

Part III --- Administrative, Miscellaneous, and Procedural

Application of the Cooperative and Small Employer Charity Pension Flexibility Act

Notice 2015-58

I. PURPOSE

This notice provides guidance on certain issues relating to the application of the Cooperative and Small Employer Charity Pension Flexibility Act, Pub. L. No. 113-97 (CSEC Act). The CSEC Act, which was enacted on April 7, 2014, specifies minimum funding requirements and related rules that apply with respect to certain defined benefit pension plans maintained by groups of cooperatives and related entities and groups of charities.

II. BACKGROUND

Section 430 of the Internal Revenue Code (Code), which was added by the Pension Protection Act of 2006, Pub. L. No. 109-280, as amended (PPA '06), specifies the minimum funding requirements that generally apply to single-employer defined benefit pension plans (including multiple-employer plans) pursuant to § 412. Under § 430(a)(1), the minimum required contribution for a plan year under § 430 is generally equal to the sum of the target normal cost and the shortfall amortization charge for the plan year.¹ Under § 430(c), the shortfall amortization charge for a plan year is the sum of the shortfall amortization installments with respect to the plan's shortfall amortization bases for the current plan year and prior plan years. Each year, a shortfall amortization base is determined based on the difference between the funding target and the value of plan assets for the plan year for which it is established. In general, the shortfall amortization installment with respect to a shortfall amortization base is the amount needed to amortize that base in level annual installments over 7 years.

Section 436 imposes certain restrictions on the accrual and payment of benefits under a single-employer defined benefit pension plan that are applied based on the plan's funded status for the plan year.

As originally enacted, section 104 of PPA '06 provided that the effective date for the application of the minimum funding rules under § 430 and the funding-based benefit restrictions under § 436 is delayed for certain plans maintained by more than one employer that are specified types of cooperative organizations and related entities. For those plans, the minimum funding rules under § 430 and the funding-based benefit restrictions under § 436 generally do not apply for plan years beginning before January 1, 2017. For plan years before § 430 applies to such a plan, the minimum funding

¹ For a plan for which a funding waiver has been obtained, the minimum required contribution also includes a waiver amortization charge.

requirement for the plan is determined under the provisions of § 412 as in effect prior to amendment by PPA '06. These provisions are referred to in this notice as “pre-PPA § 412” provisions.

Section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Pub. L. No.111-192 (PRA 2010), amended section 104 of PPA '06, as originally enacted, to add a new section 104(d). Section 104(d) of PPA '06 expands the group of plans covered by the delayed effective date of section 104 of PPA '06 to include certain plans (referred to as eligible charity plans) that are maintained by employers that are described in § 501(c)(3). Under section 104(d) of PPA '06, a plan is an eligible charity plan for a plan year if, for all periods from July 26, 2005 through the end of the plan year, the plan has been maintained by more than one employer (determined without regard to § 414(c)), provided that all of the employers maintaining the plan are described in § 501(c)(3).

The CSEC Act provides a number of rules relating to the minimum funding requirements for certain defined benefit plans maintained by groups of cooperatives and related entities and groups of charities. Most of the rules under the CSEC Act apply to CSEC plans, as defined in section 414(y). CSEC plans are generally the same plans that are covered by the delayed effective date provisions for the PPA '06 funding rules under section 104 of PPA '06 (as amended by PRA 2010). However, certain eligible charity plans are not CSEC plans, and certain CSEC plans maintained by employers that are § 501(c)(3) organization employers are not eligible charity plans. In addition, the CSEC Act includes some rules that apply solely to eligible charity plans and some rules that apply to all multiple-employer plans.

Section 433, which was added to the Code by the CSEC Act, specifies minimum funding rules that apply to CSEC plans for plan years beginning on or after January 1, 2014.² These minimum funding rules are similar to the rules under pre-PPA § 412. However, § 433 provides that the amortization period for the amortization base established for the change in liability resulting from an amendment to a CSEC plan is 15 years (instead of 30 years as provided in pre-PPA § 412) and § 433 does not include a requirement to make a deficit reduction contribution as required under pre-PPA § 412(l). In addition, § 433 provides special rules that apply to a CSEC plan with a funded percentage (as defined in § 433(j)(5)(B)) of less than 80%. Such a plan is in “funding restoration status.” If a CSEC plan is in funding restoration status, the plan sponsor must establish a funding restoration plan that is designed to bring the plan’s funded percentage to 100% over a period of 7 years (or the shortest amount of time practicable to bring the plan’s funded percentage to 100%, if longer).³ For the period for which a CSEC plan is in funding restoration status (as certified by the enrolled actuary for the plan), an amount no less than the plan’s normal cost must be contributed for each plan year. If the normal cost is not contributed for the plan year then an accumulated funding

² The benefit restrictions under § 436 do not apply to CSEC plans.

