[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-139236-07]

RIN 1545-BH07

Measurement of Assets and Liabilities for Pension Funding Purposes

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations providing guidance on the determination of plan assets and benefit liabilities for purposes of the funding requirements that apply to single employer defined benefit plans. These regulations affect sponsors, administrators, participants, and beneficiaries of single employer defined benefit plans.

DATES: Written or electronic comments and requests for a public hearing must be received by March 31, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-139236-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-139236-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS-REG-139236-07).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Lauson C. Green or Linda S. F. Marshall at (202) 622-6090; concerning submissions and requests for a public hearing, Richard A. Hurst at Richard.A.Hurst@irscounsel.treas.gov or at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by February 29, 2008. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §1.430(h)(2)-1(e). This information is required in order for a plan sponsor to make an election to use an alternative interest rate for purposes of determining a plan's funding obligations under §1.430(h)(2)-1. This information is required to obtain or retain benefits. The likely respondents are qualified retirement plan sponsors.

Estimated total annual reporting burden: 54,000 hours.

Estimated average annual burden hours per respondent: 0.75 hours.

Estimated number of respondents: 72,000.

Estimated annual frequency of responses: occasional.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 26 U.S.C. 6103.

Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under sections 430(d), 430(g), 430(h)(2), and 430(i), as added to the Internal Revenue Code (Code) by the Pension Protection Act of 2006 (PPA ’06), Public Law 109-280 (120 Stat. 780).

Section 412 provides minimum funding requirements that generally apply for pension plans (including both defined benefit pension plans and money purchase pension plans). PPA ‘06 makes extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA ‘06, specifies the minimum funding requirements that apply to single employer defined benefit pension plans (including multiple employer plans) pursuant to section 412.[1]

Section 430(a) defines the minimum required contribution for a single employer plan as the sum of the plan’s target normal cost and the shortfall and waiver amortization charges for the plan year. Under section 430(b), a plan’s target normal cost for a plan year is the present value of all benefits expected to accrue or be earned under the plan during the plan year. For this purpose, section 430(b) provides that an increase in any benefit attributable to services performed in a preceding plan year by reason of a compensation increase during the current plan year is treated as having accrued during the current plan year.

[1] Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), sets forth funding rules that are parallel to those in section 412 of the Internal Revenue Code (Code), and section 303 of ERISA sets forth additional funding rules for single employer plans that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code apply as well for purposes of section 303 of ERISA.

One of the amortization charges used in determining the minimum required contribution, the shortfall amortization charge, is determined based on the difference between the plan's funding target and the value of plan assets. Under section 430(d), except as provided in section 430(i)(1) (regarding plans in at-risk status), a plan's "funding target" for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

Section 430(g)(1) provides that all determinations made with respect to minimum required contributions for a plan year (such as the value of plan assets and liabilities) must be made as of the plan's valuation date. Section 430(g)(2) provides that, other than for plans with 100 or fewer participants (determined as provided in section 430(g)(2)(B) and (C)), the valuation date for a plan year must be the first day of the plan year. Under section 430(g)(3), the value of plan assets is generally the fair market value of those assets. However, the value of plan assets may be determined on the basis of the averaging of fair market values, but only if the averaging method is permitted under regulations and satisfies certain other requirements.

Under section 430(g)(4), if a required contribution for a preceding plan year is made after the valuation date for the current plan year, the contribution is taken into account in determining the value of plan assets for the current plan year. For 2009 and future plan years, only the present value (determined as of the valuation date for the current plan year, using the plan's effective interest rate for the preceding plan year) of the contributions made for the preceding plan year is taken into account. If any contributions for the current plan year are made before the valuation date (which could only occur for a small plan with a valuation date that is not the first day of the plan year), plan assets as of the valuation date must exclude (1) those contributions, and (2) interest on those contributions (determined at the plan's effective interest rate for the plan year) for the period between the date of the contribution and the valuation date. Under section 430(h)(2)(A), a plan's effective interest rate for a plan year is defined as the single interest rate that, if used to determine the present value of the benefits taken into account in determining the plan's funding target for the plan year, would result in an amount equal to the plan's funding target determined for the plan year under section 430(d).

Under section 430(h)(1), the determination of any present value or other computation under section 430 is to be made on the basis of actuarial assumptions and methods each of which is reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

Section 430(h)(2) specifies the interest rates that must be used in determining a plan's target normal cost and funding target. Under the provision, present value is determined using three interest rates (segment rates), each of which applies to benefit payments expected to be paid during a certain period. The first segment rate applies to benefits reasonably determined to be payable during the 5-year period beginning on the first day of the plan year. The second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial 5-year period. The third segment rate applies to benefits reasonably determined to be payable after the end of that 15-year period.

Each segment rate is a single interest rate determined monthly by the Treasury Department on the basis of a corporate bond yield curve. The corporate bond yield curve used for this purpose is to be prescribed monthly by the Treasury Department and is to reflect the average, for the 24-month period ending with the preceding month, of yields on investment grade corporate bonds with varying maturities that are in the top three quality levels available. Under section 430(h)(2)(F), the Secretary of the Treasury is directed to publish each month the corporate bond yield curve and each of the segment rates for the month. In addition, the Secretary is directed to publish a description of the methodology used to determine the yield curve and segment rates to enable plans to make reasonable projections regarding the yield curve and segment rates for future months, based on a plan's projection of future interest rates.

Section 430(h)(2)(G) provides a transition rule for plan years beginning in 2008 and 2009 (other than for plans where the first plan year begins on or after January 1, 2008). Under this transition rule, the interest rates to be used in the valuation are based on a blend of the segment rates and the long-term corporate bond rates used for plan years prior to the effective date of PPA '06. Under section 430(h)(2)(G)(iv), a plan sponsor may elect to have this transition rule not apply. In addition, solely for purposes of determining minimum required contributions under section 430, in lieu of using the segment rates, an employer may elect under section 430(h)(2)(D)(ii) to use interest rates on a yield curve based on the yields on investment grade corporate bonds within the top three quality levels without regard to the 24-month averaging described above.

Section 430(i) requires the application of special assumptions in determining the funding target and target normal cost of a plan in at-risk status. Under section 430(i)(4), a plan is in at-risk status for a year if, for the preceding year: (1) the plan's funding target attainment percentage, determined without regard to the at-risk assumptions, was less than 80 percent (with a transition rule discussed below), and (2) the plan's funding target attainment percentage, determined using the at-risk assumptions (without regard to whether the plan was in at-risk status for the preceding year), was less than 70 percent. Under a transition rule applicable for plan years beginning in 2008, 2009, and 2010, the following percentages apply instead of 80 percent in the first part of the test for determining at-risk status: 65 percent for 2008, 70 percent for 2009, and 75 percent for 2010. In the case of plan years beginning in 2008, the plan's funding target attainment percentage for the preceding plan year is to be determined under rules provided by the Treasury Department.

Under section 430(i)(6), the at-risk rules do not apply if a plan had 500 or fewer participants on each day during the preceding plan year. For this purpose, all defined benefit pension plans (other than multiemployer plans) maintained by the same employer (or a predecessor employer), or by any member of the employer's controlled group, are treated as a single plan.

If a plan is in at-risk status, the plan's funding target and normal cost are determined (under section 430(i)(1) and (2)) using special actuarial assumptions. Under these assumptions, all employees who are not otherwise assumed to retire as of the valuation date, but who will be eligible to elect to commence benefits in the current and 10 succeeding plan years, are assumed to retire at the earliest retirement date under the plan, but not before the end of the current plan year. All employees are assumed to elect the form of retirement benefit available under the plan at that assumed retirement age that results in the highest present value.

The funding target of a plan in at-risk status for a plan year is generally the sum of: (1) the present value of all benefits accrued or earned as of the beginning of the plan year, and (2) in the case of a plan that has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor. That loading factor is equal to the sum of: (1) $700 multiplied by the number of participants in the plan, plus (2) 4% of the funding target determined without regard to the loading factor. The target normal cost of a plan in at-risk status for a plan year is generally the sum of: (1) the present value of benefits expected to accrue or be earned under the plan during the plan year, determined using the special assumptions described above, and (2) in the case of a plan that has been in at-risk status for at least 2 of the 4 preceding plans years, a loading factor of 4% of the target normal cost determined without regard to the loading factor. If a plan has been in at-risk status for fewer than 5 consecutive plan years, a phase-in rule applies to the determination of the "funding target" and "target normal cost" under section 430(i)(5).

Explanation of Provisions

<u>I. Overview</u>

These proposed regulations are the third in a series of proposed regulations under new section 430.[2] These proposed regulations would provide guidance on the

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[2] Proposed regulation §§1.430(h)(3)-1 and 1.430(h)(3)-2, relating to the mortality tables used to determine liabilities under section 430(h)(3), were issued May 29, 2007 (REG-143601-06, 72 FR 29456), and proposed regulation §1.430(f)-1, relating to prefunding and funding standard carryover balances under section 430(f), was issued August 31, 2007 (REG-113891-07, 72 FR 50544).

determination of assets and liabilities for purposes of applying the new funding rules of section 430. The Treasury Department and the IRS intend to issue additional proposed regulations relating to other portions of the rules under section 430 (including sections 430(a), (c), and (j)) in the first part of 2008. It is expected that those regulations will be effective for plan years beginning on or after January 1, 2009.

II. Section 1.430(d)-1 Determination of Funding Target and Target Normal Cost

Section 1.430(d)-1 would provide rules for determining the funding target and the target normal cost of a plan that is not in at-risk status (within the meaning of section 430(i)). The proposed regulations would provide that the funding target is the present value of all benefits that have been accrued or earned under the plan as of the first day of the plan year, and that the target normal cost for the plan year is the present value of all benefits that accrue or are earned (or that are expected to accrue or to be earned) under the plan during the plan year. Thus, if the actuarial valuation date for the plan year is not the first day of the plan year, the target normal cost will include the benefits actually earned during the year through the valuation date for the plan year plus a projection of benefits that will be earned through the rest of the plan year.

In order to determine the funding target and target normal cost, the future benefits to be paid from the plan must be allocated among prior plan years (in which case they will be taken into account in determining the funding target for the current year), the current plan year (in which case they will be taken into account in determining the target normal cost of the plan for the plan year), and future years. If the amount of a benefit that is expected to be paid is a function of the accrued benefit at the time the benefit is expected to be paid, then the amount taken into account in the funding target is determined by applying that function to the accrued benefit as of the beginning of the plan year and the amount of the benefit taken into account in the target normal cost is determined by applying that function to the increase in the accrued benefit for the plan year. If the amount of a benefit that is expected to be paid is not a function of the accrued benefit at the time the benefit is expected to be paid (for example, certain ancillary benefits), but is a function of the participant's service at that time, then the amount taken into account for purposes of determining the funding target for a plan year is based on a participant's service as of the first day of the plan year and the amount of the benefit that is taken into account in the target normal cost is the increase in that benefit for the plan year based on the additional year of service. If the amount of a benefit that is expected to be paid is neither a function of the accrued benefit at the time the benefit is expected to be paid nor a function of the participant's service at that time, then the portion of the benefit taken into account for purposes of determining the funding target for a plan year is based on the proportion of a participant's service as of the first day of the plan year relative to the service the participant will have when the participant meets the age and service eligibility requirement for the benefit, and the portion of the benefit that is taken into account in the target normal cost is the increase in the proportional benefit for the plan year.

