

Part IV.--- Items of General Interest

Election of Alternative Minimum Funding Standards for Community Newspaper Plans

Notice 2020-60

I. Purpose

This notice provides guidance regarding the election of alternative minimum funding standards for certain defined benefit pension plans under § 430(m) of the Internal Revenue Code (Code), which was added by section 115 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94 (133 Stat. 2534). In addition to summarizing the relevant provisions of § 430(m), this notice:

- Specifies the applicable United States Treasury obligation yield curve that is used to determine the present value of certain increases in benefits;
- Sets forth rules and procedures relating to the election under § 430(m), including a limited period for plan sponsors to make the election for prior years;
- Provides relief related to the impact of the election on the application of § 436;
- Provides additional flexibility under § 430 to facilitate retroactive elections; and
- Provides guidance on the reporting requirements that reflect the effect of the election.

II. Background

Section 115(a) of the SECURE Act added § 430(m) to the Code to permit the plan sponsor of a community newspaper plan under which no participant has had an increase in accrued benefit after December 31, 2017, to elect to have alternative minimum funding standards apply to the plan in lieu of the minimum funding requirements that would otherwise apply under § 430.¹ Pursuant to § 430(m)(2), any election under § 430(m) is to be made at such time and in such manner as prescribed by the Secretary, and once an election is made with respect to a plan year, it will apply to all subsequent plan years unless revoked with the consent of the Secretary.

¹ Section 115(b) of the SECURE Act also added § 303(m) to the Employee Retirement Income Security Act of 1974 (Pub. L. No. 93-406 (88 Stat. 829)), as amended (ERISA). Section 303(m) of ERISA provides rules that generally are parallel to the rules of § 430(m) of the Code. Under § 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and § 3002(c) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in this notice for purposes of ERISA, as well as the Code. Thus, the provisions of this notice relating to § 430 of the Code also apply for purposes of § 303 of ERISA, and the provisions of this notice relating to § 436 of the Code also apply for purposes of § 206(g) of ERISA.

The term “community newspaper plan” means a defined benefit plan maintained by an employer that, as of December 31, 2017, publishes and distributes a daily newspaper that primarily serves a metropolitan area with a population of at least 100,000 in a single state,² but only if the employer satisfies the ownership and control requirements of § 430(m)(4)(A)(ii) through (iv). If the plan sponsor makes the election under § 430(m) for its community newspaper plan, the election also applies to all other defined benefit plans sponsored by any member of the same controlled group. Section 430(m)(5) defines the controlled group for purposes of § 430(m) as all persons treated as a single employer under § 414(b), (c), (m), or (o) as of December 20, 2019 (the date of enactment of the SECURE Act).

If the § 430(m) alternative minimum funding standards apply to a plan (including a plan sponsored by a member of the controlled group), the interest rates in § 430(m)(3)(A) (rather than the interest rates in § 430(h)(2)) are used, the rules of § 430(i) do not apply, and any shortfall amortization base is amortized over a 30-year period. For the first plan year for which the alternative minimum funding standards apply, all shortfall amortization bases for prior plan years (and associated amortization installments) are eliminated, and a new shortfall amortization base is determined using an interest rate of 8 percent to calculate the funding target (and, if applicable under § 430(g)(3)(B), the value of plan assets). The new shortfall amortization base is amortized over a 30-year period also using an 8 percent interest rate.³

Pursuant to § 430(m)(3)(A)(ii), in the case of a plan that has an increase in accrued benefits (or any increase in other benefits under the plan) in a plan year with respect to which the election is in effect, the present value of that increase, determined using the United States Treasury obligation yield curve for the valuation date for the plan year, must be included in the funding target and target normal cost (as applicable). Thus, for example, if a sponsor of the community newspaper plan makes an election under § 430(m) that applies beginning with the calendar year 2018 plan year, and a member of the plan sponsor’s controlled group maintains a defined benefit plan with a calendar year plan year that provides ongoing benefit accruals, then for the January 1, 2020 valuation of that controlled group member’s plan, the portion of the funding target that is attributable to the benefit accruals from 2018 and 2019 (and the expected accruals for 2020 included in target normal cost) must be determined using the United States Treasury obligation yield curve.

For later plan years for which the election applies to a plan, any new shortfall amortization base that is established will be amortized using a 30-year period and an 8 percent interest rate.