³ Section 4971(h)(1) imposes an excise tax if the plan sponsor fails to timely satisfy the requirement to establish a written funding restoration plan.

deficiency will exist regardless of the size of the plan's credit balance. A CSEC plan that is in funding restoration status generally cannot be amended to increase benefits or accelerate vesting unless a specified additional contribution is made.

Under the CSEC Act, a number of elections are available to eligible charity plans and plans that fit within the definition of a CSEC plan.

- Section 414(y)(3)(A) provides that the plan sponsor of a plan that fits within the definition of a CSEC plan can elect for the plan not to be treated as a CSEC plan, effective beginning with the first plan year that begins on or after January 1, 2014. The effect of this election for a plan is that § 433 and related provisions that apply to CSEC plans will not apply to the plan.

- Section 103(b) of the CSEC Act amends section 104(d) of PPA '06 to provide three new options for an eligible charity plan:

- Pursuant to section 104(d)(2) of PPA '06, the plan sponsor of an eligible charity plan to which § 433 does not apply can elect for the plan to cease to be treated as an eligible charity plan for plan years beginning after December 31, 2013, so that § 430 applies to the plan beginning with the 2014 plan year.

- If this election is made, then the plan sponsor can also elect to apply certain extended amortization rules under section 104(d)(3) of PPA '06.

- Pursuant to section 104(d)(4) of PPA '06, the plan sponsor of an eligible charity plan can make a one-time irrevocable election for the plan not to be treated as an eligible charity plan, effective for plan years beginning after December 31, 2007, so that § 430 applies to the plan beginning with the 2008 plan year.

- Section 103(c) of the CSEC Act provides that a CSEC plan that was established before January 1, 2014 is deemed to have made the election under § 410(d) (under which the plan is not treated as a church plan for purposes of certain rules) under certain circumstances.

Section 210(f) of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, as amended (ERISA), provides a definition of a CSEC plan for purposes of title I of ERISA that is parallel to the definition in § 414(y) but also requires a CSEC plan to be an "employee pension benefit plan" within the meaning of section 3(2) of ERISA. Section 306 of ERISA provides minimum funding rules that are parallel to the rules of § 433 for a plan that is a CSEC plan under title I of ERISA.

Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed

in § 433 and the other statutory provisions addressed in this notice for purposes of ERISA as well as the Code. Accordingly, the guidance in this notice applies not only for purposes of the Code but also for purposes of the parallel provisions of ERISA. Thus, the guidance in this notice under §§ 414(y) and 433 also applies for purposes of sections 210(f) and 306 of ERISA in the case of a CSEC plan (within the meaning of § 414(y)) that is an employee pension benefit plan within the meaning of section 3(2) of ERISA. The Secretary of the Treasury does not have interpretive jurisdiction under the Reorganization Plan to determine whether a CSEC plan within the meaning of § 414(y) is an employee pension benefit plan within the meaning of section 3(2) of ERISA.

III. QUESTIONS AND ANSWERS

Rules for CSEC plans

Q-1: What is a CSEC plan?

A-1: Under § 414(y)(1) and (2), a plan is a CSEC plan for a plan year if it is a defined benefit plan (other than a multiemployer plan) that meets one of the following conditions:

(1) for the plan year, the effective date of the PPA '06 funding rules has been delayed for the plan under section 104 of PPA '06 prior to the change to section 104 made by PRA 2010 (i.e., the plan is maintained by more than one employer and at least 85% of those employers are rural cooperatives or are cooperative organizations or related entities) and without regard to section 104(a)(2) of PPA '06;

(2) for all periods beginning on June 25, 2010 and ending on the last day of the plan year, the plan has been maintained by more than one employer (determined by treating all employers that are treated as a single employer under § 414(b) or (c) as a single employer) and all of those employers were described in § 501(c)(3); or

(3) for all periods beginning on June 25, 2010 and ending on the last day of the plan year, the plan was maintained by an employer described in § 501(c)(3), chartered under part B of subtitle II of title 36, United States Code, with employees in at least 40 States, and whose primary exempt purpose is to provide services with respect to children.

However, in the case of a plan that fits within the definition of a CSEC plan, the plan is not treated as a CSEC plan if the election described in § 414(y)(3) has been made for the plan. If this election is made, then § 433 does not apply to the plan.

Q-2: For a plan to which pre-PPA § 412 applies for the 2013 plan year and § 433 applies for the 2014 plan year, how are the funding standard account and related items established for the 2014 plan year?

