AMERICAN ACADEMY *of* ACTUARIES

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August 26th, 2014

J. Mark Iwry
Senior Advisor to the Secretary and
Deputy Assistant Secretary for Retirement
and Health Policy
Assistant Secretary for Tax Policy
US Department of the Treasury
1500 Pennsylvania Avenue, NW
Room 3064
Washington, DC 20220

Robert S. Choi
Director
Employee Plans
Internal Revenue Service
US Department of the Treasury
1111 Constitution Avenue, NW
Room NCA-614
Washington, DC 20224

Victoria Judson
Division Counsel/Associate Chief Counsel
Tax Exempt and Government Entities
Internal Revenue Service
US Department of the Treasury
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Guidance Needed Regarding the Highway and Transportation Funding Act of 2014 ("HATFA")

Dear Mr. Iwry, Ms. Judson, and Mr. Choi:

The American Academy of Actuaries'[1] Pension Committee is pleased to present the following comments regarding the critical need for guidance regarding HATFA. As you know, the deadlines for certifications, funding balance elections and 2013 plan year contributions are fast approaching. We urge you to issue guidance as soon as possible so that actuaries may complete the large volume of work necessary for plan sponsors to make informed decisions regarding the implementation of the law. Without guidance, this work cannot be started or might have to be performed multiple times to encompass alternative possibilities for what guidance might contain.

[1] The American Academy of Actuaries is an 18,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

With respect to 2014 plan years, we urge that Notice 2012-61 be reissued with 2013 and 2014 replacing 2011 and 2012. The situation with respect to 2014 and HATFA is analogous to the situation with respect to 2012 and implementation of the MAP-21 provisions. The guidance in this Notice was timely, practical and flexible and we see no reason to deviate from this on virtually identical issues.

Such an approach would provide plan sponsors the ability to opt out of the new law for 2014 either for §430 and §436 or just for §436. At a minimum, guidance should permit application of the new law for §436 on a prospective only basis. Not permitting this would create substantial compliance and/or administrative issues for sponsors with benefit restrictions currently in place.

The opt out for §430 is desirable as many plan sponsors have completed much or all of the work for 2014 and might not see any benefit to revising the valuations (or enough benefit to justify the additional cost of doing so). If it is not possible to provide a complete opt out for 2014, we recommend that you provide reporting relief in circumstances in which the sponsor would prefer not to revise existing calculations. One possibility would be to allow sponsors to direct their enrolled actuary to complete Schedule SB based upon the pre-HATFA interest rates for purposes of determining the funding target, normal cost, excess contributions and other relevant pieces of information. To be eligible, the enrolled actuary would have to certify (presumably on the Schedule SB or on an attachment thereto) that: (1) The implementation of HATFA would not have had a material impact on plan operations, either during 2014 or during the presumption period of 2015; and (2) The minimum required contribution would have, in fact, been lower had the HATFA interest rates been applied.

In addition to the above considerations for the 2014 plan year, HATFA raises many new issues that MAP-21 did not because it reaches back one additional year. With respect to these issues we urge that guidance provide the following:

- Provide the ability to add to the 2013 prefunding balance (PFB) and to reallocate contributions in any manner across plan years 2012-2014, without changing the deadlines for making contributions for a plan year. For instance, a sponsor may have made a 2012 plan year contribution to attain a 2013 funded status but that contribution is no longer required for that purpose. However, the sponsor cannot now use this excess contribution to directly reduce minimum required contributions as the deadline for adding to the 2013 PFB has passed. Allowing the sponsor to add to the 2013 PFB or to reassign this contribution to the 2013 plan year would address this issue. Conversely, a sponsor may have made a contribution for the 2013 plan year that will exceed the revised minimum required contribution under the new law. Reassigning this contribution to the 2012 plan year would increase the 2013 funded status and provide the sponsor any benefits associated with a higher funded status. However, none of these movements should be permitted if they cause a material change in the Adjusted Funding Target Attainment Percentage (AFTAP).

- Provide the ability to revoke elections to reduce 2013 funding balances that were made based on a certified AFTAP but would not be needed based on any newly revised AFTAP(s) reflecting HATFA. This seems clearly appropriate as it parallels treatment given for 2012 in Notice 2012-61 and the conditions contained in the Notice should apply. (This treatment would also be granted for 2014 if the Notice were reissued with updated years, as suggested above).

- In 2014 actuarial takeover situations (where matching was done for 2013), permit the automatic approval for change in methods to be based on the pre-HATFA match that has likely already been completed and allow the new actuary to revise 2013 results. Without this, both the new and old actuary would have to redo 2013 valuations if the sponsor does not opt out. There is no reason to require this duplicative effort or to compromise the ability of sponsors who happened to change actuaries to use the new law.

- Extend the deadline to add to the 2014 PFB to provide sufficient time for sponsors to make informed decisions following the issuance of guidance and the revision of valuation results. In addition, grant the ability to add 2013 funding balance use elections in excess of the 2013 minimum required contribution to the 2014 PFB (or extend the deadline to revoke such elections which expired 12/31/13 before amounts were known to be in excess of the minimum).

- Allow reclassification of §436 contributions for 2013 as §430 contributions if such contributions are no longer required to avoid benefit restrictions based on revised results. (This treatment would be granted for 2014 if the Notice were reissued with revised years, as suggested above.)

- Provide that the new law does not apply to any plan with a plan termination date prior to enactment, unless the plan sponsor so elects.

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The American Academy of Actuaries' Pension Committee appreciates the opportunity to comment on these issues and would be happy to discuss any of these items with you at your convenience. Please contact Matthew Mulling, Pension Policy Analyst (mulling@actuary.org; 202-223-8196) if have any questions or would like to discuss these items further.

Sincerely,

Michael F. Pollack, MAAA, FSA, EA, FCA
Chairperson, Pension Committee
American Academy of Actuaries