The proposed regulations would provide that the determination of the funding target and the target normal cost for a plan year is not permitted to take into account any limitations or anticipated limitations under section 436. Also, the proposed regulations would provide that plan administrative expenses paid (or expected to be paid) from plan assets for a plan year are not taken into account in determining a plan's target normal cost and funding target for that plan year. With respect to benefits provided by insurance, the proposed regulations would provide that, in general, a plan must reflect the liability for benefits that are funded through insurance contracts held by the plan in the plan's funding target and target normal cost, and must include the value of the corresponding insurance contracts in plan assets. However, an alternative rule is provided in the case of benefits that are funded through certain insurance contracts purchased from an insurance company licensed under the laws of a State. Under this rule, a plan is permitted to exclude benefits provided under such contracts from the plan's funding target and target normal cost and to exclude the corresponding insurance contracts from plan assets, but only to the extent that a participant's or beneficiary's right to receive those benefits is an irrevocable contractual right based on premiums paid to the insurance company prior to the valuation date under the insurance contracts.

The proposed regulations would provide that, except as provided in section 412(d)(2), the funding target and target normal cost are determined based on the plan terms that are adopted no later than the valuation date for the plan year and become effective during that plan year. Thus, the rules of Revenue Ruling 77-2 (1977-1 CB 120) would no longer apply. See §601.601(d)(2) of this chapter. For example, if an amendment that increases plan liabilities is adopted on or before the plan's valuation date and is effective during the plan year that includes the valuation date, the full increase in liability with respect to the amendment is taken into account as of that year's valuation date. However, with respect to the pre-PPA counterpart to section

412(d)(2) (section 412(c)(8) as in effect prior to amendments made by PPA ’06), Rev. Rul. 79-325 (1979-2 CB 190) provides that section 412(c)(8) applies to plan amendments made during the plan year (as well as to plan amendments made within 2½ months after the end of the plan year), and this same rule applies under the identical statutory provisions of section 412(d)(2). See §601.601(d)(2) of this chapter. Thus, if an amendment that increases plan liabilities is adopted after the valuation date for a plan year but the amendment is effective during that plan year, the full increase in liability will be taken into account as of the valuation date for that plan year if a section 412(d)(2) election is made, and none of the increase in liability will be taken into account as of the valuation date for that plan year if no section 412(d)(2) election is made. Regardless of whether a section 412(d)(2) election is made, the rules of section 436(c) must be applied in determining whether the amendment is permitted to take effect during the plan year. Section 430 does not contain a corresponding provision to former section 412(c)(12) under which the provisions of a collective bargaining agreement are taken into account for funding purposes before the corresponding plan amendments have been made.

The proposed regulations would require all currently employed plan participants, formerly employed plan participants (including retirees and terminated vested participants), and other individuals currently entitled to benefits under the plan to be included in the valuation. Unlike §1.412(c)(3)-1(c)(3)(ii), the proposed regulations would not permit exclusion from the valuation of those plan participants who could have been excluded from participation in the plan under the rules of section 410(a). However, the proposed regulations would continue to apply the rules of

§1.412(c)(3)-1(c)(3)(iii) (relating to the exclusion of terminated employees who do not have a vested benefit under the plan but whose service might be taken into account in future years upon rehire) and the rules of §1.412(c)(3)-1(d)(2) (under which the future participation in the plan of current employees who are not yet participants is permitted to be anticipated).

Section 1.430(d)-1 of the proposed regulations would cross-reference other regulations for the details of the statutorily specified interest rates, mortality tables, and actuarial assumptions that apply to plans in at-risk status. With respect to the actuarial assumptions that are not specified by statute or regulations, the proposed regulations would require that the actuarial assumptions used to determine present value satisfy the section 430(h)(1) requirements to be individually reasonable (taking into account the experience of the plan and reasonable expectations) and, in combination, offer the plan's enrolled actuary's best estimate of anticipated experience under the plan.

The proposed regulations would provide that, once the actuarial assumptions for a plan year are established, they are not permitted to be changed for that plan year (unless the Commissioner determines that the assumptions are unreasonable). Similarly, the proposed regulations would provide that, once the funding method for a plan year is established, it is not permitted to be changed for that plan year (unless the Commissioner determines that the use of the funding method for the plan year is impermissible).

In general, the actuarial assumptions and funding method used by a plan for a plan year are required to be established not later than the due date (with extensions) for the filing of Form 5500, "Annual Return/Report of Employee Benefit Plan," for that plan year (or not later than the last day of the seventh month after the end of the plan year in the case of a plan not required to file Form 5500). The proposed regulations would provide that the filing of the first actuarial report (Schedule SB) under section 6059 for a plan year that reflects the use of actuarial assumptions and a funding method is treated as the establishment of those assumptions and the funding method for that plan year.

In accordance with section 430(h)(4), the proposed regulations would provide that the plan's actuarial valuation must take into account the probability that future benefits will be paid in optional forms of benefit under the plan, including single sum distributions, determined on the basis of the plan's experience and other relevant assumptions. In addition, the plan's enrolled actuary must take into account any difference in the present value of those future benefit payments that results from the use of actuarial assumptions in determining benefit payments in any such optional forms of benefit that are different from those prescribed by section 430(h).

In the case of a distribution that is subject to section 417(e)(3) and that is determined using the applicable interest rate and applicable mortality table under section 417(e)(3), the proposed regulations would provide that the computation of the present value of that distribution will be treated as having taken into account any difference in present value that results from the use of actuarial assumptions that are different from those prescribed by section 430(h) only if the present value of the distribution is determined by valuing the annuity that corresponds to the distribution using special actuarial assumptions. Under these special assumptions, for the period beginning with the annuity starting date, the current applicable mortality table under section 417(e)(3) is substituted for the mortality table under section 430(h)(3) that would otherwise apply. In addition, under these special actuarial assumptions, the valuation interest rates under section 430(h)(2) are used for all periods (as opposed to the interest rates under section 417(e)(3) which the plan uses to determine the amount of the benefit).

The proposed regulations provide two elective adjustments to this methodology for valuing distributions subject to section 417(e)(3). First, in determining the present value of such a distribution, if a plan uses the generational mortality tables under §1.430(h)(3)-1(a)(4) or under §1.430(h)(3)-2, the plan would be permitted to use a 50-50 male-female blend of the annuitant mortality rates under the §1.430(h)(3)-1(a)(4) generational mortality tables in lieu of the applicable mortality table under section 417(e)(3) that would apply to a distribution with an annuity starting date occurring on the valuation date. Second, a plan would be permitted to make adjustments to reflect differences between the phase-in of the section 430(h)(2) segment rates under section 430(h)(2)(G) and the adjustments to the segment rates under section 417(e)(3)(D)(iii).

In the case of a distribution that is subject to section 417(e)(3) but that is determined as the greater of the benefit determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and the benefit determined using some basis other than the section 417(e)(3) assumptions, the proposed regulations would provide that the computation of present value must take into account the extent to which the present value of the distribution is greater than the present value determined using the applicable interest rate and applicable mortality table.

In the case of an applicable defined benefit plan described in section 411(a)(13)(C) (such as a cash balance plan), the proposed regulations would provide that, if the distribution is determined under the rules of section 411(a)(13)(A), the amount of the future distribution must be determined by projecting the future interest credits or equivalent amounts under the plan's interest crediting rules to the expected date of payment using reasonable actuarial assumptions. Thus, the present value of a future distribution is not necessarily the current amount of a participant's hypothetical account balance.

The proposed regulations would provide that any reasonable technique can be used to determine the present value of the benefits expected to be paid during a plan year, based on the interest rates and mortality assumptions applicable for the plan year. For example, the present value of a monthly retirement annuity payable at the beginning of each month can be determined using the standard actuarial approximation that reflects 13/24ths of the discounted expected payments for the year as of the beginning of the year and 11/24ths of the discounted expected payments for the year as of the end of the year, or by assuming that the payment is made in the middle of the year.

The proposed regulations would also reflect the provisions of section 430(h)(5), requiring approval of the Commissioner for large changes in actuarial assumptions. In general, this rule applies where the application of the changes in actuarial assumptions results in a decrease in the plan's funding shortfall for the current plan year (disregarding the effect on the plan's funding shortfall resulting from changes in interest and mortality assumptions) that exceeds $50,000,000, or that exceeds $5,000,000 and that is 5 percent or more of the funding target of the plan before the change. Thus, for example, if a plan leaves at-risk status and consequently makes changes to its actuarial assumptions (including a return to previously used assumptions) that result in a reduction in the funding shortfall that exceeds $50,000,000, that change in actuarial assumptions would require approval of the Commissioner. In determining whether aggregate unfunded vested benefits exceed $50,000,000, the proposed regulations would provide that multiemployer plans and plans with no unfunded vested benefits are disregarded. In addition, the proposed regulations would provide that the aggregate unfunded vested benefits used to determine premiums for the current plan year (as determined under section 4006(a)(3)(E)(iii) of ERISA) are used for purposes of calculating whether unfunded vested benefits exceed $50,000,000.

III. Section 1.430(g)-1 Valuation Date and Value of Plan Assets

Section 1.430(g)-1 would provide rules for a plan's valuation date and the value of plan assets.[3] Under the proposed regulations, except in the case of a small plan, a plan's valuation date is the first day of the plan year. For this purpose, a small plan is defined as a plan sponsored by an employer that had 100 or fewer participants in defined benefit plans (other than multiemployer plans as defined in section 414(f)) sponsored by the employer or members of the employer's controlled group, including active and inactive participants and all other individuals entitled to future benefits. A

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[3] The value of plan assets under these proposed regulations is referred to in Schedule SB of Form 5500 as "actuarial assets."

small plan is permitted to have a valuation date other than the first day of a plan year. The selection of a valuation date by a small plan is part of the plan's funding method and, thus, is permitted to be changed only with the Commissioner's consent. If a plan that was using a valuation date that was not the first day of the plan year is no longer eligible to use that date because the plan is no longer a small plan, the required change of the valuation date to the first day of the plan year is treated as automatically approved and no prior approval of the Commissioner is necessary.

The proposed regulations would provide that plan assets must be valued either at their fair market value on the valuation date or at the "average" value of assets on the valuation date. Under this average value, the value of plan assets is set equal to the average of the fair market value of assets on the valuation date and the adjusted fair market value of assets determined for one or more earlier determination dates. The proposed regulations would provide that the period of time between the valuation date and each of the earlier determination dates must be equal (with a period that is not more than 12 months), and the earliest of these determination dates cannot be earlier than the last day of the 25th month before the valuation date of the plan year. In a typical situation, the earlier determination dates will be the two immediately preceding valuation dates. The proposed regulations would provide that this average of fair market values is increased for contributions included in the plan's asset balance on the current valuation date that were not included in the plan's asset balance on an earlier determination date, and reduced for benefits and administrative expenses paid from plan assets during the same period.[4] After these adjustments, as well as the

[4] Note that this average of fair market values is different from the calculation of average value under §1.412(c)(2)-1(b)(7). For example, the adjusted value described in the proposed regulations does not

adjustments described in the following two paragraphs, the resulting average value must be constrained so that it falls between 90 and 110 percent of the fair market value of plan assets.

The proposed regulations would implement the rules of section 430(g)(4) relating to the treatment of contributions for a prior plan year that are made after the valuation date for the current plan year. These rules work in conjunction with the rules of section 430(j)(2) in order to keep employers and plans neutral regarding the timing of contributions that are paid after the end of the plan year. Under section 430(j)(2), the amount of the contribution must be adjusted for interest at the effective interest rate under section 430(h)(2) in order to take into account the delay in contributions (including the period after the end of the year). For this purpose, section 430(g)(4) requires that only the present value of a prior year contribution paid after the valuation date be included in plan assets, so that the value of plan assets for the next plan year is not inflated by reflecting a delayed contribution at full value. This effectively means that the present value of the contribution is the same from the perspective of the employer and the plan, regardless of when it is made. Because the requirement to adjust contributions for delayed payment after the end of the plan year is first effective for plan years beginning in 2008 (except for certain plans with a delayed effective date), the corresponding requirement to include only the present value of a prior year contribution paid after the valuation date is not effective until the second plan year for which section 430 applies to the plan. Thus, this corresponding requirement will

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include interest and dividends on plan assets attributable to the period between the earlier determination date and the valuation date in determining the adjusted fair market value of assets.

become effective in plan years beginning in 2009, except with respect to plans for which the effective date of section 430 is delayed.

