CONFERENCE
OF CONSULTING
ACTUARIES

Notes from Intersector Meeting with IRS/Treasury September 22, 2023

Please note: The Conference of Consulting Actuaries (CCA) provides these notes on an "as is" basis and without warranty of any kind, either expressed or implied, including, but not limited to, warranties of accuracy, reliability, non-omissions or completeness. The CCA shall not be held liable for any improper or incorrect use of the information described and/or contained herein and assumes no responsibility for anyone's use of the information.

Intersector Group Meeting with the U.S. Department of the Treasury and the Internal Revenue Service

September 22, 2023 (Hybrid)

Periodically the "Intersector Group" ("the Group") meets with representatives of the Internal Revenue Service (IRS) and the Department of the Treasury ("Treasury") to discuss regulatory and other issues affecting pension actuarial practice. The Intersector Group is composed of two delegates from each of the following actuarial organizations: American Academy of Actuaries (Academy), Conference of Consulting Actuaries (CCA), Society of Actuaries (SOA), and American Society of Enrolled Actuaries (ASEA). Attending from the Intersector Group at this meeting were Bruce Cadenhead (Academy), Kelsey Mayo (ASEA), Eric Keener (SOA), Ellen Kleinstuber (CCA), Tonya Manning (CCA), Joseph Hicks (Academy), and Maria Sarli (SOA). Philip Maguire, Academy staff member supporting the Intersector Group, also attended.

These meeting notes are not official statements of the IRS or Treasury and have not been reviewed by their representatives who attended the meetings. The notes reflect the Intersector Group's understanding of the current views of IRS and Treasury representatives and do not represent the positions of the IRS, Treasury, or of any other governmental agency and cannot be relied upon by any person for any purpose. Moreover, the IRS and Treasury have not in any way approved these notes or reviewed them to determine whether the statements herein are accurate or complete.

Discussion topics were submitted by the Intersector Group to the IRS and Treasury in advance of the meeting and are shown in regular typeface below; a summary of the discussion is shown in italics.

Full Yield Curve

It would be helpful to hear about what prompted the changes and the expected effect of the proposed changes (e.g., is it expected to change the relationship between the 2nd and 3rd segment rates?)

The modifications were made to reflect additional information; nothing has been taken out of the original model. There are two new model features that will enhance the quality of the yield curve development:

- ***Inclusion of a relatively new type of corporate bond (first introduced in 2016) that has a possible call date in the final year before maturity.*** *Historically, Treasury left out of their corporate bond universe any bonds that had a call feature. However, since many of the recent bond issues incorporate this short call period, and a short call period is not*

expected to have a significant effect on yield, Treasury believes it is appropriate that they be included in the universe.

- ***Addition of a regression variable that better reflects a yield curve "hump" that often occurs at around 20 years to maturity.*** *The new "hump adjustment variable" adds another degree of freedom and produces a more precise measure of yields around 20 years to maturity.*

These changes will be made prospectively, with historical yield curves unchanged. The final regulation will be effective for months beginning more than 15 days after the issuance of the final regulation. If the final regulation is issued in the first half of a month, the first yield curve publication that reflects this will be issued about 60 days later (i.e., the new methodology is first applied beginning with the next month, and then Treasury needs about two weeks after that month closes to publish the curve).

IRS and Treasury are considering publishing historical curves under the new methodology for informational purposes and asked if this would be a helpful exercise. The Group confirmed that since some firms develop their own yield curves, analyzing the historical effect of the changes may be informative with respect to the relative level of volatility of the changes. Treasury confirmed there won't be very many years of history since the end-call bonds are relatively new to the market. For example, modified curves may only be published back to about 2019.

The "hump" variable is already reflected in the Treasury Nominal Coupon Issues yield curve. Those curves are available on the Treasury website at the following link: [Treasury Coupon Issues | U.S. Department of the Treasury.]

The effect of adding the new bonds to the corporate bond portfolio is to reduce yields, because many of these new end-call bonds are of a higher average credit rating than those included in the prior universe. Treasury's analysis indicates that this change may reduce yields by about 12–13 bps. Currently, there are about twice as many bonds with end-calls as there are non-callable corporate bonds.

There is no expected change up or down from adding the hump variable, as that mostly changes the shape of the yield curve rather than the level. In their modeling, Treasury is not seeing any measurable effect on the relationship between the 2nd and 3rd segment rates when comparing the current and proposed methodology. The hump variable mixes in with the discount function and can occur anywhere between 19 and 22 years (i.e., it is not fixed at the 20-year mark).

IRS and Treasury noted that they did not receive a lot of comments on the proposed regulation.