III. Applicable United States Treasury obligation yield curve

² Under § 303(m)(4)(A)(i) of ERISA, the employer may either publish and distribute a community newspaper or publish and distribute one or more community newspapers in the same state.

³ The effect of the election is prospective, beginning with the first year for which the election applies, and it does not have any impact on prior unpaid minimum required contributions.

The United States Treasury obligation yield curves that are to be used under § 430(m)(3)(A)(ii) are set out at <https://home.treasury.gov/data/treasury-coupon-issues-and-corporate-bond-yield-curves/treasury-coupon-issues> (Treasury yield curve website). That webpage provides links to a number of yield curves for each month. Pursuant to § 430(m)(3)(A)(iii), the yield curve that applies to a plan depends on whether the valuation date for the plan year is the first day of a month, the last day of a month, or another day within a month.

If the plan's valuation date is the first day of a month, the applicable yield curve is the daily yield curve for the last business day of the prior month. That curve can be found on the Treasury yield curve website by selecting the "TNC Treasury Yield Curve Spot Rates, End of Month" link for the applicable year and finding the curve for the applicable month on the spreadsheet.

If the plan's valuation date is the last day of a month, the applicable yield curve is the daily yield curve for the last business day of the month. That curve can be found on the Treasury yield curve website by selecting the "TNC Treasury Yield Curve Spot Rates, End of Month" link for the applicable year and finding the curve for the month on the spreadsheet.

If the plan's valuation date is neither the first day of a month nor the last day of a month, the applicable yield curve is the monthly average of the daily yield curves for that month. That monthly average yield curve can be found on the Treasury yield curve website by selecting the "TNC Treasury Yield Curve Spot Rates, Monthly Average" link for the applicable year and finding the curve for the month on the spreadsheet.

IV. Rules relating to the making and duration of an election under § 430(m)

A. Manner of election

An election to apply § 430(m) to a community newspaper plan must be made by the plan sponsor and be provided in writing to the community newspaper plan's enrolled actuary, plan administrator, and all members of the plan sponsor's controlled group. The election must identify the first plan year for which the election applies, include a certification that the plan sponsor satisfies the ownership and control standards under § 430(m)(4)(A)(ii) and (iii), and attach a list of members of the plan sponsor's controlled group (including for each controlled group member, that member's Employer Identification Number (EIN), and an indication of whether that member sponsors a defined benefit plan). The Appendix to this notice sets forth a model election that may be used for this purpose.

B. Election timing rules

For the first plan year for which the election under § 430(m) applies to a plan, different actuarial assumptions will be used for the plan than were used for prior plan years. Under § 1.430(d)-1(f)(1)(iii), the actuarial assumptions that apply to the plan for a

plan year are established by filing the Schedule SB of Form 5500 for the plan year that reflects those assumptions, and § 1.430(d)-1(f)(1)(ii) provides that once the actuarial assumptions have been established for a plan year, generally they may not be changed. These rules generally would preclude the making of an election under § 430(m) for a plan year after the Schedule SB has been filed for the plan year.

See section VI(A) of this notice for the period during which plan sponsors may make elections under § 430(m) for a plan year after the actuarial assumptions have been established for the plan year.

C. Duration of election for community newspaper plan

Unless the plan sponsor of a community newspaper plan that has made the election to have § 430(m) apply to the plan later revokes the election (which would require the consent of the Internal Revenue Service (IRS)), the election continues to apply to the plan for future plan years. A plan sponsor of a community newspaper plan may request permission to revoke an election under § 430(m) using the procedures for obtaining a private letter ruling set forth in Rev. Proc. 2020-4, 2020-1 I.R.B. 148, or its successor.

D. Duration of application of election to controlled group member

An election to use the alternative minimum funding standards under § 430(m) for a plan year by a plan sponsor of a community newspaper plan applies to any other defined benefit plan sponsored by a member of the plan sponsor's controlled group within the meaning of § 430(m)(5) (that is, all persons treated as a single employer with the plan sponsor under § 414(b), (c), (m), or (o) as of December 20, 2019) for a plan year, provided that (1) the plan year of that other defined benefit plan begins during a plan year of the community newspaper plan for which the election applies to the community newspaper plan, and (2) the plan sponsor of that other defined benefit plan is a member of the controlled group on the first day of that plan's plan year.