The proposed regulations would specify the treatment of current year contributions that are made before the valuation date (which could only occur for small plans with valuation dates other than the first day of the plan year). These contributions, adjusted for interest at the effective interest rate under section 430(h)(2) for the plan year, must be subtracted from plan assets in determining the actuarial value of plan assets. This is similar to the pre-PPA ’06 requirement to subtract these contributions from plan assets after adjustment using the plan’s valuation interest rate.

The proposed regulations would incorporate the provisions of section 430(l) (involving qualified transfers to health benefit accounts under section 420).

IV. Section 1.430(h)(2)-1 Interest Rates

Section 1.430(h)(2)-1 would specify the interest rates that are to be used to determine present value and to make other calculations under section 430. These rates are generally based on the 24-month moving averages of 3 separate segment rates for the month that includes the valuation date (the applicable month). The first segment rate, which is based on the portion of the corporate bond yield curve over the period from 0 to 5 years, applies for purposes of discounting benefits that are expected to be paid during the 5-year period beginning on the valuation date for a plan year. The second segment rate, which is based on the portion of the corporate bond yield curve over the period between 5 and 20 years, applies for purposes of discounting benefit payments that are expected to be paid at least 5 years after the valuation date, but before 20 years. The third segment rate applies to benefit payments that are expected to be paid at least 20 years after the valuation date. Thus, for example, if a series of monthly payments is assumed to be made beginning on the valuation date, the second segment rate will apply to the 61st such payment and the third segment rate will apply beginning with the 241st such payment.[5] Except in the case of a new plan, a transition rule applies for 2008 and 2009 under which these segment rates are blended with the long-term corporate bond rate that applies under pre-PPA law.

The monthly corporate bond yield curve is, with respect to any month, a yield curve that is prescribed by the Commissioner for that month based on yields for that month on investment grade corporate bonds with varying maturities that are in the top three quality levels available. Notice 2007-81 (2007-44 IRB 899) provides guidance on the monthly corporate bond yield curve and related interest rates used to make certain computations related to the funding requirements that apply to single employer defined benefit plans under section 430(h)(2), including a description of the methodology for determining the monthly corporate bond yield curve. See §601.601(d)(2) of this chapter.

The proposed regulations would reflect the special interest rate for determining a plan’s funding target in the case of airlines that make the 10-year amortization election described in section 402(a)(2) of PPA ’06, in accordance with section 6615 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110-28 (121 Stat. 112). The special interest rate

[5] The same interest rate timing rules apply for purposes of determining present values for purposes of section 417(e)(3).

does not apply for other purposes such as the determination of the plan's target normal cost.

The proposed regulations describe several elections a plan sponsor is permitted to make in order to use an alternative interest rate rather than the segment rates. These elections are made by providing written notification of the election to the plan's enrolled actuary. Such an election is part of the plan's funding method and, accordingly, may only be adopted or changed with the consent of the Commissioner. Under one such election, a plan sponsor that is using segment rates may elect the use of an alternative month as the applicable month, provided that the alternative month is one of the 4 months that precede the month that includes the valuation date for the plan year. Under another such election, the plan sponsor may elect not to apply the transition rule under which the segment rates are blended with the 30-year Treasury rate for 2008 and 2009. Under the third such election, for purposes of determining the minimum required contribution under section 430 (including the determination of shortfall amortization installments, waiver amortization installments, and the present value of those installments), the plan sponsor may elect to use interest rates under the monthly corporate bond yield curve -- which is a set of spot rates for the month preceding the valuation date rather than a 24-month moving average for that month or an alternative applicable month -- in lieu of the segment rates. The amount of the funding target calculated in accordance with any of these elections applies for all purposes, including determining the adjusted funding target attainment percentage under section 436 and the applicable limitations under section 404. In the case of the first plan year to which section 430 applies to a plan (the first plan year beginning in

2008 other than for a plan with a delayed section 430 effective date), any of these elections are treated as having been approved by the Commissioner and do not require the Commissioner's specific prior approval.

In the case of a plan sponsor that has elected to use interest rates under the monthly corporate bond yield curve, if with respect to a decrement the benefit is only expected to be paid for one-half of a year (because the decrement was assumed to occur in the middle of the year), the proposed regulations would provide that the interest rate for that year can be determined as if the benefit were being paid for the entire year.

Under the proposed regulations, the effective interest rate determined under section 430(h)(2)(A) is the single interest rate that, if used to determine the present value of the benefits taken into account in determining the plan's funding target for a plan year, would result in an amount equal to the plan's funding target determined for the plan year under section 430(d) as described in §1.430(d)-1(b)(2) (without regard to calculations for plans in at-risk status under section 430(i)). The effective interest rate is used to adjust plan contributions made on a date other than the valuation date.

Under the proposed regulations, the interest rates used to determine the amount of shortfall amortization installments and waiver amortization installments are determined based on the dates those installments are assumed to be paid, using the same timing rules that apply for purposes of determining the target normal cost. Thus, for a plan that uses the segment rates, the first segment rate applies to the five shortfall amortization installments assumed to be paid during the first five years beginning on the valuation date for the plan year, and the second segment rate applies to the two shortfall amortization installments that are assumed to be paid after that period.

V. Section 1.430(i)-1 Plans in At-risk Status

The proposed regulations would provide rules and assumptions for determining the funding target and making other computations for certain defined benefit plans that are referred to as plans in "at-risk" status due to their significantly underfunded status. These rules apply to single employer defined benefit plans (including multiple employer plans) but do not apply to multiemployer plans. The at-risk rules do not apply to small plans. For this purpose, a small plan is defined as a plan sponsored by an employer that had 500 or fewer participants (including both active and inactive participants) in defined benefit plans (other than multiemployer plans) sponsored by the employer or any member of the employer's controlled group on each day during the preceding plan year.

In general, the proposed regulations would provide that a plan is in at-risk status for a plan year if the funding target attainment percentage (FTAP) for the preceding plan year is less than 80% (65%, 70%, and 75%, for plan years beginning in 2008, 2009, and 2010, respectively),[6] and the at-risk FTAP for the preceding plan year is less than 70 percent. For this purpose, the proposed regulations would provide that a plan's FTAP for a plan year is a fraction (expressed as a percentage) determined as: (i) the value of plan assets for the plan year after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B)), divided by (ii) the funding target of the plan for the plan year (determined

[6] This phase-in of the 80% rule applies solely for plan years beginning in 2008 through 2010 and is not adjusted for plans described in §1.430(i)-1(f)(2) for which the effective date of section 430 is delayed.

without regard to section 430(i) and these proposed regulations). The proposed regulations would provide that the at-risk FTAP of a plan for a plan year is determined similarly except that the denominator is the at-risk funding target of the plan for the plan year (but determined without regard to the loading factor discussed in the following paragraph). The proposed regulations would provide that, in the case of a newly established plan, this FTAP and at-risk FTAP determination are assumed to be 100% for years before the plan exists.

In general, in accordance with section 430(i)(1), the proposed regulations would provide that the at-risk funding target and the at-risk target normal cost of the plan for the plan year are generally determined in the same manner as for plans not in at-risk status but using special actuarial assumptions. In addition, the at-risk funding target and the at-risk target normal cost are increased to take into account a loading factor. In any case, the at-risk funding target and the at-risk target normal cost of a plan for a plan year cannot be less than the plan's funding target and target normal cost determined without regard to the at-risk rules. This minimum value is determined on a plan-wide (rather than a participant-by-participant) basis.

The actuarial assumptions used to determine a plan's at-risk funding target for a plan year are the actuarial assumptions that are applied under section 430, with certain modifications as set forth in the proposed regulations. Under these special actuarial assumptions, if an employee would be eligible to commence an immediate distribution upon termination of employment by the end of the plan year that begins 10 years after the end of the current plan year (that is, the end of the 11th plan year beginning with the current plan year), that employee is assumed to terminate and commence an immediate distribution at the earliest retirement date under the plan, or, if later, at the end of the current plan year. (However, the proposed regulations would provide that this special assumption does not apply to the extent the employee is otherwise assumed to retire during the current plan year. Thus, for example, if generally applicable retirement assumptions would provide for a 25% probability that an employee will retire during the current plan year, the special retirement age assumption would require the plan to assume a 75% probability that the employee will retire at the end of the plan year.) For this purpose, the proposed regulations would define the earliest retirement age under the plan as the earliest age at which a participant could terminate employment and receive an immediate distribution. In addition, the special actuarial assumptions in the proposed regulations would provide that all employees are assumed to elect the optional form of benefit available under the plan at the assumed retirement age that would result in the highest present value of benefits.

If a plan that is in at-risk status for the plan year has been in at-risk status for a consecutive period of fewer than 5 plan years, the plan's funding target for the plan year is determined as a blend of the funding target determined as if the plan were not in at-risk status and the funding target determined as if the plan had been in at-risk status for each of the previous 5 plan years. For this purpose, the funding target determined as if the plan had been in at-risk status for each of the previous 5 plan years is determined without applying the loading factor if the plan has not been in at-risk status for two of the last four plan years. The increase in the funding target to reflect the at-risk rules is phased in over 5 years at 20% per year. The proposed regulations provide similar rules for determining the at-risk target normal cost of a plan that has been in at-risk status for fewer than 5 consecutive plan years.

For purposes of applying the rules under section 430(i), the proposed regulations set forth rules for making certain calculations with respect to the first plan year to which section 430 applies to the plan. These rules are generally the same as the rules that apply for that plan year for purposes of section 436.

There is no special rule for determining the at-risk funding target for the plan year preceding the plan year section 430 first applies to the plan. This is because, for a plan to which section 430 applies beginning in 2008, if the plan's FTAP for the preceding plan year was less than the 65% needed to be in at-risk status (pursuant to the transition rule described in section 430(i)(4)(B)), then the at-risk FTAP would necessarily be below the 70% needed for the plan to be in at-risk status (because the at-risk funding target cannot be less than the funding target for a plan that is not in at-risk status). However, plans for which the effective date of section 430 is delayed will have to determine the at-risk funding target for the plan year that precedes the plan year for which section 430 is first effective with respect to the plan.

Effective/Applicability Dates

Section 430 generally applies to plan years beginning on or after January 1, 2008. These regulations are proposed to apply to plan years beginning on or after January 1, 2009. However, in the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780), the regulations are proposed to apply to plan years beginning on or after the date section 430 applies with respect to the plan. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in these proposed regulations for purposes of satisfying the requirements of section 430.

Under the proposed regulations, any change in a plan's funding method that is made for the first plan year section 430 applies to the plan and that is not inconsistent with the requirements of section 430 would be treated as having been approved by the Commissioner and would not require the Commissioner's specific prior approval. In addition, the Commissioner's specific prior approval is not required with respect to any actuarial assumptions that are adopted for the first plan year for which section 430 applies to the plan and that are not inconsistent with the requirements of section 430. Future guidance will cover procedures for obtaining the Commissioner's approval for changes in funding method and may provide for additional circumstances in which automatic approval is granted.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information imposed by these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The estimated burden imposed by the collection of information contained in these proposed regulations is 0.75 hours per respondent. Moreover, this burden is attributable to the flexibility given under the applicable statutory requirements under which a plan sponsor may make any of several elections related to the interest rate used for minimum funding purposes. The written elections under these proposed regulations are made by the plan sponsor upon occasion and will require minimal time to prepare. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Lauson C. Green and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.430(d)-1 is added to read as follows:

§1.430(d)-1 Determination of target normal cost and funding target.

