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Notes from Intersector Meeting with IRS/Treasury May 6, 2021

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

May 6, 2021 (Conference Call)

Periodically the "Intersector Group" ("the Group") meets with representatives of the Internal Revenue Service (IRS) and 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 (CCA), Tom Finnegan (ASEA), Eric Keener (SOA), Ellen Kleinstuber (Academy), Tonya Manning (CCA), Maria Sarli (SOA), and Jason Russell (Academy). Linda K. Stone, Academy senior pension fellow, and 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 its representatives who attended the meeting. The notes are a reflection of the Intersector Group's understanding of the views expressed by 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.

- **Phased retirement and nondiscrimination**

  Intersector Group participants are seeing increased interest in phased retirement programs. However, for employers with defined benefit (DB) pension plans (frozen or ongoing) that would like to include pension elements, there are a number of challenges for which existing guidance is unclear. Proposed regulation 1.401(a)-3, which was issued before the minimum age for in-service distributions was lowered to 62 (and then again to 59½) suggests a possible approach. However, given the reduction in the in-service distribution age, the pro-rata payment requirement in this proposed regulation is likely no longer relevant.

  Consider an employer that would like to permit participants who are working part time pursuant to a phased retirement program to receive a full or partial in-service payment. Additional guidance on the following areas would be helpful:

- Whether the plan can tie eligibility to receive in-service distributions to participation in a formal phased retirement program (the proposed regulation suggests this is permissible).

- If eligibility can be tied to participation in a phased retirement program, the level of discretion the employer may exercise over which employees are permitted to participate (the proposed regulations indicate that participation must be voluntary, but do not say anything about what criteria may be imposed to restrict entry to the program).

- The extent to which the terms of the program have to be so clearly defined in advance so as to avoid any employer discretion at the time the employee applies, or whether the employer can weigh that employee's individual job situation, taking account of criteria that are not specified in the early retirement program, to decide whether to admit the employee to the program. The concern is that discretion over entry to the program, which is a condition of receiving an in-service distribution from the pension plan, could be construed as impermissible employer discretion over availability of a pension benefit.

- The extent of the anti-cutback protection that would apply to such a program. The proposed regulations indicate that availability of an in-service distribution pursuant to a phased retirement program would be subject to anti-cutback protection under 411(d)(6). If the availability of this benefit is, in turn, tied to participation in a phased retirement program, there is a concern that 411(d)(6) might limit the employer's ability to modify the terms of the phased retirement program. As this is a developing area, and given that an employer's workforce needs are likely to change over time, we would expect that employers would want to retain the ability to modify the terms of a phased retirement program.

    - Nondiscrimination testing implications. The availability of a phased retirement benefit would be subject to nondiscrimination testing as a benefit right or feature (BRF). It is unclear whether availability would be tested based on eligibility to elect to enter the phased retirement program (which would trigger eligibility for the benefit), and if so, how effective availability would be assessed if the employer retains discretion over who can enter the program. Alternatively, availability could be based on eligibility to actually elect to receive an in-service distribution (i.e., only those who have already been admitted to the phased retirement program or who are otherwise eligible for comparable in-service payments are treated as benefitting under the BRF).

IRS/Treasury representatives in attendance indicated that they felt this issue had not generated a lot of interest due to fewer plans being in a surplus position than was the case when the original proposed regulations were issued. They indicated that the proposed regulations did not receive significant reaction, and with the ability to begin *benefits at age 59½, this fell off their list of priorities. However, if there is renewed interest in this topic, they may add it to their list of issues to work on, but it will still be subject to their prioritization process. The representatives noted that a [GAO study that](#) addressed these issues and highlighted some of the challenges in complying with nondiscrimination rules for defined benefit plans—particularly if the plan provides ongoing accruals and the intention is to provide accruals that are consistent with full-time employment (e.g., full service credits in a final pay formula), how you determine whether a highly compensated employee (HCE) with reduced hours should still be treated as an HCE, etc. The Intersector Group noted that the number of final pay DB plans has declined and that phased retirement is also an area of interest for sponsors of frozen plans and plans with an ongoing accumulation formula, where this particular issue would be less of a concern.*

IRS/Treasury representatives were interested to hear that phased retirement is an issue not just for early retirees, but also for employees working past normal retirement age for whom benefits would otherwise be suspended (if you must still forfeit pension benefits while receiving reduced pay then phased retirement may not make financial sense). They appreciated hearing that this is also not simply about using pension surplus but is primarily about workforce management. Intersector Group participants indicated that plan sponsors want to use these programs but the uncertainty about the rules makes them less likely to do so. Uncertainties include Benefits, Rights, and Features (BRF) testing—e.g., does testing depend on who the program is available to or who takes advantage of it?