SECURE 2.0 Correction Provisions

We can share our thoughts from a practitioner perspective about what would be helpful to see as implementing guidance for the SECURE 2.0 correction provisions, as well as the potential application of the changes in the assumed interest crediting rate for backloading purposes to

other purposes such as Section 415, nondiscrimination testing, Section 401(a)(26), and Section 416.

The Group shared that an overpayment issue that is commonly seen relates to benefits paid after the death of the annuitant. Typically, a participant death is not reported or otherwise discovered by the plan administrator until a month or two after the participant's death. In some cases, the death may not be reported or discovered for an extended period. Guidance that allows for the recovery of these overpayments of participant benefits would be appreciated, even where the spouse or other beneficiary is the person with access to the overpaid funds (recognizing that overpayments of participant benefits should not be recovered from benefits properly owed to a spouse or other beneficiary). In particular, where an individual with access to the overpaid funds didn't report the death, it should be acceptable to treat that individual as a culpable individual not permitted to benefit from the SECURE 2.0 overpayment protections.

It would also be appreciated if some de minimis *exceptions were permitted, such as allowing for the recoupment of small overpayments in a lump sum rather than reducing a future benefit by a very small amount each year in the future. The Group believes that immediate repayment may also be preferred by some beneficiaries even with larger overpayments and that beneficiaries should be able to repay voluntarily at any time.*

Another situation the Group has seen is pension payroll accidentally processed twice, for example upon change in a service provider where both the old and new providers issue monthly payments for the same month. It would be helpful to treat this situation as an ERISA issue rather than a qualification issue so that plan administrators can continue to make reasonable equitable recoveries without risking plan disqualification.

IRS and Treasury noted that since the overpayment provisions of SECURE 2.0 are intertwined with the DOL fiduciary rules, they work collaboratively with DOL on any associated guidance. Treasury provided the background that the provisions were the result of discussions between representatives of large employers and participant advocates, indicating that both voices were considered when the legislative language was drafted.

Another topic of discussion was the provision related to cash balance plans with variable interest crediting rates. Neither the law nor the regulations are clear about how to project accrued benefits for purposes other than the Internal Revenue Code (IRC) Section 411 accrual rules (e.g., IRC 415, 416, 401(a)(26), 401(a)(4), 410(b)). Also, the Group understands the IRS position as being that the accrued benefit should be the same no matter for what purpose it is being determined. This raises the question for actuaries as to whether this change in SECURE 2.0 should be applied for purposes other than IRC Section 411.

Feedback from the Group on these issues led to a discussion about the actuarial profession's overall view of priorities for guidance between this issue, other DB plan priorities, and the defined contribution plan community. The Group shared the following based on our collective experiences.

- *Benefit overpayments is a very high priority (as this affects both DB and DC plans and affects a large number of these plans).*
- *Definition of accrued benefit—the scope, not so much what the reasonable rate is (but understanding how much latitude will be granted is also important, and is a consideration in assessing where this issue falls on the priority list).*
- *Closed plan rules need to be relatively high priority due to the potential for abuse. The Group shared that there is anecdotal evidence that some firms may be pushing the limit on what was intended by the rules, which has the effect of pressuring other firms not otherwise inclined to push the rules to join in on these practices for competitive purposes.*
- *IRC Section 420 transfers.*
- *Long-term, part-time employee guidance (not a DB issue)—IRS/Treasury confirmed this was unlikely to happen before a government shutdown, which was impending at the time of the meeting. The Group shared that there are a lot of questions remaining and plan sponsors are not going to be able to implement this January 1, so transition/deferral relief would be helpful if full implementation guidance is not possible in the near future.*

After benefit overpayment guidance, the Group shared that prioritization of the other items would depend on whether the guidance is going to be prospective with safe protection for reasonable past administrative practice or require retroactive compliance to the statutory effective date.

JBEA Rules

Our understanding is that acceptance of virtual events for JBEA is under consideration which would be welcomed by the practitioner community and any update you can provide would be appreciated.

The Group indicated that there have been rumors that virtual events would be accepted for formal credit and noted that this change would be very welcome from the actuarial community. IRS/Treasury did not have an update on this issue. Some firms are advising their actuaries not to worry about the JBEA requirement for having three people in the same room for now, with the understanding that there may be a need to scramble later in the enrollment cycle to make up formal credits if the regulation does not come out and additional temporary relief is not granted.

Ways to Streamline Funding Method Changes for Spinoffs

It would be helpful as practitioners to be able to streamline funding method changes for spinoffs and we can provide some insights into situations where automatic approvals in RP 2017-56 might be extended, understanding that you see the actual fact patterns.