(a) In general--(1) Overview. This section sets forth rules for determining a plan's target normal cost and funding target under sections 430(b) and 430(d), including guidance relating to the application of actuarial assumptions described in sections 430(h)(1) and 430(h)(4). Section 430 and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to section 412 but do not apply to multiemployer plans (as defined in section 414(f)). For further guidance on actuarial assumptions, see §1.430(h)(2)-1 (relating to interest rates) and §§1.430(h)(3)-1 and 1.430(h)(3)-2 (relating to mortality tables). See also §1.430(i)-1 for the determination of the funding target and target normal cost for a plan that is in at-risk status.

(2) Organization of regulation. Paragraph (b) of this section sets forth definitions of target normal cost and funding target. Paragraph (c) of this section provides rules regarding which benefits are taken into account in determining a plan's target normal cost and funding target. Paragraph (d) of this section sets forth the rules

regarding the plan provisions that are taken into account in making these determinations, and paragraph (e) of this section provides rules on which plan participants are taken into account for this purpose. Paragraph (f) of this section provides rules relating to the actuarial assumptions and the plan's funding method that are used to determine present values. Paragraph (g) of this section contains effective/applicability dates and transition rules.

(3) <u>Special rules for multiple employer plans</u>. In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, the plan's funding target and target normal cost are computed separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) <u>Definition of target normal cost, funding target, and funding target attainment percentage</u>--(1) <u>Target normal cost</u>--(i) <u>In general</u>. For a plan that is not in at-risk status under section 430(i) for the plan year, the target normal cost of the plan for the plan year is the present value of all benefits that have accrued or have been earned (or that are expected to accrue or to be earned) under the plan during the plan year. See §1.430(i)-1(d) and (e)(2) for the determination of target normal cost for a plan that is in at-risk status.

(ii) Benefits accruing for a plan year. The benefits that have been accrued or have been earned (or that are expected to accrue or to be earned) under a plan during a plan year include any increase in benefits during the plan year that is a result of any actual or projected increase in compensation during the current plan year, even if that increase in benefits is with respect to benefits attributable to services performed in a preceding plan year.

(2) Funding target. For a plan that is not in at-risk status under section 430(i) for the plan year, the funding target of the plan for the plan year is the present value of all benefits that have been accrued or earned under the plan as of the first day of the plan year. See §1.430(i)-1(c) and (e)(1) for the determination of the funding target for a plan that is in at-risk status.

(3) Funding target attainment percentage. See §1.430(i)-1(b)(3) and §1.436-1(j)(2) for rules relating to the determination of the funding target attainment percentage under section 430(d)(2).

(c) Benefits taken into account--(1) In general--(i) Basic rule. The benefits taken into account in determining the funding target and target normal cost under paragraph (b) of this section are all benefits earned or accrued under the plan, including retirement-type and ancillary benefits.

(ii) Allocation of benefits--(A) Benefits that are based on accrued benefits. If the amount of a benefit that is expected to be paid is a function of the accrued benefit at the time the benefit is expected to be paid, then the amount of the benefit that is taken into account in the funding target is determined by applying that function to the accrued benefit as of the beginning of the plan year and the amount of the benefit that is taken into account in the target normal cost is determined by applying that function to the increase in the accrued benefit for the plan year. For example, a benefit that is assumed to be payable at a particular early retirement age in the amount of 90% of the accrued benefit is taken into account in the funding target in the amount of 90% of the accrued benefit as of the beginning of the plan year, and that benefit is taken into account in the target normal cost in the amount of 90% of the increase in the accrued benefit for the plan year.

(B) Benefits that are based on service. If the amount of a benefit that is expected to be paid is not a function of the accrued benefit at the time the benefit is expected to be paid, but is a function of the participant's service at that time, then the portion of the benefit taken into account for purposes of determining the funding target for a plan year is determined by applying that function to the participant's service as of the first day of the plan year and the amount of the benefit that is taken into account in the target normal cost is the increase in that benefit for the plan year based on the additional year of service. For example, if a plan provides a post-retirement death benefit of $500 per year of service, then the funding target is determined based on a death benefit of $500 multiplied by a participant's service at the beginning of the year and the target normal cost is based on the additional $500 in death benefits earned for one more year of service.

(C) Other benefits. If the amount of a benefit that is expected to be paid is neither a function of the accrued benefit at the time the benefit is expected to be paid as described in paragraph (c)(1)(ii)(A) of this section nor a function of the participant's service at that time as described in paragraph (c)(1)(ii)(B) of this section, then the portion of the benefit taken into account for purposes of determining the funding target for a plan year is based on the proportion of a participant's service as of the first day of the plan year relative to the service the participant will have when the participant meets the age and service eligibility requirements for the benefit, and the portion of the benefit that is taken into account in the target normal cost is the increase in the proportional benefit for the plan year. For example, if a plan provides a Social Security supplement for a participant who retires after 30 years of service that is equal to a participant's Social Security benefit, the funding target is determined based on the participant's Social Security benefit as of the beginning of the plan year multiplied by a fraction, the numerator of which is the participant's service as of the first day of the plan year and the denominator of which is 30 years. In such a case, the target normal cost is based on the increase in the proportional benefit taking into account one additional year of service and any changes in the participant's Social Security benefit.

(iii) Application of section 436 limitations to funding target and target normal cost determination. The determination of the funding target and target normal cost of a plan for a plan year is not permitted to take into account any limitations or anticipated limitations under section 436.

(2) Payment of expenses from plan assets. Plan administrative expenses paid (or expected to be paid) from plan assets for a plan year are not taken into account in the determination of a plan's target normal cost and funding target for that plan year.

(3) Benefits provided by insurance. A plan generally is required to reflect in the plan's funding target and target normal cost the liability for benefits that are funded through insurance contracts held by the plan, and to include in plan assets the value

of the corresponding insurance contracts. Alternatively, in the case of benefits that are funded through insurance contracts purchased from an insurance company licensed under the laws of a State, the plan is permitted to exclude benefits provided under such contracts from the plan's funding target and target normal cost and to exclude the corresponding insurance contracts from plan assets, but only to the extent that a participant's or beneficiary's right to receive those benefits is an irrevocable contractual right, based on premiums paid to the insurance company prior to the valuation date under the insurance contracts. Thus, for example, in the case of a retired participant receiving benefits from an annuity contract in pay status under which no premiums are required on or after the valuation date, a plan is permitted to exclude the benefits provided by the contract from the plan's funding target and target normal cost, provided that the value of the contract is also excluded from plan assets. Similarly, in the case of an active or deferred vested participant whose benefits are funded by a life insurance or annuity contract under which further premiums are required on or after the valuation date, a plan is permitted to exclude the benefits, if any, that would be paid from the contract if no further premiums were to be paid (for example, if the contract were to go on reduced paid-up status) from the plan's funding target and target normal cost, provided that the value of the contract is excluded from plan assets. A plan's treatment of benefits funded through insurance contracts pursuant to this paragraph (c)(3) is part of the plan's funding method. Accordingly, that treatment can be changed only with the consent of the Commissioner.

(d) Plan provisions taken into account. Except as provided in section 412(d)(2), the determination of a plan's funding target and target normal cost for a plan year is based on plan provisions that are adopted no later than the valuation date for the plan year and that become effective during that plan year. Section 412(d)(2) applies for purposes of determining whether a plan amendment is treated as having been adopted on the first day of the plan year (including a plan amendment adopted within 2-1/2 months after the close of the plan year).

(e) Plan population taken into account--(1) In general. In making any determination of the funding target or target normal cost under paragraph (b) of this section, the plan population is determined as of the valuation date. The plan population must include three classes of individuals--

(i) Participants currently employed in the service of the employer;

(ii) Participants who are retired under the plan or who are otherwise no longer employed in the service of the employer; and

(iii) All other individuals currently entitled to benefits under the plan.

(2) Special exclusion for “rule of parity” cases. Certain individuals may be excluded from the class of individuals described in paragraph (e)(1)(ii) of this section. The excludable individuals are those former participants who, prior to the valuation date for the plan year, have terminated service with the employer without vested benefits and whose service might be taken into account in future years because the ‘rule of parity’ of section 411(a)(6)(D) does not permit that service to be disregarded. However, if the plan's experience as to separated employees returning to service has been such that the exclusion described in this paragraph (e)(2) would be unreasonable, the exclusion would no longer apply.

(3) Anticipated future participants. In making any determination of the funding target or target normal cost under paragraph (b) of this section, the actuarial assumptions and funding method used for the plan must not anticipate the affiliation with the plan of future participants not employed in the service of the employer on the plan valuation date. However, any such determination may anticipate the affiliation with the plan of current employees who have not yet satisfied the participation (age and service) requirements of the plan as of the valuation date.

(f) Actuarial assumptions and funding method used in determination of present value--(1) Establishment of actuarial assumptions and funding method--(i) General rules--(A) Assumptions and method cannot be changed for a plan year once established. The determination of any present value or other computation under section 430 must be made on the basis of actuarial assumptions and a funding method. Actuarial assumptions established for a plan year in accordance with paragraph (f)(1)(ii) of this section cannot subsequently be changed for that plan year unless the Commissioner determines that the assumptions that were used are unreasonable. Similarly, a funding method established for a plan year in accordance with paragraph (f)(1)(ii) of this section cannot subsequently be changed for that plan year unless the Commissioner determines that the use of that funding method for that plan year is impermissible.

(B) Scope of funding method. A plan's funding method includes not only the overall funding method used by the plan but also each specific method of computation used in applying the overall method. However, the choice of which actuarial assumptions are appropriate to the overall method or to the specific method of computation is not a part of the funding method.

(ii) Timing rule for establishing actuarial assumptions and funding method. The actuarial assumptions and the funding method used by a plan for a plan year must be established not later than the due date (with extensions) for the filing of Form 5500, "Annual Return/Report of Employee Benefit Plan," for that plan year (or the last day of the 7th month after the end of the plan year in the case of a plan not required to file Form 5500). The filing of the first actuarial report (Schedule SB) for a plan year under section 6059 that reflects the use of actuarial assumptions and a funding method is treated as the establishment of those assumptions and the funding method for that plan year.

(2) Interest and mortality rates. Section 430(h)(2) and §1.430(h)(2)-1 set forth the interest rates, and section 430(h)(3) and §§1.430(h)(3)-1 and 1.430(h)(3)-2 set forth the mortality tables, that must be used for purposes of determining any present value under this section.

(3) Other assumptions. In the case of actuarial assumptions other than those specified in sections 430(h)(2), 430(h)(3), and 430(i), each of those actuarial assumptions must be reasonable (taking into account the experience of the plan and reasonable expectations), and the actuarial assumptions, in combination, must offer the plan's enrolled actuary's best estimate of anticipated experience under the plan. See paragraph (f)(4)(iii) of this section for special rules for determining the present value of a single sum and similar distributions.

(4) Probability of benefit payments in single sum or other optional forms--(i) In general. This paragraph (f)(4) provides rules relating to the probability that benefit payments will be paid as single sums or other optional forms under a plan and the impact of that probability on the determination of the present value of those benefit payments under section 430.