V. Deemed immaterial treatment for change in AFTAP

If an election under § 430(m) is made for a plan year after a plan's adjusted funding target attainment percentage (AFTAP) under § 436 has been certified for the plan year, the election will impact that certified AFTAP. Section 1.436-1(h)(4)(iii) sets forth rules relating to changes in certified AFTAPs. The effect of such a change in a certified AFTAP depends on whether the change is material (within the meaning of § 1.436-1(h)(4)(iii)(B)) or immaterial (within the meaning of § 1.436-1(h)(4)(iii)(C)). Under § 1.436-1(h)(4)(iv)(A), a material change in a plan's AFTAP will cause a plan to fail to comply with § 401(a).

Section 1.436-1(h)(4)(iii)(C) provides that, subject to certain conditions, a change in a plan's AFTAP is deemed to be immaterial (even if the change would otherwise be material) if the change results from an event specified in § 1.436-1(h)(4)(iii)(C)(1) through (8). Deemed immaterial treatment under § 1.436-1(h)(4)(iii)(C) with respect to

an event that results in a change in AFTAP is conditioned on the AFTAP being recertified as soon as reasonably practicable after the event. The effect of this deemed immaterial treatment is that a plan administrator may reflect the change in AFTAP on a prospective basis beginning with the date of the event (including for purposes of determining the presumed AFTAP for the following year).

Section 1.436-1(h)(4)(iii)(C)(9) provides authority for the expansion of the list of events for which a resulting change in AFTAP may be deemed immaterial through publication of guidance in the Internal Revenue Bulletin. Pursuant to that authority, this notice designates an election under § 430(m) as an event for which a resulting change in AFTAP may be deemed to be immaterial. Accordingly, the change in AFTAP attributable to such an election is deemed to be an immaterial change in the plan's AFTAP, provided that the plan's enrolled actuary recertifies the AFTAP as soon as reasonably practicable after the election in accordance with § 1.436-1(h)(4)(v)(D).

VI. Additional flexibility to facilitate retroactive elections

A. Permission to change assumptions for prior plan year

Under § 115(c) of the SECURE Act, § 430(m) applies to plan years ending after December 31, 2017. In light of this retroactive effective date, this section VI provides an exception to the general timing rule restricting changes in actuarial assumptions after they have been established for a plan year, to facilitate making a § 430(m) election for a prior year. Under this exception, a change of the interest rate assumption that applies to a plan pursuant to an election under § 430(m) is permitted to be made for a plan year after the actuarial assumptions for that plan year have been established under § 1.430(d)-1(f)(1)(iii), if certain conditions are satisfied. Specifically, an election under § 430(m)(3) may be made for a plan year ending after December 31, 2017, after the actuarial assumptions for that plan year have been established (referred to as a retroactive § 430(m) election), provided that (1) the election is made on or before December 31, 2020, and (2) for each affected plan year, an amended Schedule SB reflecting the retroactive § 430(m) election is filed no later than the date the next Schedule SB is filed after the election is made.

In order to fully reflect the impact of the reduced minimum funding requirement resulting from a retroactive § 430(m) election, section VI(B) of this notice provides additional flexibility with respect to certain funding balance elections for a plan year. The extended deadline and permission to revoke an election are in addition to the deemed immaterial treatment for changes in the AFTAP described in section V of this notice for such a plan year.

B. Additional flexibility for funding balance elections

Section 1.430(f)-1 provides rules regarding a plan's prefunding balance and funding standard carryover balance, which may be used to offset all or a portion of the minimum required contribution for the plan. Under § 1.430(f)-1(b)(1)(ii), a plan sponsor

may elect each year to increase the plan's prefunding balance by an amount not in excess of the present value of the excess contributions for the preceding plan year. Under § 1.430(f)-1(f)(2)(i), this election must be made no later than the due date for the minimum required contribution for that preceding plan year (or a later date prescribed in guidance published in the Internal Revenue Bulletin).

