

Corrections and Additions to EA-2B Course Outline and Problems Spring, 2009

Page 10: The following sentence should be added to the last bullet point:

Note that technical corrections to the Pension Protection Act of 2006 (PPA) allow a forced lump sum payment of no more than \$5,000 even if the plan is subject to the lump sum distribution restrictions of IRC section 436.

Page 11: The date of hire for Smith in question 4 should be 1997 (not 1998).

Page 72: In the last sub-bullet within the first main bullet point, the reference to page 66 should actually read “other than the option noted in the second bullet point on page 70.”

Page 101: In the third paragraph, the reference in the parenthesis that refers to the HCEs should be a reference to all employees, so that the statement in the parenthesis should read “the ratio of non-excludable NHCEs to non-excludable employees.”

Page 124: The statement is actually true, as evidenced by this revised solution:

The plan does not have the same retirement age for all participants, since participants in different locations have different normal retirement age. The definition of testing age in IRS regulation 1.401(a)(4)-12 requires that normal retirement age is generally the testing age. For plans that do not have a uniform normal retirement age, age 65 is deemed to be the testing age. However, a plan is deemed to have a uniform normal retirement age if the normal retirement age is uniform for different groups of employees. Different locations would be a way of creating such groupings. In a situation where different groups of employees each have a uniform retirement age, the testing age for the plan is the latest of the uniform retirement age. As a result, age 64 would be used as the testing age. The statement is true.

Page 147: The last paragraph on this page should be deleted. The aggregate allocation rate described in this paragraph is determined on a contributions basis – not the benefits basis as the calculations in this question have been done. So the conclusion of the paragraph is incorrect. In reality, it is unnecessary to worry about the issue brought up in this paragraph since the question is already asking for the plans to be tested on a benefits basis – so it is not necessary to check to see if that is even allowed – it should just be assumed that it is allowed (the question wouldn't ask you to do it otherwise).

Page 158: In the calculation of 1% of current liability for HCE2, the “.1” should actually read “.01.” The numerical solution is correct.

Page 163: In the second of the two benefit formulas in the middle of the page, each piece of the formula should be multiplied by years of service, as is the case in the first formula.

Page 175: The solution to question 68 should indicate that for Smith, the value of X% is 1.4044%.

Page 178: In the data for question 70, the following piece of information should be added:

Defined benefit plan integration level: Covered compensation

Page 190: The second bullet point under the “AFTAP for fully funded plans” section should be deleted.

Page 194: The following should be added as a final bullet point on this page:

Lump sum payments of no more than \$5,000 that are paid under the rules of IRC section 411(a)(11) can be paid even though a plan is subject to the limitations on accelerated distributions.

Page 195: The following bullet point should be added after the second bullet point on this page:

For the plan year that begins between October 1, 2008 and September 30, 2009, if the prior year AFTAP exceeds the current year AFTAP, then the prior year AFTAP is used for purposes of the 60% test as well as possible corrections below. (Note that this is a temporary provision that applies only to the one-year period indicated.)

Page 201: In the solution to question 79, the last sentence of the second paragraph and the determination of the revised AFTAP that follows it should be replaced by the following:

“It is irrelevant whether this additional contribution (equal to the increase in the funding target due to the plan amendment) is enough to raise the AFTAP to 80% or more.”

Page 254: In the last bullet point, the expiration date of December 31, 2010 should be removed. This no longer applies.

Page 275: The second statement is incorrect (actually it makes no sense as written) and should read as follows:

Unless an extension is agreed upon, the PBGC has no more than 60 days (after it receives notice from the plan administrator of the plan termination) to issue a notice of noncompliance to the plan administrator.

Page 298: In the second to last bullet point, it should be added that non-vested participants who terminate within the 3-year period prior to the plan termination date are not included in the reallocation.

Page 301: In the main paragraph, delete the parenthetical “(regardless of the date of termination of employment)”. In order for those terminated participants who had category 2 benefits to receive a share of the excess assets, they need only have received their distribution during the 3 years prior to plan termination, and their actual date of termination is irrelevant.

Page 326: In the second to last bullet point, the reference to IRC section 412(n) should be IRC section 430(k).

Page 337: With regard to the Summary Annual Report, these are no longer required for defined benefit plans under PPA. The following should be added to the end of this section:

Note that an SAR is not required for a defined benefit plan beginning in 2008. However, defined benefit plans must provide annual funding notices under ERISA section 101(f) that are due within 120 days after the end of the plan year (for plans with 100 or fewer participants, the due date is the same as the Form 5500 due date). The funding notice must be provided to the PBGC, plan participants, and the employer contributing to the plan.