(ii) General rules of application. Any determination of present value or any other computation under this section must take into account--

(A) The probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including single sum distributions), determined on the basis of the plan's experience and other related assumptions; and

(B) Any difference in the present value of future benefit payments that results from the use of actuarial assumptions in determining benefit payments in any such optional form of benefits that are different from those prescribed by section 430(h).

(iii) Single sum and similar distributions--(A) Distributions using section 417(e) assumptions. In the case of a distribution that is subject to section 417(e)(3) and that is determined using the applicable interest rate and applicable mortality table under section 417(e)(3), for purposes of applying paragraph (f)(4)(ii) of this section, the computation of the present value of that distribution will be treated as having taken into account any difference in present value that results from the use of actuarial assumptions that are different from those prescribed by section 430(h) (as required under paragraph (f)(4)(ii)(B) of this section) if the present value of the distribution is determined in accordance with paragraph (f)(4)(iii)(B) of this section.

(B) Substitution of annuity form--(1) In general. Except as otherwise provided in this paragraph (f)(4)(iii)(B), the present value of a distribution is determined in accordance with this paragraph (f)(4)(iii)(B) if it is determined by valuing the annuity that corresponds to the distribution using special actuarial assumptions. Under these special assumptions, for the period beginning with the annuity starting date, the current applicable mortality table under section 417(e)(3) that would apply to a distribution with an annuity starting date occurring on the valuation date is substituted for the mortality table under section 430(h)(3) that would otherwise be used. In addition, under these special assumptions, the valuation interest rates under section 430(h)(2) are used for this purpose for all periods (as opposed to the interest rates under section 417(e)(3) which the plan uses to determine the amount of the benefit).

(2) Optional application of generational mortality. In determining the present value of a distribution under this paragraph (f)(4)(iii)(B), if a plan uses the generational mortality tables under §1.430(h)(3)-1(a)(4) or §1.430(h)(3)-2, the plan is permitted to use a 50-50 male-female blend of the annuitant mortality rates under the §1.430(h)(3)-1(a)(4) generational mortality tables in lieu of the applicable mortality table under section 417(e)(3) that would apply to a distribution with an annuity starting date occurring on the valuation date.

(3) Optional phase-in of section 417(e)(3) segment interest rates. In determining the present value of a distribution under this paragraph (f)(4)(iii)(B), a plan is permitted to make adjustments to reflect differences between the phase-in of the section 430(h)(2) segment rates under section 430(h)(2)(G) and the adjustments to the segment rates under section 417(e)(3)(D)(iii).

(C) Distributions subject to section 417(e)(3) using other assumptions. In the case of a distribution that is subject to section 417(e)(3) but that is determined as the greater of the benefit determined using the applicable interest rate and the applicable mortality table under section 417(e)(3) and the benefit determined using some basis other than the section 417(e)(3) assumptions, for purposes of applying paragraph (f)(4)(ii)(B) of this section, the computation of present value must take into account the extent to which the present value of the distribution is greater than the present value determined using the rules of paragraph (f)(4)(iii)(B) of this section.

(D) Distributions subject to section 411(a)(13). In the case of an applicable defined benefit plan described in section 411(a)(13)(C), if the distribution is determined under the rules of section 411(a)(13)(A), the amount of the future distribution must be determined by projecting the future interest credits or equivalent amounts under the plan's interest crediting rules to the expected date of payment using reasonable actuarial assumptions.

(5) Reasonable techniques permitted. Any reasonable technique can be used to determine the present value of the benefits expected to be paid during a plan year, based on the interest rates and mortality assumptions applicable for the plan year. For example, the present value of a monthly retirement annuity payable at the beginning of each month can be determined--

(i) Using the standard actuarial approximation that reflects 13/24ths of the discounted expected payments for the year as of the beginning of the year and 11/24ths of the discounted expected payments for the year as of the end of the year; or

(ii) By assuming that the payment is made in the middle of the year.

(6) Approval of significant changes in actuarial assumptions for large plans--(i) In general. A large plan as described in paragraph (f)(6)(ii) of this section cannot change any actuarial assumption used to determine the plan's funding target for a plan year without the approval of the Commissioner if the change in assumptions results in a decrease in the plan's funding shortfall (within the meaning of section 430(c)(4)) for the current plan year (disregarding the effect on the plan's funding shortfall resulting from changes in interest and mortality assumptions) that exceeds $50,000,000, or that exceeds $5,000,000 and is 5 percent or more of the funding target of the plan before such change.

(ii) Affected plans. A plan is a large plan as described in this paragraph (f)(6)(ii) if--

(A) The plan is a defined benefit plan (other than a multiemployer plan) to which Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) applies; and

(B) The aggregate unfunded vested benefits used to determine premiums for the plan year (as determined under section 4006(a)(3)(E)(iii) of ERISA) of the plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of ERISA) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of ERISA) which are covered by Title IV (disregarding multiemployer plans and disregarding plans with no unfunded vested benefits) exceed $50,000,000.

(7) Examples. The following examples illustrate the rules of this section. Unless otherwise indicated, these examples are based on the following assumptions:

the normal retirement age is 65, the plan is subject to section 430 starting in 2008, the plan year is the calendar year, and the valuation date is January 1. The examples read as follows:

Example 1. (i) Plan P provides an accrued benefit equal to 1.0% of a participant's highest 3-year average compensation for each year of service. Plan P provides that an early retirement benefit can be received at age 60 equal to the participant's accrued benefit reduced by 0.5% per month for early commencement. On January 1, 2008, Participant A is age 60 and has 12 years of past service. Participant A's compensation for the years 2005 through 2007 was $47,000, $50,000, and $52,000, respectively. Participant A's rate of compensation at December 31, 2007, is $54,000 and A's rate of compensation for 2008 is assumed not to increase at any point during 2008.

(ii) Participant A's annual accrued benefit as of January 1, 2008, is $5,960 [0.01 x 12 x ($47,000 + $50,000 + $52,000)/3]. Participant A's expected benefit accrual for 2008 is $800 [0.01 x 13 x ($50,000 + $52,000 + $54,000)/3 - $5,960].

(iii) The early retirement benefit, with respect to the decrement at age 60, that is taken into account when determining the 2008 funding target is $4,172 [$5,960 accrued benefit x (1-0.005 x 60 months)]. The annual accrual of the early retirement benefit, with respect to the decrement at age 60, that is taken into account when determining the 2008 target normal cost is $560 [$800 annual accrual x (1-0.005 x 60 months)].

(iv) The early retirement benefit, with respect to the decrement at age 61, that is taken into account when determining the 2008 funding target is $4,529.60 [$5,960 accrued benefit x (1-0.005 x 48 months)]. The annual accrual of the early retirement benefit, with respect to the decrement at age 61, that is taken into account when determining the 2008 target normal cost is $608 [$800 annual accrual x (1-0.005 x 48 months)].

Example 2. (i) The facts are the same as in Example 1. In addition, the plan offers a $500 temporary monthly supplement to participants who complete 15 years of service and retire from active employment after attaining age 60. The temporary supplement is available for retirements occurring at ages 60 and 61, and is payable until the participant turns age 62. In addition, the supplement is limited so that it does not exceed the participant's social security benefit payable at age 62. On January 1, 2008, Participant B is age 55 and has 20 years of past service, and Participant C is age 60 and has 14 years of past service. For Participants B and C, the projected social security benefit is greater than $500 per month.

(ii) For Participant B, the allocable portion of the annual temporary supplement that is taken into account when determining the funding target for 2008 is $4,800, which applies for the decrement at age 60 until age 62 [($500 x 12 months) x 20 years of past service / 25 years of service at eligibility for the supplement]. This same dollar amount will apply for the assumed decrement at age 60 or age 61, but the period of time the amount will be paid is different for those two decrements.

(iii) For Participant C, the allocable portion of the annual temporary supplement that is taken into account when determining the funding target for 2008 is $5,600, which is payable for the decrement at age 61 until age 62 [($500 x 12 months) x 14 years of past service / 15 years of service at eligibility for the supplement].

Example 3. (i) The facts are the same as in Example 1. In addition, the plan provides a disability benefit to participants who become disabled after completing 15 years of service. The disability benefit is payable at normal retirement age. For purposes of calculating the disability benefit, service continues to accrue until normal retirement age (unless recovery or retirement occurs earlier). Further, compensation is deemed to continue to normal retirement age at the same rate as when the disability began.

(ii) Participant A will be eligible for the disability benefit at age 63 when he will have 15 years of service. Participant A's projected annual disability benefit at normal retirement age is $9,180 (that is, 1% of highest 3-year average compensation of $54,000 multiplied by 17 years of deemed service at normal retirement age).

(iii) The allocable portion of the disability benefit that is taken into account when determining the 2008 funding target with respect to the disability decrements occurring at age 63 and later is $7,344 [$9,180 x (12 years of past service / 15 years of service at eligibility for disability benefits)].

(iv) The disability benefit accrual that is taken into account when determining the 2008 target normal cost with respect to the disability decrements occurring at age 63 and later is $612 [$9,180 x (1 year of deemed service / 15 years of service at eligibility for disability benefits)].

Example 4. (i) Retiree D, a participant in Plan P, is a male age 72 and is receiving a $100 monthly straight life annuity. The 2008 actuarial valuation is performed using the segment rates applicable for September 2007 (determined without regard to the transitional rule of section 430(h)(2)(G)), and the 2008 annuitant and nonannuitant (male and female) mortality tables (published in §1.430(h)(3)-1).

(ii) The present value of Retiree D's straight life annuity on the valuation date is $10,624. This is equal to the sum of: $5,005, which is the present value of payments expected to be made during the first 5 years, using the first segment interest rate of 5.26%; $5,431, which is the present value of payments expected to be made during the next 15 years, using the second segment interest rate of 5.82%; and $188, which is the present value of payments expected to be made after 20 years, using the third segment interest rate of 6.38%.

Example 5. (i) The facts are same as in Example 4, except Plan P does not provide for early retirement benefits or single sum distributions. The actuary assumes that no participants terminate employment prior to age 50 (other than by death), there is a 5% probability of withdrawal at age 50, and that those participants who do withdraw receive a deferred annuity starting at age 65. Participant E is a male age 46 on January 1, 2008, and has an annual accrued benefit of $23,000 beginning at age 65.

(ii) After taking into account the 5% probability of withdrawal, the funding target associated with Participant E's assumed age 50 withdrawal benefit in the 2008 actuarial valuation is $3,573.69. This is equal to the sum of: $363.55, which is the present value of payments expected to be made during the year the participant turns age 65 (the 20th year after the valuation date), using the second segment interest rate of 5.82%; and $3,210.14, which is the present value of payments expected to be made after the 20th year, using the third segment interest rate of 6.38%.

Example 6. (i) The facts are the same as in Example 5, except the plan offers a single sum distribution payable at normal retirement age (age 65) determined based on the applicable interest rate and the applicable mortality table under section 417(e)(3). The actuary assumes that 70% of the participants will elect a single sum upon retirement and the remaining 30% will elect a straight life annuity.

(ii) After taking into account the 5% probability of withdrawal, the portion of the 2008 funding target that is attributable to Participant E's assumed single sum payment, deferred to age 65, is $2,564.86. This is calculated in the same manner as the present value of annuity payments, except that the 2008 applicable mortality rates are substituted for the 2008 male annuitant mortality rates. This portion of the 2008 funding target is equal to the sum of: $254.63, which is the present value of annuity payments expected to be made between age 65 and 66 (during the 20th year after the valuation date), using the second segment interest rate of 5.82%; and $2,310.23, which is the present value of annuity payments expected to be made after the 20th year following the valuation date, using the third segment interest rate of 6.38%. These present value amounts reflect the 2008 male nonannuitant mortality rates prior to the assumed commencement of benefits at age 65, the 100% probability of retiring at age 65, and the 70% probability that E will elect a single sum distribution.

