to solicit comments on how the agencies could enhance retirement security for participants in retirement plans by providing a lifetime income stream. The request was published Feb. 2 in the *Federal Register*.

"Agencies are considering whether it would be appropriate for them to take future steps to facilitate access to, and use of, lifetime income or other arrangements designed to provide a stream of income after retirement," the request reads.

The request was made as part of a review of the economic impact of rules under the Employee Retirement Income Security Act and plan qualification rules under the Internal Revenue Code, as well as other related regulations and guidance. It contains 39 questions to spark discussion of any steps that could enhance retirement security for retirement plan participants in light of the greater burden placed on workers to assume investment risks leading up to retirement and to ensure those funds last through retirement.

The request cites Labor Department data that show employers trending toward sponsorship of defined contribution plans at the expense of sponsoring defined benefit plans.

"While defined benefits plans are generally required to make annuities available to participants at retirement, 401(k) plans and other defined contribution plans typically make only lump sums available," the request states.

It also includes findings in recent Government Accountability Office (GAO) reports detailing the resulting retirement risks faced by newer generations of retirees. One 2003 GAO report recommended that Congress "may wish to consider amending ERISA to require plan sponsors to provide participants with a notice on risks that individuals face in managing their income and expenditures at and during retirement."

The Labor and Treasury departments welcome comments from plan participants, employers and other plan sponsors, plan service providers, and members of the financial community, as well as the general public. The Pension Practice Council and Life Practice Council intend to submit joint comments. The comment deadline is May 3, 2010.

TOM SCHRYER

Valuing Pension Plans in 2010

SOCIAL SECURITY'S benefits and maximum taxable wages did not increase in 2010. Key limitations in the Internal Revenue Code also remained unchanged in 2010. Upon first impression, 0 percent inflation was reflected, but it gets more interesting than that. There was actually a period of deflation from 2008 to 2009, and such deflation will be reflected in future adjustments. Also, there was even some wage inflation that did not get recognized. All this affects the work actuaries do on pension plans.

Employees of the Social Security Administration and the Internal Revenue Service (IRS) have agreed that a hypothetical projection of 4 percent inflation on prices and wages, beyond what was recognized in 2010 amounts, would result in the following:

Social Security benefits did not increase at the end of 2009, which was well publicized. The maximum taxable wage under Social Security did not change from 2009 to 2010 either, but it would have except for a part of the law that got virtually no coverage. Ordinarily, the 2.3 percent increase in Social Security's national average wage between 2007 and 2008 would have been used to set the Social Security maximum taxable wage for 2010 equal to $109,200. However, since there was no cost-of-living increase for Social Security benefits at the end of 2009, a special provision in the long-standing law clearly provides that the 2010 limit will equal the $106,800 used in 2009. Therefore, the actual published maximum taxable wage for 2010 did not reflect all wage inflation.

There might not be any increase in Social Security benefits at the end of 2010. Consumer price index (CPI) changes between August 2009 and January 2010 have reflected an annualized rate of inflation of about 1.6 percent, and there will need to be an average annual inflation rate of 2.4 percent from January 2010 through September 2010 to trigger a benefit increase. Consequently, Social Security's maximum taxable wage for 2009 may also persist throughout 2011. Regarding Social Security offset plans, the deflation from 2008 to 2009 will ultimately need to be removed from future inflation adjustments, as illustrated (see graph). Therefore, projections of primary insurance amounts also should be reviewed.

The Social Security law does not ignore any years of wage inflation or deflation when setting the maximum taxable wage base. At some point in the next few years, we can expect that, ignoring rounding issues:

$$\text{Wage Base}_{20xx} = (\text{Wage Base}_{2009}) \times (\text{National Average Wage}_{(20xx-2)}) / (\text{National Average Wage}_{2007})$$

	Social Security Maximum Taxable Base	Change in CPI-Adjusted Social Security Benefits Since Mid-2008	Benefit Limit IRC 415(b)(1)(A)	Pay Limit IRC 401(a)(17)
2010	$106,800	1.058 (all at end of 2008)	$195,000	$245,000
Unrounded number reflected in publicized 2010 amount	$106,759	1.058 (all at end of 2008)	$197,360	$246,700
Unrounded 2010 number future will be based on	$109,215	1.036	$194,160	$242,700
2011 (assuming 4 percent inflation adjustment*)	$113,700 ($113,584 unrounded)	1.077 (up 1.8 percent)	$200,000 ($201,926 before truncation)	$250,000 ($252,408 before truncation)

**Inflation on prices and wages will probably be much lower than the 4 percent used here; it has been used only to illustrate how adjustments will be made after deflation, according to our best current understanding. Social Security's maximum wage is rounded to the nearest multiple of $300, and limits for 415(b) and the pay cap are truncated to multiples of $5,000.*

So, how should actuaries project Social Security's maximum taxable wage in 2010 valuations? This is clearly an issue for accounting valuations under Accounting Standards Codification (ASC) Nos. 715-20 and 715-30, since a full projection is used for those calculations. A question was posed for the 2010 Enrolled Actuaries Meeting's Gray Book on what approaches might be appropriate for funding calculations under the Pension Protection Act, but the question wasn't chosen for inclusion.