The proposed regulations seem to contemplate providing in-service distributions from a defined benefit plan to participants in a formal phased retirement program that is separate from the defined benefit plan. That raises questions about whether employer discretion can be exercised in that program (e.g., do you need black-and-white rules about who is eligible and how the program works, or can employers modify it based on an employee's job situation?) IRS/Treasury representatives indicated caution in assuming that a separate program would necessarily be exempt from requirements (such as 411(d)(6) anti-cutback requirements and the requirement to have definitely determinable benefits specified in a formal written document) that would otherwise apply to benefits provided directly through a pension plan.

- **Statutory hybrid plan issues**

  There are a number of issues relating to statutory hybrid plans that have not yet been addressed in regulations and on which further IRS guidance would be helpful to plan sponsors and practitioners. For example:

  - Projection of future interest credits for various purposes, including nondiscrimination testing, application of section 415 limits, and accrual rule testing

- Late retirement actuarial increases for cash balance plans (see Appendix for additional detail)
- Application of the market rate of return rules to "implicit interest" pension equity plans
- Other common issues the IRS may have encountered in reviews of recent determination letter applications that plan sponsors and practitioners may need to be aware of and/or address

IRS/Treasury representatives in attendance did not provide details on guidance projects that might be underway with regard to statutory hybrid plans. However, they did note certain issues that have come up in determination letter (DL) applications received through the temporary DL window for hybrid plans.

Required actuarial increases for participants working past normal retirement age have been a common issue; such increases are required after normal retirement age in plans that do not suspend benefits or fail to provide suspension of benefits notices, and after "age 70½" in plans that do not provide for in-service distributions commencing at "age 70½," as well as for terminated vested participants for whom benefits cannot be suspended. Where such actuarial increases would be required, the IRS has identified a few approaches that would enable the issuance of a DL, and this has resulted in most reviews being closed with a favorable determination. In most cases, plans have adopted fail-safe language stating that the interest crediting rate will be increased as needed so that it is sufficient to provide required increases, without describing in detail how this will be determined; this is consistent with the approach described in the second sub-bullet in the Appendix. (Whether a plan actually needs to increase the rate, or is actually increasing the rate so that it is sufficient, would need to be determined on audit.) The IRS has not generally required either of the approaches described in the last two sub-bullets in the Appendix. Intersector Group participants noted that in their observation, in some cases, a plan sponsor's legal counsel has interpreted the IRS as requiring one of these two approaches. IRS representatives in attendance suggested that, if this question comes up in a particular case, the issue should be discussed with the agent involved to clarify what changes are being requested.

Certain other issues have come up in individual cases, such as the interest rates used for certain projections or the lookback used for plans with variable interest crediting rates, but these have not been observed broadly. Intersector Group participants noted that additional guidance would be helpful for plans crediting "true" market-based rates (e.g., the rate of return on plan assets) and on when pre-retirement mortality increments must be included in actuarial increases. Intersector Group participants noted that in particular in the small plan market it is common for the death benefit to be the full present value of the account balance and that common practice in this situation is to credit interest only. IRS/Treasury representatives noted that the issue regarding post-normal retirement date actuarial increases has been a point of consideration in the past (e.g., there is a *proposed regulation from 2016 dealing with this question in the IRC §417(e) context), but that they are not providing specific guidance at this time.*

- **Partial plan termination issues**

  Based on situations we are seeing with plan sponsors, it would be helpful for the IRS to provide more guidance on how to determine who must be vested on partial plan termination. This is less pressing for defined benefit (DB) (because you don't have to vest people if the plan is underfunded on a plan termination basis, and with more plans closed, there are fewer nonvested people), but it is coming up more frequently for defined contribution (DC) plans.

  The issue is that Rev. Rul. 2007-43's discussion of the "applicable period" (during which nonvested participants who terminate employment must be fully vested) is not clear when there are multiple events or events that span plan years. Rev. Rul. 2007-43 provides that "The applicable period depends on the circumstances: the applicable period is a plan year (or, in the case of a plan year that is less than 12 months, the plan year plus the immediately preceding plan year) or a longer period if there are a series of related severances from employment."