(iii) After taking into account the 5% probability of withdrawal, the portion of the 2008 funding target that is attributable to Participant E's assumed straight life annuity, deferred to age 65, is equal to 30% of the result obtained in Example 5.

Example 7. (i) The facts are the same as in Example 6, except the plan offers an immediate single sum upon withdrawal at age 50 determined based on the applicable interest rate and the applicable mortality table under section 417(e)(3). The actuary assumes that 70% of the participants will elect to receive a single sum distribution upon withdrawal.

(ii) After taking into account the 5% probability of withdrawal, the portion of the 2008 funding target that is attributable to Participant E's assumed single sum payment is $2,523.03. This is calculated in the same manner as the present value of annuity payments, except that the 2008 applicable mortality rates are substituted for the 2008 male annuitant and nonannuitant mortality rates after the annuity starting date. This portion of the 2008 funding target is equal to the sum of: $250.48, which is the present value of annuity payments expected to be made between age 65 and 66 (during the 20th year after the valuation date), using the second segment interest rate at an interest rate of 5.82%; and $2,272.55, which is the present value of annuity payments expected to be made after the 20th year following the valuation date, using the third segment interest rate of 6.38%. These present value amounts reflect the 2008 male nonannuitant mortality rates prior to the assumed single sum distribution age of 50, and the 70% probability that E will elect a single sum distribution.

Example 8. (i) The facts are the same as in Example 5, except that the plan sponsor elects under section 430(h)(2)(D)(ii) to use the monthly corporate bond yield curve instead of segment rates. The enrolled actuary assumes payments are made monthly throughout the year and uses the interest rate from the middle of the monthly corporate bond yield curve because this mid-year yield rate most closely matches the average timing of benefits paid. Solely for purposes of this example, assume that the monthly yield curve derived from the August 2007 data is applicable (even though the plan would actually have to use the yield curve derived from the December 2007 data).

(ii) After taking into account the 5% probability of withdrawal, the funding target associated with Participant E's assumed age 50 withdrawal benefit in the 2008 actuarial valuation is $3,359.69. This reflects the sum of each year's expected payments, discounted at the yield rates described in paragraph (i) of this Example 8, as shown below:

Age	Discount period	Yield rate	Present value
65	19.5	6.47%	$322.75
66	20.5	6.49%	298.51
67	21.5	6.51%	275.62
68 and over	Varies	Varies	2,462.81
Total			$3,359.69

Example 9. (i) Plan F is a cash balance plan that permits an immediate payment of a single sum equal to the participant's hypothetical account balance upon termination of employment. Plan terms provide that the hypothetical account is credited with interest at the 3rd segment rate. In the 2008 actuarial valuation, the enrolled actuary assumes that the hypothetical account balances will increase with annual interest credits of 5.0% until the participant commences receiving his or her benefit, that all participants will retire on the first day of the plan year in which they attain age 65 (that is, no participant will terminate employment prior to age 65 other

than by death), and that 100% of participants will elect a single sum upon retirement. The 2008 actuarial valuation is performed using the 24-month average segment rates applicable for September 2007 (determined without regard to the transitional rule of section 430(h)(2)(G)), and the separate annuitant and non-annuitant mortality tables under §1.430(h)(3)-1 for 2008 for periods prior to commencement of benefits (however, the annuitant mortality table is never used because the only assumed payment is a single sum). No mortality table is required for the period after commencement of benefits because the single sum payment is equal to the account balance. Participant F is a male age 61 on January 1, 2008, and has a hypothetical account balance equal to $150,000 on that date.

(ii) Participant F's hypothetical account balance projected to January 1, 2012 (the plan year in which F attains age 65) is $182,326 based on the assumed annual interest crediting rate of 5%. The 2008 funding target attributable to Participant F's benefit at age 65 is $145,905, which is calculated by discounting the projected hypothetical account balance of $182,326 using the first segment rate of 5.26% and the male non-annuitant mortality rates.

(iii) In contrast, if the enrolled actuary assumes that the hypothetical account balances increase with annual interest credits of 6.0%, the 2008 funding target attributable to Participant F's benefit at age 65 is $151,544 calculated by discounting the projected hypothetical account balance of $189,372 using the first segment rate of 5.26% and the male non-annuitant mortality rates.

(g) <u>Effective/applicability dates and transition rules</u>--(1) <u>In general</u>. Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) <u>Plans with delayed effective date</u>. In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780), this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) Approval for changes in funding method. Any change in a plan's funding method that is made for the first plan year for which section 430 applies to the plan and that is not inconsistent with the requirements of section 430 is treated as having been approved by the Commissioner and does not require the Commissioner's specific prior approval.

(4) Approval for changes in actuarial assumptions. The Commissioner's specific prior approval is not required with respect to any actuarial assumptions that are adopted for the first plan year for which section 430 applies to the plan and that are not inconsistent with the requirements of section 430.

Par. 3 Section 1.430(g)-1 is added to read as follows:

§1.430(g)-1 Valuation date and valuation of plan assets.

(a) In general--(1) Overview. This section provides rules relating to a plan's valuation date and the valuation of a plan's assets for a plan year under section 430(g). Section 430 and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to the rules of section 412, but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes valuation date rules. Paragraph (c) of this section describes rules regarding the determination of the asset value for purposes of a plan's actuarial valuation. Paragraph (d) of this section contains rules for taking employer contributions into account in the determination of the value of plan assets. Paragraph (e) of this section contains an example. Paragraph (f) of this section sets forth effective/applicability dates and transition rules.

(2) <u>Special rules for multiple employer plans</u>. In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan as if each employer maintained a separate plan. Thus, in such a case, the value of plan assets is determined separately for each employer under the plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) <u>Valuation date</u>--(1) <u>In general</u>. The determination of the funding target, target normal cost, and asset value of a plan for a plan year is made as of the valuation date of the plan for that plan year. Except as provided in paragraph (b)(2) of this section, the valuation date of a plan for any plan year is the first day of the plan year.

(2) <u>Exception for small plans</u>--(i) <u>In general</u>. If, on each day during the preceding plan year, a plan had 100 or fewer participants (including active and inactive participants and all other individuals entitled to future benefits), the plan may designate any day during the plan year as its valuation date for that plan year and succeeding plan years. For purposes of this paragraph (b)(2)(i), all defined benefit plans (other than multiemployer plans as defined in section 414(f)) maintained by an employer are treated as one plan, but only participants with respect to that employer or that employer's controlled group members are taken into account.

(ii) Employer determination. For purposes of this paragraph (b)(2), the employer includes all members of the employer's controlled group determined pursuant to sections 414(b), (c), (m), and (o).

(iii) Application of exception in first plan year. In the case of the first plan year of any plan, the exception for small plans under paragraph (b)(2)(i) of this section is applied by taking into account the number of participants that the plan is reasonably expected to have on each day during the first plan year.

(iv) Valuation date is part of funding method. The selection of a plan's valuation date is part of the plan's funding method and, accordingly, may only be changed with the consent of the Commissioner. The change of a plan's valuation date that is required by section 430 is treated as having been approved by the Commissioner and does not require the Commissioner's prior specific approval.

(c) Determination of asset value--(1) In general--(i) General use of fair market value. Except as provided in this paragraph (c), the value of plan assets for purposes of section 430 is equal to the fair market value of plan assets on the valuation date. Prior year contributions made after the valuation date and current year contributions made before the valuation date are taken into account to the extent provided in paragraph (d) of this section.

(ii) Fair market value. The fair market value of an asset is determined as the price at which the asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. The Commissioner may, in guidance of general applicability, issue guidance on the valuation of insurance contracts. See §601.601(d)(2) of this chapter.

(2) Averaging of fair market values--(i) In general. Subject to the plan asset corridor rules of paragraph (c)(2)(iii) of this section, a plan is permitted to determine the value of plan assets on the valuation date as the average of the fair market value of assets on the valuation date and the adjusted fair market value of assets determined for one or more earlier determination dates using the method described in this paragraph (c)(2). The period of time between the valuation date and each of the earlier determination dates must be equal and that period of time cannot exceed 12 months. In addition, the earliest such determination date cannot be earlier than the last day of the 25th month before the valuation date of the plan year. In a typical situation, the earlier determination dates will be the two immediately preceding valuation dates. The method of determining the value of assets is part of the plan's funding method and, accordingly, may only be changed with the consent of the Commissioner.

(ii) Adjusted fair market value. The adjusted fair market value of plan assets for a prior determination date is the fair market value of plan assets on that date, increased for contributions included in the plan's asset balance on the current valuation date that were not included in the plan's asset balance on the earlier determination date, and reduced for benefits and administrative expenses paid from plan assets during the same period.

(iii) Restriction to 90-110 percent corridor--(A) Asset value less than 90 percent of fair market value. If the value of plan assets determined under paragraph (c)(2)(i) of this section is less than 90 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (c)(2) is equal to 90 percent of the fair market value of plan assets.

(B) Asset value greater than 110 percent of fair market value. If the value of plan assets determined under paragraph (c)(2)(i) of this section is greater than 110 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (c)(2) is equal to 110 percent of the fair market value of plan assets.

(3) Qualified transfers to health benefit accounts. In the case of a qualified transfer (as defined in section 420), any assets so transferred are not treated as plan assets for purposes of section 430 and this section.

(d) Accounting for contribution receipts--(1) Prior year contributions--(i) In general. For purposes of determining the value of plan assets under paragraph (c) of this section, if an employer makes a contribution to the plan after the valuation date for the plan year, and the contribution is for a preceding plan year, then the present value of the contribution determined as of that valuation date is taken into account as an asset of the plan as of the valuation date. For this purpose, the present value is determined using the effective interest rate under section 430(h)(2)(A) for the preceding plan year.

(ii) Special rule for plan years beginning before plan's first effective plan year. Notwithstanding paragraph (d)(1)(i) of this section, in the case of a plan's first effective plan year, if the plan sponsor makes a contribution to the plan after the valuation date for the first effective plan year and that contribution is for a preceding plan year, then the contribution is taken into account as a plan asset under paragraph (d)(1)(i) of this section without applying any present value discount.

(2) Current year contributions made before valuation date. For purposes of determining the value of plan assets under paragraph (c) of this section, if an employer makes a contribution for a plan year before that year's valuation date, that contribution (and any interest on the contribution for the period between the contribution date and the valuation date, determined using the effective interest rate under section 430(h)(2)(A) for the plan year) must be subtracted from plan assets in determining the value of plan assets as of the valuation date.