A-2: If pre-PPA § 412 applies to a plan for the 2013 plan year and § 433 applies for the 2014 plan year, then all items that are part of the funding standard account determination under pre-PPA § 412 as of the close of the 2013 plan year must be used to establish the corresponding items established under § 433 as of the beginning of the 2014 plan year. This is because § 433 functions as a continuation of pre-PPA § 412. Thus, the balance of the funding standard account under § 433 as of the first day of the 2014 plan year is the same as the balance of the funding standard account under pre-PPA § 412 as of the close of the 2013 plan year. In addition, charge bases under § 433(b)(2) and credit bases under § 433(b)(3) must be established for the 2014 plan year as continuations of the bases that were being amortized under pre-PPA § 412. Thus, as of the first day of the 2014 plan year, the outstanding balances and amortization periods with respect to those bases are the same as if pre-PPA § 412 had continued to apply to the plan. See § 433(b)(6).

Election to cease to be an eligible charity plan beginning in 2014

Q-3: Can a plan sponsor of an eligible charity plan elect for the plan to cease to be treated as an eligible charity plan?

A-3: Pursuant to section 104(d)(2) of PPA '06, as amended by PRA 2010 and the CSEC Act, a plan sponsor of an eligible charity plan (other than a plan to which § 433 applies) can elect for the plan to cease to be treated as an eligible charity plan beginning with the 2014 plan year.

If the election is made, then--

- As of the first day of the plan year beginning in 2014, the plan is subject to the minimum funding requirements of § 430 and the benefit restrictions of § 436.
- Pursuant to § 1.430(f)-1(b)(2), the plan's funding standard carryover balance as of the beginning of the 2014 plan year is the positive balance in the plan's funding standard account under pre-PPA § 412(b) as of the end of the prior plan year.

A plan sponsor makes the election described in this Q&A-3 by providing written notification of the election to the plan administrator and the enrolled actuary for the plan. As a general rule, this election must be made no later than the plan's § 430(j)(1) contribution deadline for the 2014 plan year (i.e., 8½ months after the end of the 2014 plan year). Alternatively, a plan sponsor may make the election described in this Q&A-3 by reflecting the election on the Schedule SB filed for the 2014 plan year and providing written notification of the election to the plan administrator and the enrolled actuary for the plan by December 31, 2015. This election can be revoked only with the consent of the Commissioner.

Extended amortization election

Q-4: If a plan sponsor of an eligible charity plan makes the election described in Q&A-3 of this notice, can the plan sponsor elect extended amortization?

A-4: Pursuant to section 104(d)(3)(A) of PPA '06, which was added by the CSEC Act, if a plan sponsor of an eligible charity plan makes the election for the plan to cease to be treated as an eligible charity plan beginning with the 2014 plan year (as described in Q&A-3 of this notice), then the plan sponsor can also make an election to use the extended amortization rules set forth in section 104(d)(3)(B) through (G) of PPA '06 (which were also added by the CSEC Act). These amortization rules provide funding relief for the plan that is generally comparable to the funding relief that would have applied if (1) § 430 had applied to the plan for all plan years beginning on or after January 1, 2008, (2) the plan sponsor had made a 15-year amortization election under § 430(c)(2)(D)(iii) for the plan years beginning in 2010 and 2011, and (3) there were no previous installment acceleration amounts described in § 430(c)(7).

A plan sponsor makes the election described in this Q&A-4 by providing written notification of the election to the plan administrator and the enrolled actuary for the plan. As a general rule, this election must be made no later than the plan's § 430(j)(1) contribution deadline for the 2014 plan year (i.e., 8½ months after the end of the 2014 plan year). Alternatively, a plan sponsor may make the election described in this Q&A-4 by reflecting the election on the Schedule SB filed for the 2014 plan year and providing written notification of the election to the plan administrator and the enrolled actuary for the plan by December 31, 2015. The election described in this Q&A-4 can be revoked only with the consent of the Commissioner.

Reporting Requirements

Q-5: How should the rules described in this notice for plans that are subject to § 433 be reflected on the Schedule SB for 2014 and 2015?

A-5: For the 2014 and 2015 plan years, the reporting requirements described in this Q&A-5 apply to plans that are subject to § 433.

Complete only the following on Schedule SB:

- Lines A through F
- Part I (including signature of enrolled actuary), determined as if PPA '06 provisions were effective for all plan years beginning after December 31, 2007.
- Part III, line 14, determined as if PPA '06 provisions were effective for all plan years beginning after December 31, 2007.
- Part IV, line 18.
- Part V, determined as if PPA '06 provisions were effective for all plan years beginning after December 31, 2007.