Ideally, valuation systems should project Social Security's benefit CPI using your CPI assumption, note when the

2010 VALUATIONS, PAGE 7 ›

‹FINAL REGULATIONS, FROM PAGE 1

in the future. This contrasts with pre-PPA rules and can be particularly problematic in that it requires the actuary to assume responsibility for setting an assumption for which the actuary may not have any reasonable basis. Further, this requirement did not appear in the proposed regulations, providing no opportunity for public comment.

- **Attribution methodology used in determining the funding target** – Some of the examples in the regulations describe an attribution methodology that appears to be inconsistent with the wording of the regulations and gives counterintuitive results. The examples are also inconsistent with any standard approach commonly used by actuaries.
- **Double counting of certain amendments** – If an amendment was adopted by the valuation date of the plan year and is permitted to take effect under the rules of Section 436 during the year, the amendment is taken into account in determining the funding target and the target normal cost. The application of this rule seems to include an amendment that takes effect because the plan sponsor paid a Section 436 contribution. As a result, the plan sponsor could be required to pay contributions exceeding the entire increase in liability due to the amendment.
- **Applicability of restrictions to a cash refund annuity** – Based on a plan's funding status, the election of certain accelerated payment options may be fully or partially restricted. The regulations should be clarified to indicate that these restrictions on accelerated payments do not apply to the cash refund annuity payment form.
- **Effective interest rate for plans that pay lump sums** – If a plan pays the greater of the 417(e)(3) minimum lump sum or a plan-specified lump sum amount, the rules to determine the effective interest rate are extremely and unnecessarily complex.
- **Reflecting an annuity option for a cash balance plan** – The regulation describes how to determine the funding target for an annuity option in a cash balance plan. The methodology seems to produce a result that is not theoretically correct.
- **Range certifications and deemed immaterial changes** – The regulations require that an updated adjusted funding target attainment percentage certification be issued following certain events "deemed immaterial" that would otherwise be material. Further, the updated certification will apply retroactively. A problem arises if an actuary issues a range certification and then is required to issue an updated certification due to a subsequent event but cannot immediately certify based on the new situation. Since the updated certification will apply retroactively to the date of the event, the updated certification could cause problems with plan administration and continued plan qualification.

Ordinarily, the Academy's Pension Committee does not comment on final regulations, knowing the government has followed a deliberate process that involves the consideration of many comments received (including the Academy's) in response to its proposed regulations. However, given the extreme complexity of the new PPA rules, it appears that some of these issues may have been overlooked. In addition, the committee believes that it is important not to increase the administrative burdens of maintaining defined benefit plans unless necessary because these burdens are deterring plan sponsorship.

JEFFREY LITWIN, *senior vice president for Sibson Consulting, a division of the Segal Co. in New York, is a member of the Academy's Pension Committee.*

‹2010 VALUATIONS, FROM PAGE 6

CPI again exceeds the temporarily elevated level for July 2008 through September 2008, and increase the maximum taxable wage for such year so it reflects wage inflation for all intervening years per the formula above.

More practically, a valuation system could simply project 2010's special $109,215 limit and use such projection for Social Security's maximum taxable wages for 2011 and beyond.

Then again, just projecting the lower 2010 limit is simple and conservative. However, that approach would overstate the annual accounting charge by roughly 0.5 percent to 1 percent. Fortunately, the extra effort needed to apply one of the more accurate approaches outlined above should be minor.