  For example:

  (a) If a single event spans plan years, and so causes "a series of related severances from employment" it is not clear what the "longer period" is. For example, for a plant that shuts down in stages from late 2020 through early 2021, it is not clear whether the "applicable period" ends when the last severance occurs, or includes all of 2021.

  (b) In addition, if the period in (a) does not include all of 2021, assume that there was also a sale of a location in 2021 that happened after the plant shutdown was completed. Is there a period during 2021 during which non-vested terminees do not have to be vested (between the shutdown of the plant and the sale), or does the affected period now include all of 2021 because of the sale? Presumably it does if the sale is large enough on its own to trigger another partial plan termination, but that raises the question of whether there is a new, separate 2021 "applicable period," or whether all terminations in 2020 and 2021 now count in determining whether the 20% threshold is reached ("The turnover rate is determined by dividing the number of participating employees who had an employer-initiated severance from employment during the applicable period by the sum of all of the participating employees at the start of the applicable period and the employees who became participants during the applicable period.") The latter interpretation would mean that a sale of any size, even a very small one, would require vesting of employees, because the 20% was already reached with the plant closing.

The IRS wants to make sure that practitioners and plan sponsors are aware of the COVID-19 FAQ postings on their website that address partial terminations. They noted this is the sort of matter that becomes a priority but by the time they are able to work through the concerns and issue guidance, it is no longer a hot topic. The current situation has put a spotlight on the need to review the existing Revenue Ruling and evaluate where updates or clarifications would be helpful and appropriate. The IRS cautioned that they may not find it appropriate to move away from a facts-and-circumstances test; however, they expressed interest in including in guidance what types of factors will be considered if that will provide additional clarity.

IRS representatives indicated that several of the questions they have received relate to which participants are required to be covered, and not just the appliable period. Intersector Group participants noted that these two issues are related—if you aren't sure what the applicable period is, you aren't sure what people need to be counted and potentially vested. For example, a second event later in the year may not trigger a partial termination on its own, but if all terminations in the entire year must be wrapped in as part of a prior event, that collectively might trigger a partial termination vesting requirement. IRS representatives indicated they understand the issue, but did not indicate whether there would be any additional guidance about the meaning of the "applicable period," or how to measure the percentage reduction in the number of plan participants, when events span plan years and/or there are multiple events in succession.

IRS representatives also asked whether there was resistance among plan sponsors to vesting all nonvested terminations during the applicable period, including those who terminated voluntarily and not in connection with any event. Intersector Group participants indicated in their observation that many plan sponsors are surprised to learn that that is required, but that were not seeing a failure to comply with the rule.

- **Lump sums that are the greater of §417(e) and some other basis**

  It would be helpful for the IRS to provide guidance on how the funding regulations apply to lump sums that are calculated using §417(e) or some other variable basis, whichever produces the greater lump sum. Similar questions arise when trying to apply the regulations to payment of annuities from cash balance plans when the conversion is done using either §417(e) or some other variable basis, whichever produces the greater annuity.

  The §430 regulations require that the subsidy <u>relative to annuity substitution</u> be taken into account, not the subsidy relative to the <u>§417(e) lump sum</u> (§1.430(d)-1(f)(4)(ii)(B)). That made sense when the regulations were written, given that §430 rates and §417(e) rates tracked much more closely than they do now with stabilized interest rates.

  The assumed lump sum conversion rate for the alternative lump sum calculation is a non-prescribed assumption, which is required to (i) be reasonable individually (taking into account the experience of the plan and reasonable expectations) and (ii) *in* *combination with other non-prescribed assumptions*, offer the actuary's best estimate of anticipated experience under the plan. This terminology suggests a long-term best estimate of the alternative lump sum conversion rate is required to be used, not a long-term expected differential from a current prescribed assumption (the §430 rates).

Such an approach can result in situations where the difference between the funding target (FT) determined for the plan and the FT that would have been determined had the plan used only §417(e) rates might significantly exceed the expected additional value of the alternative lump sum basis. For example, if a plan pays a lump sum using Pension Benefit Guaranty Corporation (PBGC) rates if that exceeds the lump sum using §417(e) rates, and the best estimate assumption (consistent with other long term valuation assumptions) is that current low PBGC rates will persist, the additional FT measured (over and above what would be measured using annuity substitution) will be significantly in excess of the expected value of that additional calculation. Conversely, if the actuary's long-term assumptions consistently reflect an expectation that interest rates will rise, a plan with an alternative interest rate conversion basis that is expected to be subsidized relative to §417(e) rates (e.g., AMT and 10-year Treasury rates) could determine that the present value of this subsidized lump sum is smaller than the annuity substitution approach, leading to the §417(e) minimum lump sum being valued and no subsidy reflected.

