



AMERICAN ACADEMY *of* ACTUARIES

VIA E-MAIL to Notice.Comments@irscounsel.treas.gov

June 3, 2009

Mr. Harry Schneiderman
Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2009-43)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Request for Comments on 2009-2010 Guidance Priority List

Dear Mr. Schneiderman:

The American Academy of Actuaries'¹ Pension Committee appreciates the opportunity to provide input on the Internal Revenue Service's guidance priority list. The following attachment contains a list of items the committee would like to see addressed by the IRS, categorized by preference/priority. It is important that the IRS provide proposed guidance early, so comments can be made and final guidance issued on a timely basis.

The attached list is what we consider key issues awaiting guidance. This is not a comprehensive list of all the guidance needed but rather the most important needs for 2009-2010. We list the issues in order of urgency within broad topic areas such as funding, hybrid plan, and benefit restriction rules.

We would be happy to discuss any of these items with you at your convenience. Please contact Jessica M. Thomas, the Academy's pension policy analyst (202-785-7868, thomas@actuary.org) if you have any questions or would like to discuss these items further.

Sincerely,

Nadine Orloff, MAAA, EA, FCA, FSA
Chairperson, Pension Committee
American Academy of Actuaries

¹ The American Academy of Actuaries is a 16,000-member professional association whose mission is to serve the public on behalf of the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

Funding rules

1. Guidance on AFTAP certifications
 - Timing
 - Format
 - Process for any changes to AFTAP certifications
 - Details on presumed AFTAP certifications, including impact (if any) of plan amendments, changes in employer elections, methods for determining presumed funding target
 - Definition of accelerated benefit distributions, including whether the term includes return of employee contributions, cash refund annuities, and retroactive annuity starting dates
 - If the WRERA look-back applies, how presumptions will work in the following year
 - If the collective bargaining delay applies, how presumptions will work in the first year
2. Mechanics of credit balances
 - Determination of rate of return for rolling forward credit balances
 - Technique for interest adjustments, e.g., for quarterly installments
 - Ordering rules for contributions
3. What expenses must be included in target normal cost
 - What, if any, investment expenses
 - How to determine investment expenses
 - What, if any, expense should be reflected for insurance policies (for insured death benefits)
4. Changes in funding methods and prescribed assumptions
 - Automatic approvals that will be available beginning in 2010 [high priority item]
 - Transition rules for 2008 and 2009
 - Look back rules for yield curve
5. Final guidance on use of credit balance to pay quarterly installments, including whether a formula or a specific dollar amount must be elected.
6. Additional details on using credit balances and methods and timing of elections, including whether specific elections for 2008 and 2009 can be changed to reflect WRERA.
7. How to treat bargained increases, including what to include as a component of target normal cost and what to include in shortfall amortization.
8. How to address the circularities that arise in determining whether to subtract the prefunding balance for purposes of the shortfall base exemption test
9. Spinoffs and mergers under Sections 430 and 436.
10. Under Section 430, clarification of allocation of benefit rules, including how to value benefits that are not based on accrued benefits or service, such as disability benefits.
11. Clarification of at-risk rules, including whether the modified assumptions apply to active employees only or also to non-retired participants.
12. Guidance on maximum tax deductible contributions.

Multiemployer Plan rules needed in calendar year 2009:

1. Construction and actuarial progress certification of funding improvement and rehabilitation plans, including description (and default schedule applicability) of "adjustable benefits," for multiemployer pension plans.
2. Final regulations on determination of endangered status and critical status for multiemployer pension plans.
3. Procedure for requesting approval to revoke a WRERA zone "freeze" election for multiemployer pension plans.

Hybrid Plan rules:

1. Complete definition of market rate of return, including whether participants can elect from among various rates and how to apply the 5-year lookback rule.
2. Guidance on when a rate is *not* a market rate and reductions to accrued benefits are required [Section 1107 requires an amendment before the end of the 2009 plan year.]
3. Guidance on PEP plans.

Nondiscrimination testing:

1. Guidance on non-discrimination testing for plans using a market rate of return.
2. Guidance on nondiscrimination testing in the context of benefit restrictions.

Benefit Restrictions:

1. Clarification of benefits and accruals, and nondiscrimination testing after restriction period.
2. Details on the coordination of the funding of any amendment with the amount included in shortfall amortization base, to avoid double counting.
3. Treatment of 415 increases when a plan is or might become <80% funded

Benefit Accrual Rules:

1. Revised proposed regulations allowing for separate testing of benefits determined under different formulae.