

A Closer Examination of Examples in 1.430(f)-1 and 1.436-1 Regulations

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Administrative agencies are said not to make the law, but rather to find the law and declare its meaning.

The 430 and 436 regulations contain many interesting examples that illustrate what the Regulators found in the law.

1.436-1(j)(5) Example 1

- 1/1/08 MVA: \$2,100,000
- 1/1/08 Carryover Balance (COB): \$200,000
- Annuities for NHCEs purchased in 2007 and 2006: \$100,000
- 2008 Funding Target: \$2,500,000

2008 Adjusted Funding Target Attainment Percentage (AFTAP):

$$(\$2,100,000 - \$200,000 + \$100,000) \div (2,500,000 + \$100,000)$$

$$= 76.92\%$$

1.436-1(j)(5) Example 2

Same as Example 1 but

- It is reasonable to expect the sponsor will contribute \$80,000 for 2007 by 9/15/08 (they crossed-their-heart-hoped-to-die-promised, I hope.)
- The \$80,000 is all in excess of the 2007 minimum
- The sponsor elects to reduce the 2008 COB by \$80,000

2008 AFTAP:

$$(\$2,100,000 + \$80,000 - \$200,000 + \$100,000) \div (2,500,000 + \$100,000) = 80\%$$

1.436-1(j)(5) Example 2 (continued)

This ability to count receivables before they have been made only exists for 2007 contributions for 2008 AFTAPs.

In this Example, if the sponsor does not make the contribution as they promised then it will result in a “Material Change” (more on this later) and that means Big Trouble.

1.436-1(j)(5) Example 3

- 2007 Valuation Interest Rate: 7%
- 1/1/07 MVA: \$1,000,000
- 1/1/07 MVA: \$1,200,000
- 1/1/07 Current Liability: \$1,500,000
- 1/1/07 Credit Balance (CB): \$80,000
- 1/1/08 Carryover Balance (COB): \$50,000
- Sponsor elects in 2008 to reduce COB by \$45,000

1.436-1(j)(5) Example 3 (continued)

For purposes of calculating the AFTAP for the pre-effective year (2007) the AVA must be limited to not more than 110% and not less than 90% of the MVA.

PPA-Limited AVA: \$110,000

For purposes of calculating the AFTAP for 2007 the 1/1/07 CB is subtracted from the 1/1/07 PPA-Limited AVA. But because the sponsor chose to reduce the 1/1/08 COB by \$45,000 the 1/1/07 CB is reduced by the value of this at 1/1/07 is based on the 2007 valuation interest rate.

$$1/1/07 \text{ CB: } \$80,000 - \$45,000 \times 1.07^{-1} = \$37,944$$

2007 AFTAP:

$$(\$1,100,000 - \$37,944) \div \$1,500,000 = 70.80\%$$

1.430(f)-1(g) Example 1

- 2008 Minimum Required Contribution: \$100,000
- 2008 COB: \$25,000
 - Sponsor chose not to reduce COB
 - COB is available to meet minimum
- 2008 Effective Interest Rate (EIR): 6%
- 2008 rate of return on plan assets: 2%
- \$150,000 contributed on 12/1/08.

1.430(f)-1(g) Example 1 (continued)

\$150,000 contributed on 12/1/08 must be discounted back to 1/1/08 at 2008 EIR.

$$\$150,000 \times 1.06^{-11/12} = \$142,198$$

Excess of amount contributed over minimum required contribution (both at 1/1/08):

$$\$142,198 - \$100,000 = \$42,198$$

This amount is available to go into the Prefunding Balance (PB).

1.430(f)-1(g) Example 1 (continued)

As of 1/1/08 there exists

\$25,000 COB

\$42,198 PB

What happens to these Balances in 2008?

Assuming neither is used or waived...

The COB that existed at the beginning of the year is adjusted to reflect the rate of return on plan assets during 2008: $\$25,000 \times 1.02 = \$25,000$

The PB that came into existence as a result of 2008 contributions is adjusted by the EIR: $\$42,198 \times 1.06 = \$44,730$

1.430(f)-1(g) Example 1 (continued)

- Explicitly states to use compound interest when discounting a contribution back to the valuation date.
- Illustrates how the COB is adjusted for the actual rate of return on plan assets.
- Gives first glimpse at how the Prefunding Balance (“PB”) works. (Later examples will elaborate. We’ll see it’s not exactly like the old Credit Balance.)

Nothing really interesting or surprising about Example 1.
(They are starting out slow.)