Thus, the most literal reading of the regulations appears to lead to determining a FT reflecting the alternative basis that may differ from the FT that would have been determined had the plan not provided the alternative basis in a way that may not logically reflect the value of the subsidy included in the alternative basis.

IRS is aware of the issue, and they have an ongoing regulation project to address outstanding questions related to the IRC §430/§436 regulations. Higher-priority items have emerged that take precedence over this particular project. IRC §430/§436 regulations are still in the mix, but are not the highest priority at this time. IRS representatives also indicated that they may be looking at whether they have authority within the American Rescue Plan Act (ARPA) guidance process to address some of these issues. They noted that specific authority is granted and they must stay within the bounds of what is granted to them by the statutory language. Otherwise, this must be a separate guidance project.

Intersector Group participants noted that valuation systems may be handling this differently and asked that any rules in this regard be effective prospectively because it is difficult to discern from the current regulations (which were written before interest rate stabilization) how to apply them post interest rate stabilization.

- **Applicability of excise taxes on multiemployer plans remaining in critical status after 10-year rehabilitation period**

  Plans with a rehabilitation period that began January 1, 2010, or 2011 and ended December 31, 2019, or 2020 that have not yet emerged from critical status in 2020 could fear excise taxes based on a lack of guidance from IRS. Any new thinking on the applicability or enforcement of excise taxes would be appreciated by those plans and others with delayed emergence planned from critical status. (We note that some plans in this situation might have extended their rehabilitation period under WRERA 2008 or ARPA 2021.)

IRS/Treasury representatives indicated they are working on ARPA issues as fast as they can, but special financial assistance is at the top of the list. One of the top priorities for IRS/Treasury is to support PBGC in the development of their regulations on a tight, 120-day timeline. IRS/Treasury is also working on guidance related to temporary funding relief under ARPA, but it will come after PBGC and Treasury release their guidance on special financial assistance.

IRS/Treasury have also been thinking about how §432 should work in the context of a plan receiving special financial assistance, but they have not yet focused on the §4871 issue. Intersector Group participants noted that plans that are eligible for special financial assistance are more focused on the eligibility and amount of special financial assistance, and not as much on minimum funding standards. Plans that are not eligible for special financial assistance may be very focused on the minimum funding standards aspects of ARPA that fall to IRS/Treasury.

IRS/Treasury representatives indicated they would appreciate comments from the Academy on the funding relief for multiemployer plans. They have started drafting guidance on single-employer and multiemployer funding issues.

- **Variable annuity pension plans**

  Both multiemployer and single-employer plan sponsors are setting up variable annuity plan designs. Sometimes these designs are included in the same plan as a frozen legacy benefit, and other times they are in a standalone plan. In the absence of guidance on how to value variable annuity plans, many actuaries turn to the Academy's November 2019 practice note.

  The most significant issue is how to value a variable annuity benefit when the interest rate assumption is prescribed. Many actuaries are using the approach that the prescribed interest rate also represents the future return on plan assets and value changes in the variable benefit accordingly. (This is identified as the "single assumption" approach in the Academy practice note). In other words, the value of a variable benefit that decreases (increases) to the extent the prescribed interest assumption is below (above) the hurdle rate is essentially the same as the value of a fixed benefit discounted at the hurdle rate. This approach is premised on the theory that a liability (or present value) represents the amount of money needed as of the valuation date to provide the specified future benefits assuming that that value will grow based on a return equal to the prescribed interest rate. Some actuaries, on the other hand, use the "independent expected return" approach described in the practice note.

For multiemployer plans, this interpretive issue comes up for purposes of current liability (for minimum funding purposes the interest rate is not prescribed). For single-employer plans, it applies both to minimum funding and PBGC variable rate premiums (acknowledging that the latter is not under IRS jurisdiction). IRS should consider transition issues if any future guidance differs from current practice.

This is an issue for both multiemployer and single-employer variable annuity plans. For multiemployer current liability, many plan actuaries are using a single interest rate approach. For single-employer plans, plans can immunize interest rate risk by using single rate approach. Many pension actuaries believe the single rate approach is theoretically correct. However, there is a risk of IRS issuing future guidance that runs counter to the single rate approach. More single-employer plans are using this approach and taking the risk. Is there guidance planned, and if actuaries are currently doing something different will there be transition guidance?