(e) Example. The following example illustrates the application of this section:

Example. (i) Facts. All assets of Plan F are invested in a trust fund, the plan year is the calendar year, and the valuation date is January 1. The actuarial value is determined by averaging fair market value over the valuation date and the preceding two valuation dates. For each plan year, all contributions for the plan year are made during that plan year. An actuarial valuation is performed as of January 1, 2019. The fair market value of assets, the plan contributions, the benefit payments, and other relevant items for 2017 through 2019 are as follows:

	2017	2018	2019
Fair market value: Jan. 1	$196,500	$238,000	$228,000
Contributions	$ 62,000	$ 66,000	
Benefit payments	$ (24,000)	$ (25,000)	
Expenses	$ (7,000)	$ (7,500)	
Interest and dividends	$ 7,500	$ 7,000	
Net realized gains (losses)	$ 6,000	$ (8,500)	
Balancing item	$ (3,000)	$ (42,000)	
Fair market value: Dec. 31	$238,000	$228,000	

(ii) Computation of average value. The average value as of January 1, 2019, is computed as follows:

Adjusted values	2017	2018	2019
Fair market value: January 1	$ 196,500	$238,000	$ 228,000
Net adjustments:			
Contributions	$ 128,000	$ 66,000	
Benefits Paid	$ (49,000)	$ (25,000)	
Expenses Paid	$ (14,500)	$ (7,500)	
Total......................................	$ 261,000	$ 271,500	$ 228,000

Average value as of January 1, 2019 equals:

$261,000 + $271,500 + $228,000 ÷ 3 = $253,500

(iii) Conclusion. Having determined an average value as of January 1, 2019 equal to $253,500, Plan F must confirm that this value satisfies the 90-110 percent corridor rules under paragraph (c)(2)(iii) of this section. Because 110% of $228,000 equals $250,800, the value of Plan F's assets under paragraph (c)(2) of this section must be limited to $250,800 (rather than $253,500) for this purpose. This valuation method meets the requirements of this section.

(f) Effective/applicability dates and transition rules--(1) In general. Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) Plans with delayed effective date. In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780), this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) First effective plan year. For purposes of this section, the first effective plan year for a plan is the first plan year to which section 430 applies to the plan.

(4) Approval for changes in the valuation date and valuation method for first effective plan year. Any change in a plan's valuation date or asset valuation method that is made for the first effective plan year and that is not inconsistent with the requirements of section 430 is treated as having been approved by the Commissioner and does not require the Commissioner's specific prior approval.

Par. 4 Section 1.430(h)(2)-1 is added to read as follows:

§1.430(h)(2)-1 Interest rates used to determine present value.

(a) In general--(1) Overview. This section provides rules relating to the interest rates to be applied for a plan year under section 430(h)(2). Section 430(h)(2) and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to section 412 but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes how the segment interest rates are used for a plan year. Paragraph (c) of this section describes those segment rates. Paragraph (d) of this section describes the monthly corporate bond yield curve that is used to develop the segment rates. Paragraph (e) of this section describes certain elections that are permitted to be made under this section. Paragraph (f) of this section describes other rules related to interest rates. Paragraph (g) contains effective/applicability dates and transition rules.

(2) Special rules for multiple employer plans. In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan as if each employer maintained a

separate plan. Thus, each employer under such a multiple employer plan may make elections with respect to the interest rate rules under this section that are independent of the elections of other employers under the plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) Interest rates for determining plan liabilities--(1) In general. For purposes of determining the target normal cost and the funding target for any plan year, the interest rates used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan are determined as set forth in this paragraph (b).

(2) Benefits payable within 5 years. In the case of benefits expected to be payable during the 5-year period beginning on the valuation date for the plan year, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the first segment rate with respect to the applicable month, as described in paragraph (c)(2)(i) of this section.

(3) Benefits payable after 5 years and within 20 years. In the case of benefits expected to be payable during the 15-year period beginning after the end of the period described in paragraph (b)(2) of this section, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the second segment rate with respect to the applicable month, as described in paragraph (c)(2)(ii) of this section.

(4) Benefits payable after 20 years. In the case of benefits expected to be payable after the period described in paragraph (b)(3) of this section, the interest rate used in determining the present value of the benefits that are included in the target normal cost and the funding target for the plan is the third segment rate with respect to the applicable month, as described in paragraph (c)(2)(iii) of this section.

(5) Applicable month. Except as provided in paragraph (e) of this section, the term "applicable month" for purposes of this paragraph (b) means the month that includes the valuation date of the plan for the plan year.

(6) Special rule for certain airlines--(i) In general. Pursuant to section 6615 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110-28 (121 Stat. 112), for a plan sponsor that makes the election described in section 402(a)(2) of the Pension Protection Act of 2006 (PPA '06), Public Law 109-280 (120 Stat. 780), the interest rate required to be used to determine the plan's funding target for each of the 10 years under that election is 8.25 percent (rather than the segment rates otherwise described in this paragraph (b)).

(ii) Special interest rate not applicable for other purposes. The special interest rate described in paragraph (b)(6)(i) of this section does not apply for other purposes such as the determination of the plan's target normal cost.

(c) Segment rates--(1) Overview. This paragraph (c) sets forth rules for determining the first, second, and third segment rates for purposes of paragraph (b) of this section. The first, second, and third segment rates are set forth in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See

§601.601(d)(2) of this chapter. See paragraph (g)(3) of this section for a transition rule under which the definition of the segment rates is modified for plan years beginning in 2008 and 2009.

(2) Definition of segment rates--(i) First segment rate. For purposes of this section, except as provided under the transition rule of paragraph (g)(3) of this section, the “first segment rate” is, with respect to any month, the single rate of interest determined by the Commissioner on the basis of the average of the monthly corporate bond yield curves (described in paragraph (d) of this section) for the 24-month period ending with the month preceding that month, taking into account only the first 5 years of each of those yield curves.

(ii) Second segment rate. For purposes of this section, except as provided under the transition rule of paragraph (g)(3) of this section, the “second segment rate” is, with respect to any month, the single rate of interest determined by the Commissioner on the basis of the average of the monthly corporate bond yield curves (described in paragraph (d) of this section) for the 24-month period ending with the month preceding that month, taking into account only the portion of each of those yield curves corresponding to the 15-year period that follows the end of the 5-year period described in paragraph (c)(2)(i) of this section.

(iii) Third segment rate. For purposes of this section, except as provided under the transition rule of paragraph (g)(3) of this section, the “third segment rate” is, with respect to any month, the single rate of interest determined by the Commissioner on the basis of the average of the monthly corporate bond yield curves (described in paragraph (d) of this section) for the 24-month period ending with the month preceding that month, taking into account only the portion of each of those yield curves corresponding to the 40-year period that follows the end of the 15-year period described in paragraph (c)(2)(ii) of this section.

(d) Monthly corporate bond yield curve--(1) In general. For purposes of this section, the "monthly corporate bond yield curve" is, with respect to any month, a yield curve that is prescribed by the Commissioner for that month based on yields for that month on investment grade corporate bonds with varying maturities that are in the top three quality levels available.

(2) Determination and publication of yield curve. A description of the methodology for determining the monthly corporate bond yield curve is provided in guidance issued by the Commissioner that is published in the Internal Revenue Bulletin. The yield curve for a month will be set forth in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2) of this chapter.

(e) Elections--(1) In general. This paragraph (e) describes elections that a plan sponsor can make to use alternative interest rates under this section. Any election under this section must be made by providing written notification of the election to the plan's enrolled actuary. Any election in this paragraph (e) is part of the plan's funding method and, accordingly, may only be adopted or changed with the consent of the Commissioner.

(2) Elections for alternative date. A plan sponsor that is using segment rates as provided under paragraph (b) of this section may elect the use of an alternative month as the applicable month for purposes of paragraph (b)(5) of this section, provided that

the alternative month is one of the 4 months that precede the month that includes the valuation date of the plan for the plan year.

(3) Election not to apply transition rule. The plan sponsor may elect not to apply the transition rule in paragraph (g)(3) of this section.

(4) Election to use full yield curve--(i) In general. For purposes of determining the minimum required contribution under section 430, the plan sponsor may elect to use interest rates under the monthly corporate bond yield curve described in paragraph (d) of this section for the month preceding the month that includes the valuation date in lieu of the segment rates determined under paragraph (c) of this section. These purposes include determining the installments and present values described in paragraph (f)(2) of this section. In order to address the timing of benefit payments during a year, reasonable approximations are permitted to be used to value benefit payments that are expected to be made during a plan year.

(ii) Reasonable techniques permitted. In the case of a plan sponsor using the monthly corporate bond yield curve under this paragraph (e)(4), if with respect to a decrement the benefit is only expected to be paid for one-half of a year (because the decrement was assumed to occur in the middle of the year), the interest rate for that year can be determined as if the benefit were being paid for the entire year. See §1.430(d)-1(f)(5) for additional reasonable techniques that can be used in determining present value.

(5) Plan sponsor. For purposes of the elections described in this section, any reference to the plan sponsor generally means the employer or employers responsible for making contributions to or under the plan. In the case of plans that are multiple

employer plans to which section 413(c)(4)(A) does not apply, any reference to the plan sponsor means the plan administrator within the meaning of section 414(g).

(f) Interest rates used for other purposes--(1) Effective interest rate. The effective interest rate determined under section 430(h)(2)(A) is the single interest rate that, if used to determine the present value of the benefits that are taken into account in determining the plan's funding target for a plan year, would result in an amount equal to the plan's funding target determined for the plan year under section 430(d) as described in §1.430(d)-1(b)(2) (without regard to calculations for plans in at-risk status under section 430(i)).

(2) Interest rates used for determining shortfall amortization installments and waiver amortization installments. The interest rates used to determine the amount of shortfall amortization installments and waiver amortization installments and the present value of those installments are determined based on the dates those installments are assumed to be paid, using the same timing rules that apply in determining target normal cost as described in paragraph (b) of this section. Thus, for a plan that uses the segment rates described in paragraph (c) of this section, the first segment rate applies to installments assumed to be paid during the first five plan years beginning on the valuation date for the plan year, and the second segment rate applies to installments assumed to be paid during the subsequent 15-year period. For purposes of this paragraph (f)(2), the shortfall amortization installments for a plan year are assumed to be paid on the valuation date for that plan year. Thus, for example, for a plan that uses the segment rates described in paragraph (c) of this section, the shortfall amortization installment for the fifth plan year following the current plan year

(the sixth installment) is assumed to be paid on the valuation date for that year so that such shortfall amortization installment will be determined using the second segment rate.

(g) Effective/applicability dates and transition rules--(1) In general. Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) Plans with delayed effective date. In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of PPA ‘06, this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) Transition rule--(i) In general. Notwithstanding the general rules for determination of segment rates under paragraph (c)(2) of this section, for plan years beginning in 2008 or 2009, the first, second, or third segment rate for a plan with respect to any month is equal to the sum of--

(A) The product of that rate for that month determined without regard to this paragraph (g)(3), multiplied by the applicable percentage; and

(B) The product of the weighted average interest rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as that provision was in effect for plan years beginning in 2007), multiplied by a percentage equal to 100 percent minus the applicable percentage.

(ii) Applicable percentage. For purposes of this paragraph (g)(3), the applicable percentage is 33-1/3 percent for plan years beginning in 2008 and 66-2/3 percent for plan years beginning in 2009.

(iii) New plans ineligible. The transition rule of this paragraph (g)(3) does not apply to a plan if the first plan year of the plan begins on or after January 1, 2008.

(4) Approval to make elections in first effective plan year. In the case of the first plan year to which section 430 applies to a plan, the plan sponsor's elections described in paragraph (e) of this section are treated as having been approved by the Commissioner and do not require the Commissioner's specific prior approval.

Par. 5 Section 1.430(i)-1 is added to read as follows:

§1.430(i)-1 Special rules for plans in at-risk status.

(a) In general--(1) Overview. This section provides special rules related to determining the funding target and making other computations for certain defined benefit plans that are in at-risk status for the plan year. Section 430(i) and this section apply to single employer defined benefit plans (including multiple employer plans) but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes rules for determining whether a plan is in at-risk status for a plan year, including the determination of a plan's funding target attainment percentage and at-risk funding target attainment percentage. Paragraph (c) of this section describes the funding target for a plan in at-risk status. Paragraph (d) of this section describes the target normal cost for a plan in at-risk status. Paragraph (e) of this section describes rules regarding how the funding target and target normal cost are determined for a plan that has been in at-risk status for fewer than 5 consecutive years. Paragraph (f) of this section sets forth effective/applicability dates and transition rules.