IRS/Treasury stated that if the Group or others in the profession have suggestions, we should send them in as a comment letter. The American Academy of Actuaries last submitted such a [letter](#) in 2011*. Any new or reiterated comments may be addressed to Harlan Weller and he will ensure they are distributed internally to the appropriate parties.*

The IRS/Treasury representatives indicated there is an existing approval process, and to modify that process they need to be comfortable that things don't slip through the cracks that shouldn't. IRS indicated that they would, with no promises, consider some guidance that provides automatic approvals for mergers and spinoffs in certain situations since they see a lot of these applications come in.

Proposed Mortality Regulations

It would be helpful for plan sponsors and practitioners to understand whether the IRS expects to finalize proposed mortality regulations under Code section 430(h) to be effective for the 2024 plan year, as well as when the mortality table under Code section 417(e) may be updated to reflect the final regulations. Participants in plans with an August 417(e) lookback may request benefit commencement paperwork for 2024 annuity starting dates in the very near future, and it will require lead time for recordkeepers to implement and test updated mortality tables. We can also share practitioners' thoughts on the proposed mortality regulations, including potential adjustments for COVID-19, the 0.78% limitation on mortality improvements under SECURE 2.0, and how/whether those items might be reflected in the section 417(e) mortality table.

Participants are now requesting paperwork for 2024 benefit commencements that will rely on the IRC Section 417(e) mortality assumptions. IRS/Treasury reports they are making a lot of progress in finalizing the regulations.

They have heard that there are also questions about the timing of guidance and how it might affect private sector corporate accounting. The Group provided background that when the accounting assumptions include an election of a lump sum or other benefit based on IRC Section 417(e), the audit community generally does not accept the reflection of anticipated future regulatory or law changes as consistent with accounting requirements. If new guidance comes out before the measurement date (or in some cases after the measurement date), this could lead to auditors requesting that the plan's actuary quantify the effect of the guidance before the financial statements are issued. The Group discussed the plan and corporate accounting requirements under ASC 960 and ASC 715 and how they might be affected by the timing of new mortality regulations. For example, issuance of a new mortality projection scale by the SOA after the ASC 960 measurement date, but before plan financial statements are issued, could be viewed as information that is knowable but not known at the measurement date, requiring the new scale to be reflected when it is issued. In contrast, final mortality regulations issued by the IRS/Treasury after the ASC 960 measurement date could be viewed as a law change that is not required to be reflected at an ASC 960 measurement date that preceded the issuance of

regulations. The Group noted they are not fully confident this is how the audit community will interpret the accounting and auditing standards in this situation.

Ultimately, the administrative challenges override the accounting concerns and having this guidance sooner rather than later is important (even if that is before October 15, the extended deadline for Form 5500 filings for calendar year plans).

IRS/Treasury will issue a specific IRC Section 417(e) table as they have in the past to eliminate the need for actuarial firms to make an interpretation of how to blend the IRC Section 430(h) tables. The Group noted that understanding how the 417(e) tables will be projected after the initial effective year is important for some accounting calculations where the assumptions project what the table will be at a future commencement date.

With respect to the mortality improvement cap introduced in SECURE 2.0, IRS/Treasury indicated that if a mortality improvement scale is used to project a base table to the year that a table will apply (the valuation year), and that scale has rates above 0.78%, the rates preceding the valuation year will not be capped; the cap applies only in years after the valuation year.

Section 420 Transfers

Section 420(e)(7), added by Secure 2.0, extended the option to make 420 transfers to de minimis transactions meeting the following requirements:

- The amount transferred is less than 1.75% of plan assets (lesser of AVA and MVA reduced by funding balances)
- The plan was at least 110% funded for the two prior years

A plan utilizing this provision can make a 420 transfer as long as the plan remains at least 110% funded (instead of 125%) after the transfer. The cost maintenance period under this provision is 7 years, instead of the customary 5 years.

The clear intent of this change was to extend the ability to make relatively small 420 transfers to another tier of plans. However, the statute could be read to apply automatically to all transfers satisfying these conditions – including plans that are over 125% funded, potentially extending the cost maintenance period by two years for plans that met the pre-Secure 2.0 conditions.

Interest in 420 transfers is increasing due to a growing number of pension plans that are in surplus, and the addition of 420(e)(7). Most practitioners appear to view 420(e)(7) as applying only when the pre-Secure 2.0 conditions would not otherwise be met. If the IRS intends to enforce a different view, employers would like to know before making the transfer.

IRS/Treasury are aware of this issue and indicated the profession is unlikely to get an answer from them in the short-term.