IRS/Treasury has a longstanding IRC §430/§436 regulation project, and acknowledges the project could include variable annuity plan issues. To the extent they issue guidance on the matter, it will be on a notice and comment basis with a prospective effective date. They would need to deal with Treasury counsel/examining agents to determine how to deal with situations in which current practice is inconsistent with a regulation that has a prospective effective date.

Appendix

In this appendix, Intersector Group members provide additional detail on certain areas where further IRS guidance would be helpful to plan sponsors and practitioners.

- **Late retirement actuarial increases for cash balance plans**

  In recent determination letter reviews, plan sponsors and practitioners have encountered a range of positions among IRS reviewers regarding post-retirement actuarial increases in cash balance plans and when an actuarial increase is considered sufficient. These various positions have included:
    - Interest credits at the plan's interest crediting rate are sufficient to provide for actuarial increases.
    - The plan's normal interest crediting rate is not sufficient to provide for an actuarial increase, but the interest crediting rate can be increased (e.g., after normal retirement age or age 70½) so that it is sufficient.
    - The plan's normal interest crediting rate is not necessarily sufficient to provide for an actuarial increase, but a comparable calculation is applied using the plan's actuarial equivalence rate. If pre-retirement mortality is disregarded, this would be equivalent to increasing the balance with interest at the plan's actuarial equivalence rate each year.
    - A fixed annuity is determined (e.g., at normal retirement age or age 70½) and actuarially increased each year, with the actuarially increased annuity possibly

being replaced any time the annuitized account balance exceeds the actuarially increased annuity.
  - An annuity is determined at the beginning of each year, actuarially increased to year-end, converted back to a lump sum, and compared to the normal account balance. The actuarially increased benefit would be the greater of these two amounts.

We believe the last two approaches could be considered actuarially unreasonable and in conflict with other informal guidance. It would be helpful for the IRS to provide guidance on acceptable approaches, including whether there is only one acceptable approach or if it depends on how the plan is written.

We would also note that market-based cash balance plans raise further complications, since the account balance may decrease from year to year based on a negative return and it is unclear whether the annuity benefit can decrease while still being considered to comply with the actuarial increase requirement and whether preventing declines in the annuity benefit would result in limiting declines in the account balance that might otherwise apply.

This topic was not covered explicitly during the meeting as most of what is addressed here was discussed under other topics earlier in the meeting. See discussion of statutory hybrid plan issues in the main section of the document.

- **Funding waivers**

  Intersector Group members have seen increased interest, and even actual filings, for funding waivers, and this will likely continue if the economic downturn continues to drag deep into 2021. For some troubled plan sponsors, even with the relief provided, there will be a need for more relief for 2021. Understanding that every plan must be viewed based on its particular facts and circumstances, are there any overarching principles or views the IRS might share on filings specifically related to business challenges due to COVID-19 (vs typical general business issues)? It would be helpful to hear IRS' perspective about the specific factors that might be considered, what might be done by the filer to facilitate the process, mistakes IRS has seen plan sponsors make in the filing process so these can be avoided, etc.

IRS/Treasury is aware that this is an issue that needs to be addressed for businesses that are affected and intending to apply for a waiver. Representatives noted there are no hard-and-fast rules for determining who meets the criteria—each case is evaluated based on facts and circumstances. When an application is being reviewed, they consult with PBGC, who has a lot of interest in the funded status and financial condition of plans that apply for a waiver.

IRS representatives offered several suggestions for plan sponsors planning to apply for a funding waiver.