Also, report other information for the current plan year using a 2007 Schedule B (Form 5500). Label this attachment “[Insert reporting year] Schedule SB, line 27 – Actuarial Information for CSEC Plans.” Each attachment must include the plan name, the plan sponsor’s name and EIN, and the plan number. Complete all items from the 2007 Schedule B, excluding line 9f and Part II, and attach the 2007 Schedule B and all applicable attachments to the Schedule SB. Note that under PPA ‘06, the third segment rate determined under § 430(h)(2)(C)(iii) and ERISA section 303(h)(2)(C)(iii) is substituted for the current liability interest rate under § 412(b)(5)(B) and ERISA section 302(b)(5)(B) (as in effect before PPA ‘06).

If the plan’s funded percentage (as defined in § 433(j)(5)(B)) as of the beginning of the plan year is less than 80%, then the plan is in funding restoration status. If the plan’s enrolled actuary certifies that the plan is in funding restoration status for a plan year, include the following additional information in the attachment “[Insert reporting year] Schedule SB, line 27 – Actuarial Information for CSEC Plans:” (a) the annual certification by the enrolled actuary for the plan; and (b) the value of plan assets and the funding liability, including any adjustments to these amounts as specified in § 433(j)(4) and ERISA section 306(j)(4).

If a plan in funding restoration status has an accumulated funding deficiency based on the excess of the employer’s normal cost⁴ determined under line 9b, over the amount actually contributed to the plan for the plan year, as determined under § 433(j)(1) and ERISA section 306(j)(1), then the details of this calculation must be included in the attachment “[Insert reporting year] Schedule SB, line 27 – Actuarial Information for CSEC Plans.”

Q-6: How should an election for an eligible charity plan to be made subject to the requirements of § 430 beginning either in 2014 or in 2008 (and the related amortization extension election for a plan that applies the requirements of § 430 beginning in 2014) be reflected on Schedule SB for 2014 and later years?

A-6: If a plan sponsor of an eligible charity plan has made an election for the plan not to be treated as an eligible charity plan, a copy of that election should be included as an attachment to line 27 of the 2014 Schedule SB. In addition, if this election takes effect beginning with the 2008 plan year, then any difference between the amount of the funding standard carryover balance or the prefunding balance reported on line 7 of the Schedule SB filed for the 2014 plan year and the corresponding amounts reported on line 13 of the Schedule SB filed for the 2013 plan year must be explained in the attachment to line 7 of the Schedule SB filed for the 2014 plan year.

If a plan sponsor of an eligible charity plan has made an election for the plan to be made subject to the requirements of § 430 beginning in 2014 and has elected extended amortization as described in Q&A-4 of this notice, then the extended

⁴In the case of a plan for which a spread gain funding method is used, the normal cost that is used to apply this rule is the normal cost determined under the entry age normal cost funding method.

amortization election should be reflected on Schedule SB for 2014 by checking the box on line 41a and including an attachment to line 32 showing the development of the 11-year, 12-year and 7-year amortization bases. The Schedule SB for any later plan year to which this information is applicable should include an attachment to line 32 that provides information consistent with the information required with respect to a § 412(c)(7) amortization extension and related installment acceleration amounts.

Q-7: If the guidance provided in this notice affects the computations on the Schedule SB filed with the Form 5500 or Form 5500-SF for the 2014 plan year, must the plan sponsor file a revised 2014 Schedule SB?

A-7: No. The filing of an amended Form 5500 or Form 5500-SF for the 2014 plan year is not required solely to reflect the effect of the guidance provided in this notice on the computations on the Schedule SB. However, the Schedule SB filed with the Form 5500 or Form 5500-SF for the 2015 plan year must accurately reflect the effect of the guidance provided in this notice. To the extent that the amounts shown on the Schedule SB for the 2015 plan year are different than the amounts shown on the Schedule SB for the 2014 year, this difference should be explained in attachments to the Schedule SB for the 2015 plan year.

IV. PAPERWORK REDUCTION ACT

The collections of information contained in this notice have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2095.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in section III of this notice. The collections of information are required to provide for the elections permitted under sections 103 and 203 of the CSEC Act. The collections of information are mandatory for those plan sponsors making these elections.

The likely respondents are sponsors of fewer than 50 single-employer defined benefit plans. Currently, it is estimated that any effect on burden as previously reported to OMB will not be significant. Any potential changes on burden will be reported through the renewal of the current OMB approval numbers.

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

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by § 6103.

V. DRAFTING INFORMATION

The principal authors of this notice are Michael P. Brewer and Linda S. F. Marshall of the Office of the Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Michael Brewer or Linda Marshall (202) 317-6700 (not a toll-free number).