The Group shared that two additional questions are whether a transfer can be made on behalf of someone who has had an annuity purchased for them or received a lump sum, and whether a transfer can be used to reimburse the plan sponsor later in the year for expenses that were incurred earlier in the year before the transfer was made? In most cases the participant is still in the retiree medical plan at the time the transfer would be made. IRS/Treasury confirmed they are also familiar with these issues. They noted there is a private letter ruling (PLR) from 2016 addressing the annuity purchase situation, which is the most recent guidance on this subject (though a PLR generally cannot be relied upon by a taxpayer other than the one to whom the PLR is issued).

The Group noted that this becomes a significant issue for some employers because there is a severe penalty for transfers of funds the plan sponsor didn't use for qualified expenses in that year (i.e., there is a 100% excise tax, which effectively means the excess amount is forfeited). The Group noted of the three different tiers of 401(h) issues, single year 420 transfers is the most significant.

Allocation of Prior Year Contributions to Plans Involved in a Spinoff

In corporate transactions involving a pension plan spinoff, it is common for either the predecessor plan or spun-off plan to be less well-funded than the other plan following the allocation of assets under Code section 414(l) and ERISA section 4044. This can result in adverse consequences to sponsors and participants, such as the imposition of benefit restrictions under Code section 436, at-risk status under Code section 430, or PBGC reporting requirements under ERISA section 4010. Historically, many sponsors in this situation have made excess contributions for the prior plan year, following the date of the spinoff, and allocated those contributions to either plan as needed to achieve desired funding thresholds for the current plan year and avoid such adverse consequences. Neither Code section 414(l) nor ERISA section 4044 prohibits such an approach, and past informal guidance has not indicated any concerns with such an approach. However, based on practitioner experiences with recent funding method change filings, it appears that IRS thinking on this issue may have changed, suggesting that post-spinoff excess contributions for the prior plan year may need to be allocated in the same manner as pre-spinoff contributions or post-spinoff contributions needed to satisfy the minimum required contribution, making it much more difficult to achieve desired funding thresholds for the less well-funded plan.

It would be helpful for plan sponsors and practitioners to understand any change in IRS thinking on this issue and if there are specific policy concerns the IRS may have in this area. An inability to allocate post-spinoff contributions directly to the predecessor plan or spun-off plan could complicate many corporate transactions, and as noted above, adversely impact both sponsors and participants.

This question was added after the initial proposed agenda was distributed. The Group clarified that it is representative of a class of questions the Group has seen with common/similar fact patterns and was not intended to relate to a specific case that is before the IRS, which IRS/Treasury noted they cannot discuss. These are practices that historically have not been questioned, so it would be helpful to know if there are concerns about abuse or other factors that may have led to a change in interpretation.

IRS/Treasury noted they are seeing an increasing number of people relying on past Gray Book Q&As when making cases to the IRS and wanted to remind practitioners about the caveat at the end of each Gray Book Q&A—it represents opinions of individuals who attended the meeting, does not necessarily represent the positions of IRS/Treasury, and cannot be relied upon by any taxpayer for any purpose. IRS/Treasury leadership shut down the Gray Book process after 2015 because people were viewing these Q&As as guidance and there are many other avenues for them to provide guidance. The Group noted that even considering the cautions, practitioners and plan administrators take comfort in this information as it may be more reliable when compared to other possible alternatives that a consultant may come up with to fill the gaps between formal guidance. The Group also noted that allowing for informal sharing of currently agreed-upon approaches actually elevates practice by helping to rein in rogue approaches that are unlikely to ever be supported.

The Group shared that a challenge for actuaries and plan sponsors is that these situations arise in real time, are time sensitive, and cannot always be delayed until guidance is made available.

IRS/Treasury indicated there is a "back burner" regulations project to address merger and spinoff questions under IRC Sections 430 and 436 (along with other issues) and inquired about where to rank that project relative to other priorities. The Group shared that plan sponsors and practitioners currently rely on reasonable interpretations and present those approaches to the IRS with a funding method change request. If regulations will apply prospectively and continue to allow for reasonable interpretations before the regulations are effective, then the timing for regulations is less important. However, if regulations are going to be more prescriptive and apply to current or past transactions, then it would be more important to have guidance sooner.

Other Discussion

The Group inquired as to any other issues where IRS/Treasury would like to hear from the Group or others in the profession, or information they would like us to share with the profession.

They noted there are a lot of layers of approval for anything they do. The people who need to provide the approvals are not in the weeds, they are looking at the big picture so there is an education process to allow the reviewers to evaluate guidance within that framework. While this takes time, it ensures that guidance is not going in different directions for different areas.

Therefore, it is always better for the regulators to address concerns in the initial drafting of the regulations than to respond to critiques after guidance is issued. To that end, the Group was

encouraged to send in comments related to funding method changes or other guidance we feel is needed or should be updated.