- *Sponsors should not send in their request too early (e.g., during the first half of the year). Nearer the end of the year is better because they need information for the entire year and that is difficult to have if you apply just a few months into the year. For example, if you apply too early, you might not be able to provide the final Minimum Required Contribution (MRC) for the year.*
- *Applications should be for one plan year at a time. For example, do not ask for a 2021 waiver with a 2020 waiver application.*
    - *If business hardships are expected to continue into the following year and the sponsor is expecting to need to request another waiver, the sponsor needs to keep in mind that the hardship must be shown to be temporary; as such, the request should include information on how the sponsor expects things to turn around. IRS will consult with PBGC since they have financial expertise.*
    - *They indicated they understand it is difficult to predict how the pandemic will affect a business over the next few months or year, but they need to see that there is some plan in place for improvement. Any non-pandemic business issues need to be clearly addressed.*
    - *Any granting of a waiver will require that certain conditions be met, and if the PBGC is involved, there will be added conditions (though often similar). The main condition is that the employer is positioned to make all future quarterlies and other required contributions on time; else, the waiver is void. If, in a 2020 application, the sponsor indicates that they cannot make 2021 quarterlies, that will be of concern to the agencies, and they will have to think through how that would be addressed.*
- *In general, these requests take some time for them to review and rule on, so sponsors should not expect a very quick turnaround.*
    - *Some requests ask for expedited treatment and they will take this into account, but if they are coordinating with PBGC, it will likely take more than 6 months.*
    - *As with any request, if they do not have all the required information up front, this will slow things down. The more information provided with the request, including valuation reports and financial projections, the quicker the response.*
    - *Additionally, requests should include the underlying assumptions used for projections, including the expected return on assets and expected Effective Interest Rate.*
- *If there is an intervening legislative change that will need to be taken into account (such as ARPA), the request must be revised accordingly.*
    - *Specifically, if new legislation will change the plan's MRC for the year for which waiver is requested, the sponsor will need to provide the revised MRC and underlying calculations.*
    - *Similarly, any intervening law changes will need to be reflected in projections if the law change would change those amounts.*
    - *Obviously, this will further delay the process.*

IRS has increased staffing in anticipation of greater volume of requests. They are prepared for perhaps twice the normal volume, but anything beyond that could strain their resources.

- **Nondiscrimination testing**

  We expect that IRS is or will be working on nondiscrimination testing regulations. We would like to request that IRS consider (a) not undoing any of the features of the previously proposed regulations that were able to be relied upon beginning with the 2014 plan year and (b) making available in any final regulations the proposal (that was not available until the earlier proposed regulations were finalized) to skip the cross-testing gateway if normalization calculations are performed using 6% interest.

Intersector Group participants noted that different plans, and plans covering different types of participant groups, can be helped by this type of relief. The IRS/Treasury representatives asked whether there is anything included in the 2014 closed plan relief that has not now been subsumed by the Setting Every Community Up for Retirement Enhancement (SECURE) Act. They are working the §401(a)(4) guidance and are curious how much of the closed plan relief in the proposed regulations is still needed. Group members committed to follow up.

- **ARPA guidance**

  The Intersector Group would welcome guidance on ARPA with regard to the following:

  - Effective date of certain funding provisions
  - Funding balance elections for the 2019 or 2020 plan years
  - Ability to add to prefunding balance or to revoke excess use
  - Redesignation of section 436 contribution
  - Redesignation of a contribution originally designated for 2019 or 2020
  - Application of benefit restrictions
  - Asset smoothing
  - Full retroactive effect
  - Automatic approval of an election to switch from the use of yield curve
  - Top 25 pre-termination restrictions
  - Transition relief

  The Group would also welcome guidance relating to various considerations regarding temporary funding relief for multiemployer plans, namely:

  - Timing, manner, and form of election for relief measures such as extended amortization of experience losses, extended smoothing of asset returns and the "zone freeze"

- How to reflect any elections that have a retroactive effect on prior year minimum funding or current year IRC 432 status certifications
- Clarification on how to measure non-investment losses related to COVID, especially contribution shortfalls

IRS representatives thanked the Intersector Group for the list and acknowledged that they had received other such lists and were beginning to work on guidance.

Other Discussion Topics Added at IRS Request

The IRS/Treasury representatives in attendance noted that their resources available to work on various guidance projects are very tight, and they welcome input from practitioners on how they should prioritize the items on their work plan. They continue to refine the prioritization of guidance projects, and are often forced to focus on those with time pressing needs. They also noted that the House Ways and Means Committee recently passed the SECURE 2.0 legislation, and if that is enacted it will significantly increase their workload.

Intersector Group participants offered that a key determinant of how guidance projects might be prioritized is how the issues addressed in the guidance will be handled on audit. If the IRS is willing to be flexible and consider different reasonable approaches in the absence of guidance, then having regulations issued becomes less imperative. IRS representatives noted that anyone within the agency would say they intend to be reasonable—the question comes down to what they think is reasonable vs. what practitioners think is reasonable.

Intersector Group participants called out variable annuity plans as a topic that is a high priority, as it is of interest to both multiemployer and single-employer plans, as well as both large plans and, increasingly, small plans. Having clear guidance on how to value them is key to obtaining buy-in and gives us a strong tool to encourage plan sponsors to stay in the DB system rather than leaving.