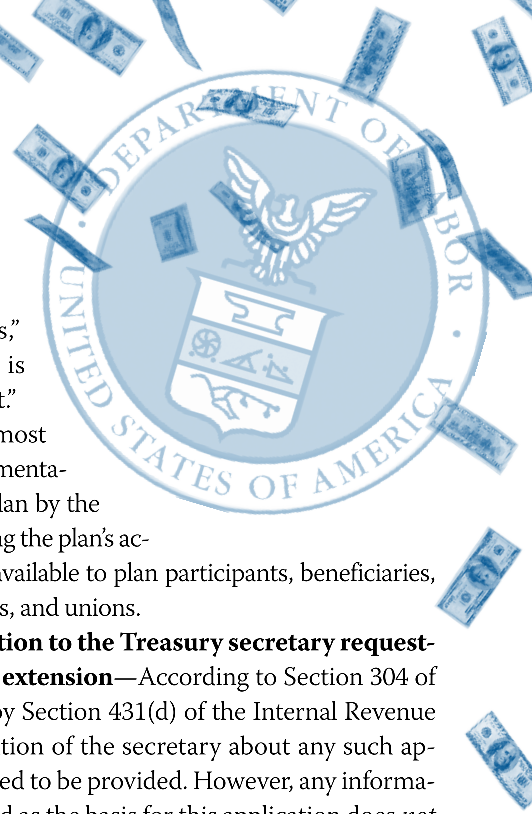
The IRS and the president's staff had to interpret the parts of the Internal Revenue Code that govern adjustments to statutory limitations for inflation and deflation; these sections referred to Social Security law but were not entirely clear. We now have a clear and fully justifiable ruling saying that these limits cannot decrease. In addition, the IRS tells us it maintained a series of unrounded amounts adjusted for CPI increases and decreases. Those unrounded amounts decreased in 2010. Each year, truncation is performed on such unrounded limits, and then each actual limit for such year is to be no less than the prior year's truncated (actual) limit. Our valuation systems need to do just that. The IRS is working on an updated white paper on its post-deflation procedures that will formalize these rules, but the recent departure of Academy member James Holland, now chief research actuary for Cheiron Inc. in McLean, Va., is slowing that process.

This will be a pervasive issue in 2010. Actuaries use many valuation systems, and many pension actuaries will find that 2010 valuations are not being performed as suggested above. That was the case as of March 5, 2010. More than ever, actuaries need to understand the calculations we make and apply our professional standards of practice before certifying results.

TOM SCHRYER *is a consulting actuary with Findley Davies Inc. in Cleveland.*

HAL TEPFER

Multiemployer Guidance Finalized



THE DEPARTMENT OF LABOR (DOL) issued final regulations Feb. 26 that address information that a multiemployer plan is required to give under Section 101(k) of the Employee Retirement Income Security Act (ERISA) to people or organizations that request it. The section was added to ERISA by the Pension Protection Act of 2006. The rules, which become effective on April 1, 2010, modified proposed regulations issued in September 2007 and spell out the information that can be requested, who can ask for this information, and rules/limits about the request.

The final regulations specify the following people and organizations as eligible to request and receive reports and applications: plan participants, beneficiaries receiving benefits under the plan, labor organizations representing participants under the plan, and employers that are parties to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability.

It would seem that the list of the items that can be requested is clear, but upon further review, questions still remain as to what information plan administrators and plan actuaries can request. The final regulations list the data that any eligible person/organization can ask for and receive.

Defined Benefit Plans

Periodic actuarial report—In the final regulations, the DOL defines the term "periodic actuarial report" as:

- Any actuarial report prepared by an actuary of the plan and received by the plan at regularly scheduled, recurring intervals. This would seem to mean the formal valuation report that multiemployer actuaries provide to plan sponsors (trustees, administrators, etc.) every year but could also mean any interim reporting the plan actuary has performed. For example, running a midyear "What if?" valuation for the following year and reporting the results to the plan trustees would seem to be an "actuarial report" for purposes of Section 101(k).
- The DOL is clear in the final regulations that a "report" does not have to be a "report." For example, when an actuary presents results of the funded status of the plan and notes that the plan is or is not in "endangered" or "critical" status, this is considered a report to the trustees. The final regulations note that the following items are actuarial reports for Section 101(k) purposes: any study, test (including a sensitivity test), document, or analysis, as well as other information. In each case, if the item listed is provided to the plan by the actuary and "depicts alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not such information is received by the plan at regularly scheduled, recurring intervals," such information is an "actuarial report."

This means that most (if not all) of the documentation provided to the plan by the plan actuary concerning the plan's actuarial calculations is available to plan participants, beneficiaries, contributing employers, and unions.

A copy of an application to the Treasury secretary requesting an amortization extension—According to Section 304 of ERISA (as regulated by Section 431(d) of the Internal Revenue Code), the determination of the secretary about any such application is also required to be provided. However, any information or data that served as the basis for this application does *not* have to be provided, but that information could be available to requesters under other sections of ERISA.

Defined Benefit and Defined Contribution Plans

Quarterly, semiannual, or annual financial reports—This includes those prepared for the plan by any plan investment manager or adviser—without regard to whether such adviser is a fiduciary within the meaning of ERISA Section 3(21)—or other fiduciary.

The final rule's clarification of "without regard to whether…" is an important phrase to consider. Investment advisers who do not consider themselves fiduciaries (unlikely but possible) and who provide a financial report to the plan will now have those reports made available to affected participants. From the DOL's perspective, investment-related reports are the main reason these new disclosure requirements have been implemented.