Page 340: In the data for question 135, the \$600,000 represents the health benefits paid in 2009 (not 2008).

Page 349: Two revenue rulings have been added to the final recommended reading list:

2007-43 This ruling describes a situation in which an employer closes one location of its operations, resulting in a rate of turnover of 23%. Based upon prior rulings and court cases, this revenue ruling concludes that a partial termination has occurred (resulting in full vesting of all current participants, including those who were terminated) since at least 20% of the work force has terminated employment.

2007-67 This ruling deals with minimum survivor annuity rules under IRC section 417 with regard to the PPA interest rates and mortality tables. It makes 3 important points.

1. The interest rate for distributions made under PPA (after 12/31/2007) is determined using the same plan definition of stability period and look-back month as was used prior to PPA. However, since the PPA interest rate is different from the pre-PPA interest rate, any distribution with an annuity starting date that occurs on or after the first day of the first PPA plan year must be determined using PPA interest rates.
2. The PPA applicable mortality table (which changes each calendar year) applies to distributions with annuity starting dates that begin in a PPA calendar year. However, the PPA mortality table does not apply for distributions made in plan years that begin prior to 2008. So, for example, if a plan year runs from July 1 to June 30, and uses a stability period of the plan year, then the PPA mortality table for 2008 applies only to distributions with annuity starting dates that begin after June 30, 2008.
3. An amendment changing the interest rate to conform with PPA will not result in a violation the protected benefit requirements of IRC section 411(d)(6). However, if the definition of the look-back month or stability period is changed, then the one-year protections under the regulations of IRC section 417 do apply.

Page 350: Revenue Notice 87-20 has been deleted from the reading list.

Page 351: Sections III and IV of Revenue Notice 2008-30 have been added to the recommended reading list. It is summarized as follows:

Section III: This section deals with questions and answers concerning the qualified optional survivor annuity (QOSA) that must be offered to a married participant under IRC section 417 if the participant waives the QJSA. The important points (but not all the points) made by this section of the notice are:

1. Even if the QJSA is more valuable than the plan's normal form of benefit, the QOSA need not be subsidized (it can simply be the actuarial equivalent of the normal form of benefit).
2. Spousal consent is not required for the participant to elect to receive a QOSA that is actuarially equivalent to the QJSA. However, if the QOSA is not actuarially equivalent to the QJSA, then spousal consent is required.
3. A plan is not required to offer a QOSA option with regard to the pre-retirement survivor annuity.

Section IV: This section deals with questions and answers concerning lump sum benefits as determined under IRC section 417(e)(3) with regard to PPA. The important points (but not all the points) made by this section of the notice are:

1. Single employer plans generally have until the end of the first plan year beginning after 2008 to be amended to comply with PPA. During that interim period, the plan can be amended to provide that present value calculations under IRC section 417(e)(3) can be equal to the greater of the present value determined using pre-PPA interest and mortality or post-PPA interest and mortality. Since QJSA benefits generally cannot be less than the actuarial equivalent of the most valuable benefit, this provision could cause a violation of that requirement. The notice states that this temporary present value provision would not be considered a violation of the QJSA requirement.
2. Plans amended to provide the IRC section 417(e)(3) present value as being the larger of the two calculations (pre-PPA and post-PPA) that are later amended to just provide for the post-PPA calculation will not violate the anti-cutback rules of IRC section 411(d)(6).

PBGC Technical Updates 07-2 and 07-3 have been removed from the recommended reading list.

PBGC Technical Update 08-4 has been added to the recommended reading list:

This technical update describes rules with regard to lump sum determinations upon plan termination and subsequent distribution of assets that both occur after 2007. Under PPA, for distributions in 2008 through 2011, there is a phase-in of the segmented interest rates under IRC section 430, and these phase-ins apply for purposes of PBGC plan termination as determined by the phase-in applicable for the date of distribution (not the plan termination date).

For example, suppose that a plan defines its stability period as the plan quarter, and the look-back month as the third month before the stability period begins. If a plan terminates on August 1, 2009 and distributes assets on May 15, 2010, the applicable segmented interest rates are determined as of January, 2010 (the stability period is from April 1, 2010 through June 30, 2010 for the May 15, 2010 distribution date, and January, 2010 is the third month before the stability period). The segmented interest rates are then subject to phase-in with the currently liability rate from January, 2010 (using 60% of the segmented rate and 40% of the current liability rate – these are the percentages applicable to distributions in 2010).

The mortality table to be used to determine the lump sum value is the table in effect on the plan's termination date, with mortality improvements through the distribution date.