Section 1.430(f)-1(d) provides rules regarding a plan sponsor's election to use the plan's prefunding balance or funding standard carryover balance to offset all or a portion of the minimum required contribution for a plan year. Under § 1.430(f)-1(f)(2)(i), this election must be made no later than the due date for the minimum required contribution for that plan year (or a later date prescribed in guidance published in the Internal Revenue Bulletin). Under § 1.430(f)-1(f)(3), a plan sponsor's election to use a plan's prefunding balance or funding standard carryover balance, is irrevocable except as provided in § 1.430(f)-1(f)(3), or in guidance published in the Internal Revenue Bulletin.

Pursuant to the authority in § 1.430(f)-1(f)(2)(i) and § 1.430(f)-1(f)(3), the Department of the Treasury and the IRS are providing exceptions to these rules in order to facilitate a retroactive § 430(m) election. Specifically, for a plan year for which a retroactive § 430(m) election has been made (1) the deadline for a plan sponsor to elect to increase the plan's prefunding balance by an amount not in excess of the present value of the excess contributions for that plan year is extended to December 31, 2020, and (2) the plan sponsor may revoke an election to use a plan's prefunding balance or funding standard carryover balance (or reduce the portion of that balance to which an election applied), provided that the revocation is made no later than December 31, 2020.

VII. Instructions for completing the Schedule SB to reflect the election

For a plan year for which an election under § 430(m) applies to a plan, the Schedule SB of Form 5500 must be completed based on the following instructions:

Line 5 - If the funding target calculation includes some benefits for which the present value is calculated using the 8 percent segment interest rates and other benefits for which present value is calculated using the applicable United States Treasury obligation yield curve, the effective interest rate must reflect both sets of rates.

Line 21a - Enter 8 percent in each of the three segment rate fields. Do not check the full yield curve box, even if some or all of the funding target or the target normal cost is calculated using the applicable United States Treasury obligation yield curve.

Line 21b - Enter '0'.

Line 27– For plan years beginning in 2017 through 2020, the instructions for line 27 do not provide a code to reflect that a § 430(m) election applies to the plan and no code should be entered on Line 27 for the plan. For future years, see the instructions to Schedule SB.

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 the Appendix of this notice. The collections of information are required to implement the application of the alternative minimum funding standards under § 430(m). The collections of information are mandatory for those plan sponsors making an election under § 430(m) to a plan.

The likely respondents are sponsors of approximately 20 community newspaper plans.

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 available at this time.

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.

Drafting information

The principal author of this notice is Tom Morgan of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the IRS participated in the development of this guidance. For further information regarding this notice, contact Mr. Morgan or Linda Marshall at 202-317-6700 (not a toll-free call).

Appendix

Model election

As an officer of the employer sponsoring a community newspaper plan as defined in §430(m)(4) of the Internal Revenue Code (Code), I hereby elect to apply the alternative minimum funding standards under § 430(m)(3) of the Code, beginning with the plan year beginning _____. I also provide the following information about the employer and plan and hereby certify that the plan sponsor meets the ownership and control standards under § 430(m)(4)(A)(ii) and (iii) of the Code as set forth below:

Information about the employer and community newspaper plan:

- Name of employer
- Employer Identification Number (EIN) of employer
- Name of community newspaper
- Metropolitan area in which the newspaper is primarily distributed
- State or states in which that metropolitan area is located
- Name of plan for which election is made
- Plan number
- Date as of which benefit accruals ceased

Certifications relating to ownership and control:

- The employer is not publicly traded, and is not controlled, directly or indirectly, by a publicly traded company.
- The employer is controlled directly or indirectly (indicate all that apply):
 - (1) By one or more persons residing primarily in the state in which the community newspaper is published _____
 - (2) For not less than 30 years, by individuals who are members of the same family _____
 - (3) By a trust created or organized in the state in which the community newspaper is published, the sole trustees of which are persons described in (1) or (2) _____
 - (4) By an entity which is described in § 501(c)(3) of the Code and exempt from taxation under § 501(a) of the Code, which is organized and operated in the state in which the community newspaper is published, and the primary purpose of which is to benefit communities in such state _____
 - (5) By a combination of persons described in (1), (3), or (4) _____
- The employer does not control, directly or indirectly, any newspaper in any other state.

Attached is a list of all other members of the controlled group, as defined in § 430(m)(5) of the Code, including each member's EIN, and indicating whether that member sponsors a defined benefit plan.

Signature of employer _____ Date _____
Name _____ Title _____