Although it is out of the range of services that are provided to the plan by its actuary, financial information prepared for the plan could be the source of significant requests from eligible participants/organizations.

Deadlines

Any information that has been in the possession of the plan for at least 30 days is available to any eligible person/organization. If the requested information hasn't been provided to the plan (or has been provided fewer than 30 days before the request), the final rule states that the plan administrator must give the requester (within 30 days of the request) a notice informing the requester of the existence of the report and the earliest date on which the report can be furnished by the plan.

It's important that the plan provide the requested informa-

MULTIEMPLOYER, PAGE 9 ›

ALAN PARIKH

ASOP 35 Exposure Addresses Future Mortality Improvement

PENSION ACTUARIES and other interested parties should read the latest exposure draft of Actuarial Standard of Practice (ASOP) No. 35, ***Selection of Demographic and Other Noneconomic Assumptions for Measuring Pension Obligations***. Proposed changes to the ASOP cover the selection of mortality assumptions used in the measurement of pension obligations.

As mortality rates have continued to decline over time, concern has increased over the impact of potential future mortality improvements on the magnitude of pension commitments. ASOP No. 35 provides guidance to actuaries in selecting (including giving advice on selecting) demographic and other noneconomic assumptions for measuring obligations under defined benefit pension plans.

Section 3.5.3 of the current ASOP 35 lists "the likelihood and extent of mortality improvement in the future" as a factor for the actuary to consider in selecting a mortality assumption. The exposure draft more explicitly recognizes estimated future mortality improvement as a fundamental and necessary assumption and requires that the actuary's provision for such improvement should be explicitly and transparently disclosed, the same as for any other assumption—even if the actuary's best judgment concludes zero mortality improvement.

The exposure draft was released in December 2009 and includes instructions for providing comments on the proposed changes. The deadline for comments is March 31, 2010. If approved in its current form, the guidance will be effective for actuarial valuations with measurement dates on or after June 30, 2011.

ALAN PARIKH, *a principal for Mercer in Chicago, is a member of the Actuarial Standards Board's Pension Committee.*

ASOP 41 Exposed

The Actuarial Standards Board (ASB) approved a second exposure draft of Actuarial Standard of Practice (ASOP) No. 41, ***Actuarial Communications***, at its December 2009 meeting. In September 2008, the ASB approved the first exposure draft of a revised ASOP No. 41 and received 23 comment letters. Although a majority of the comments were supportive of the effort to revise the ASOP, some indicated that the first draft was unclear as to when an actuarial report needed to be issued and had some deficiencies in regards to oral communication and various other areas. The ASB reviewed the comments and redrafted the ASOP. It feels a second exposure was warranted. The second exposure draft is available for comment until March 31, 2010, and can be viewed at www.actuarialstandardsboard.org.

2010 Enrolled Actuaries Meeting

The Academy and the Conference of Consulting Actuaries host the 35th annual Enrolled Actuaries Meeting April 11-14 at the Marriott Wardman Park Hotel in Washington. The program features sessions covering a wide range of topics and issues relevant to enrolled actuaries and pension professionals, including up-to-date information on recent guidance and other developments. The meeting also includes an exhibit of products and services geared to pension professionals. Seminars are available before and after the meeting:

- **Seminar on professional standards/ABCD hearings, April 11**
- **Seminar on public plans, April 14**
- **2010 Pension Symposium: Retirement Security—Where Are We Headed? Private and Public Sector Challenges and Forecasts, April 14-15**

For more information, go to www.enrolledactuaries.org.

‹MULTIEMPLOYER, FROM PAGE 8

tion (or the notice about when the information will be available) within the 30 days because there are potentially significant penalties for missing the deadline. The DOL may assess civil penalties of up to $1,000 per day for each violation, according to final rules that were published in the *Federal Register* on Jan. 2, 2009, and became effective March 2, 2009.

Fortunately, the DOL is not requiring that plans rent out storage units to retain information from the first day the plan was implemented. The final regulations exclude from the documents required to be furnished under Section 101(k) those reports and applications that have been in the plan's possession for six years or more as of the date on which the request was received by the plan. Therefore, a participant who makes a request for information on July 1, 2010, does not have to be given any information that the plan received on or before June 30, 2004.

Proprietary Information

Any information that is deemed to be "proprietary" or "individually identifiable" is excluded from the information that a plan has to provide. This would include participant listings that show personal information (Social Security numbers, dates of birth, etc.).

HAL TEPFER, *principal for the Savitz Organization of Massachusetts in Newton, Mass., is a contributing editor of the* EAR.