(2) Special rules for multiple employer plans. In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, for example, at-risk status is determined separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) Determination of at-risk status of a plan--(1) General rule. Except as otherwise provided in this section, a plan is in at-risk status for a plan year if--

(i) The funding target attainment percentage for the preceding plan year (determined under paragraph (b)(3) of this section) is less than 80 percent; and

(ii) The at-risk funding target attainment percentage for the preceding plan year (determined under paragraph (b)(4) of this section) is less than 70 percent.

(2) Small plan exception. If, on each day during the preceding plan year, a plan had 500 or fewer participants (including both active and inactive participants), the plan is not treated as in at-risk status for the plan year. For purposes of this paragraph (b)(2), all defined benefit plans (other than multiemployer plans as defined in section 414(f)) maintained by an employer (or any member of the employer's controlled group) are treated as one plan, but only participants with respect to that

employer or member are taken into account. For this purpose, the rules of section 412(d)(3) and §1.430(g)-1(b)(2)(ii) apply.

(3) Funding target attainment percentage. The funding target attainment percentage of a plan for a plan year is a fraction (expressed as a percentage)--

(i) The numerator of which is the value of plan assets for the plan year after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B)); and

(ii) The denominator of which is the funding target of the plan for the plan year (determined without regard to section 430(i) and this section).

(4) At-risk funding target attainment percentage. The at-risk funding target attainment percentage of a plan for a plan year is a fraction (expressed as a percentage)--

(i) The numerator of which is the value of plan assets for the plan year after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B); and

(ii) The denominator of which is the at-risk funding target of the plan for the plan year (determined under paragraph (c) of this section, but without regard to the loading factor imposed under paragraph (c)(2)(ii) of this section).

(5) Special rules--(i) Special rule for new plans. In the case of a newly established plan, the funding target attainment percentage under paragraph (b)(3) of this section and the at-risk funding target attainment percentage under paragraph (b)(4) of this section are assumed to be 100 percent for years before the plan exists. Except as otherwise provided in paragraph (b)(5)(ii) of this section, a plan that has a

predecessor plan in accordance with section 414(a) or §1.415(f)-1(c) is not a newly established plan under this rule.

(ii) Special rules for mergers, acquisitions, and spinoffs. [Reserved]

(6) Special rule for determining at-risk status of plans of specified automobile manufacturers. See section 430(i)(4)(C) for special rules for determining the at-risk status of plans of specified automobile and automobile parts manufacturers.

(c) Funding target for plans in at-risk status--(1) In general. If the plan has been in at-risk status for 5 consecutive years, including the current plan year, then the funding target for the plan is the at-risk funding target determined under paragraph (c)(2) of this section. See paragraph (e) of this section for the determination of the funding target where the plan is in at-risk status for the plan year but was not in at-risk status for one or more of the 4 preceding plan years.

(2) At risk funding target--(i) Use of modified actuarial assumptions. Except as provided in this paragraph (c)(2), the at-risk funding target of the plan for the plan year is equal to the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, as determined in accordance with §1.430(d)-1 but using the additional actuarial assumptions described in paragraph (c)(3) of this section.

(ii) Funding target includes load. The at-risk funding target is increased by the sum of--

(A) $700 multiplied by the number of participants in the plan (including active participants, inactive participants, and beneficiaries); plus

(B) Four percent of the funding target (determined under §1.430(d)-1(b)(2) as if the plan was not in at-risk status) of the plan for the plan year.

(iii) Minimum amount. Notwithstanding any otherwise applicable provisions of this section, the at-risk funding target of a plan for a plan year is not less than the plan's funding target for the plan year determined without regard to this section.

(3) Additional actuarial assumptions--(i) In general. The actuarial assumptions used to determine a plan's at-risk funding target for a plan year are the actuarial assumptions that are applied under section 430, with the modifications described in this paragraph (c)(3).

(ii) Special retirement age assumption--(A) Employees eligible to retire and collect benefits within 11 years. Subject to paragraph (c)(3)(ii)(B) of this section, if an employee would be eligible to commence an immediate distribution by the end of the plan year that begins 10 years after the end of the current plan year (that is, the end of the 11th plan year beginning with the current plan year), that employee is assumed to commence an immediate distribution at the earliest retirement date under the plan, or, if later, at the end of the current plan year. The rule of this paragraph (c)(3)(ii)(A) does not affect the application of plan assumptions regarding an employee's termination of employment prior to the employee's earliest retirement date.

(B) Employees otherwise assumed to retire immediately. The special retirement age assumption of paragraph (c)(3)(ii)(A) of this section does not apply to an employee to the extent the employee is otherwise assumed to retire during the current plan year. Thus, for example, if generally applicable retirement assumptions would provide for a 25% probability that an employee will retire during the current plan year, the special retirement age assumption of paragraph (c)(3)(ii)(A) of this section will require the plan to assume a 75% probability that the employee will retire at the end of the plan year.

(C) Definition of earliest retirement date. For purposes of paragraph (c)(3)(ii) of this section, a plan's earliest retirement date is the earliest date on which a participant can commence receiving an immediate distribution. See §1.401(a)-20, Q&A-17(b).

(iii) Requirement to assume most valuable benefit. An employee who is assumed to retire at a date determined under paragraph (c)(3)(ii) of this section is assumed to elect the optional form of benefit available under the plan at that date that would result in the highest present value of benefits. The plan's actuary is permitted to use reasonable assumptions in determining the optional form of benefit under the plan that would result in the highest present value of benefits for this purpose.

(d) Target normal cost of plans in at-risk status--(1) General rule. If the plan has been in at-risk status for 5 consecutive years, including the current plan year, then the target normal cost for the plan is the at-risk target normal cost determined under paragraph (d)(2) of this section. See paragraph (e) of this section for the determination of the target normal cost where the plan is in at-risk status for the plan year but was not in at-risk status for one or more of the 4 preceding plan years.

(2) At-risk target normal cost--(i) Use of modified actuarial assumptions. Except as provided in this paragraph (d)(2), the at-risk target normal cost of a plan for the plan year is equal to the present value of all benefits expected to be accrued or earned under the plan during the plan year, as determined in accordance with §1.430(d)-1 but using the additional actuarial assumptions described in paragraph (c)(3) of this section.

(ii) Loading factor. The at-risk target normal cost is increased by a loading factor equal to 4 percent of the target normal cost determined without regard to section 430(i) and this section.

(iii) Minimum amount. The at-risk target normal cost of a plan for a plan year is not less than the plan's target normal cost determined without regard to section 430(i) and this section.

(e) Transition between applicable funding targets and applicable target normal costs--(1) Funding target. If a plan that is in at-risk status for the plan year has been in at-risk status for a consecutive period of fewer than 5 plan years, the plan's funding target for the plan year is determined as the sum of--

(i) The funding target determined without regard to this section; plus

(ii) The phase-in percentage for the plan year multiplied by the excess of--

(A) The at-risk funding target determined under paragraph (c)(2) of this section (determined taking into account paragraph (e)(4) of this section); over

(B) The funding target determined without regard to this section.

(2) Target normal cost. If a plan that is in at-risk status for the plan year has been in at-risk status for a consecutive period of fewer than 5 plan years, the plan's target normal cost for the plan year is determined as the sum of--

(i) The target normal cost determined without regard to section 430(i) and this section; plus--

(ii) The phase-in percentage for the plan year multiplied by the excess of--

(A) The at-risk target normal cost determined under paragraph (d)(2) of this section (determined taking into account paragraph (e)(4) of this section); over

(B) The target normal cost determined without regard to section 430(i) and this section.

(3) Phase-in percentage. For purposes of this paragraph (e), the phase-in percentage is 20 percent multiplied by the number of consecutive plan years that the plan has been in at-risk status (including the current plan year).

(4) Transition funding target and target normal cost determined without load. Notwithstanding paragraph (c)(2)(ii) of this section, if a plan has not been in at-risk status for 2 of the last 4 plan years, the plan's at-risk funding target that is used for purposes of paragraph (e)(1)(ii)(A) (to calculate the plan's funding target where the plan has been in at-risk status for fewer than 5 plan years) is determined without regard to the load set forth in paragraph (c)(2)(ii) of this section. Similarly, if a plan has not been in at-risk status for 2 of the last 4 plan years, the plan's at-risk target normal cost that is used for purposes of paragraph (e)(2)(ii)(A) (to calculate the plan's target normal cost where the plan has been in at-risk status for fewer than 5 plan years) is determined without regard to the load set forth in paragraph (d)(2)(ii) of this section.

(f) Effective/applicability dates and transition rules--(1) In general. Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. For plan years beginning in 2008, plans are permitted to rely on the provisions set forth in this section for purposes of satisfying the requirements of section 430.

(2) Plans with delayed effective date. In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106

of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780), this section applies to plan years beginning on or after the date section 430 applies with respect to the plan.

(3) First effective plan year. For purposes of this section, the first effective plan year for a plan is the first plan year to which section 430 applies.

(4) Pre-effective plan year. For purposes of this section, the pre-effective plan year for a plan is the last plan year beginning before the first day of the first effective plan year. Thus, except for plans with a delayed effective date under paragraph (f)(2) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

(5) Transition rule for determining funding target attainment percentage for the plan's pre-effective date plan year--(i) In general. In the case of the plan's first effective plan year, the funding target attainment percentage for the plan's pre-effective plan year is determined as the fraction (expressed as a percentage), the numerator of which is the plan assets determined under paragraph (f)(5)(ii) of this section, and the denominator of which is the plan's current liability determined pursuant to section 412(l)(7) on the valuation date for the plan's pre-effective plan year.

(ii) General determination of value of net plan assets--(A) In general. The value of net plan assets for purposes of this paragraph (f)(5)(ii) is determined under section 412(c)(2) as in effect for the plan's pre-effective plan year, except that the value of plan assets prior to subtracting the plan's funding standard account credit balance described in paragraph (f)(5)(ii)(B) of this section can neither be less than 90 percent of the fair market value of plan assets nor greater than 110 percent of the fair market value of plan assets on the valuation date for that plan year. If the value of plan assets determined under this paragraph (f)(5)(ii) is less than 90 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (f)(5)(ii) is equal to 90 percent of the fair market value of plan assets. If the value of plan assets determined under this paragraph (f)(5)(ii) is greater than 110 percent of the fair market value of plan assets on the valuation date, then the value of plan assets under this paragraph (f)(5)(ii) is equal to 110 percent of the fair market value of plan assets.

(B) Subtraction of credit balance. If a plan has a funding standard account credit balance as of the valuation date for the plan's pre-effective plan year, that balance is subtracted from the net asset value described in paragraph (f)(5)(ii)(A) of this section as of that valuation date.

(C) Effect of funding standard carryover balance reduction for first effective plan year. Notwithstanding paragraph (f)(5)(ii)(B) of this section, if, for the first effective plan year, the employer has made an election to reduce some or all of the funding standard carryover balance as of the first day of that year in accordance with §1.430(f)-1(e), then the present value (determined as of the valuation date for the pre-effective plan year using the valuation interest rate for that pre-effective plan year) of the amount so reduced is not treated as part of the funding standard account credit balance when that balance is subtracted from the asset value under paragraph (f)(5)(ii)(B) of this section.

(6) Transition rule for determining at-risk status. In the case of plan years beginning in 2008, 2009, and 2010, paragraph (b)(1)(i) of this section is applied by substituting the following percentages for ‘80 percent’--

(i) 65 percent in the case of 2008;

(ii) 70 percent in the case of 2009; and

(iii) 75 percent in the case of 2010.

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