1.430(f)-1(g) Example 2

Same as Example 1 but \$150,000 contribution for 2008 is contributed 2/1/09.

\$150,000 contribution must be discounted back to 1/1/08 at 2008 EIR.

$$\$150,000 \times 1.06^{-13/12} = \$140,824$$

Excess of amount contributed over minimum required contribution (both at 1/1/08):

$$\$140,824 - \$100,000 = \$40,824$$

This PB that came into existence as a result of 2008 contributions is adjusted by the EIR: $\$40,824 \times 1.06 = \$43,273$.

1.430(f)-1(g) Example 2 (continued)

In this example a contribution is discounted for a period that spans two plan years. (Each presumably with a different effective interest rate.)

Contribution is discounted for 13 months at the 2008 effective interest rate not one month at 2009 rate and 12 months at 2008 rate.

More interesting than Example 1. (They are starting to speed up.)

1.430(f)-1(g) Example 3

Same as Example 1 but...

- Contribution for 2008 is \$85,000 contributed on 1/1/08
- \$15,000 of COB is applied to meet minimum

Together these two satisfy the \$100,000 minimum required contribution as of 1/1/08.

There is no excess contribution for 2008 that can go into the PB.

1.430(f)-1(g) Example 3 (continued)

As of 1/1/08 there exists on a COB of

$$\$25,000 - \$15,000 = \$10,000$$

What happens to this balance?

Assuming it is not waived it is adjusted to reflect the rate of return on plan assets in 2008: $\$10,000 \times 1.02 = \$10,200$.

1.430(f)-1(g) Example 3 (continued)

This example shows how the COB is applied to the minimum required contribution.

- COB behaves just like the old Credit Balance in this respect.
- Further illustrates how the “COB” is adjusted for the actual rate of return on plan assets.

1.430(f)-1(g) Example 4 – Now it begins to get interesting

Given the existence of a \$25,000 COB as of 1/1/08 and its availability to meet the minimum required contribution in 2008 the minimum required cash contribution for 2008 as of 1/1/08 is \$75,000.

\$90,000 is contributed for 2008 on 1/1/08.

\$15,000 more than the minimum required cash contribution is contributed for 2008. This goes into the PB, right?

Wrong! Only contributions in excess of the minimum required contribution can (potentially) go into the PB.

This is a subtle but crucial difference between the old rules and the new rules.

1.430(f)-1(g) Example 4 (continued)

In the pre-PPA world any contribution in excess of the minimum required cash contribution would go into the Credit Balance.

In the PPA world only a contribution in excess of the minimum required contribution goes into the PB.

In the PPA world remember the distinction between the *minimum required contribution* and the *minimum required cash contribution*.

(The former is before applying any COB/PB and the latter is after applying these balances.)

1.430(f)-1(g) Example 5

This is an example of a valuation date other than the first day of the plan year.

We won't spend time looking at it here. (Sorry, small plan practitioners!)

1.436-1(a)(4)(iv) Example

1/1/11, AFTAP is 75%. (2010 certified AFTAP because current year AFTAP not certified yet.)

Beginning 1/1/11 plan is subject to partial accelerated benefit restriction.

Participant U retires 2/1/11 and elects cash but can only get 50% in cash and the remainder as an annuity.

3/1/11 80% AFTAP is certified. Accelerated benefit restriction no longer applies.

What about Participant U?

1.436-1(a)(4)(iv) Example (continued)

Effective 3/1/11 plan is amended to provide that a participant whose benefits were restricted may elect a new annuity starting date and receive the remainder of his or her pension in an accelerated form of payment.

But this is an amendment that could run afoul of the restriction on plan amendments.

Luckily the example specifies this is not the case so Participant U may elect to receive the remainder of his or her benefit as a lump sum.

1.436-1(a)(4)(iv) Example (continued)

Lessons:

Lifting of accelerated benefit restriction is not retroactive.

Plan has to state that participants subject to accelerated benefit restrictions may “reelect” after the restriction is lifted. Don’t forget spousal elections and other administrative matters.

Aside: See 2008 Gray Book Q&A #.

Big Lesson: Sponsors should avoid the benefit restrictions.
(Didn’t need examples to conclude that!)

1.436-1(a)(5)(iv) Example 1

- 1/1/10 AFTAP of 81% certified 3/1/10
- 3/25/10 amendment increasing benefits adopted
- 1/1/10 AFTAP would be 75% taking into account the amendment

Because the AFTAP would be less than 80% taking into account the amendment the amendment is prohibited.

Is there any way out of this prison?

If there exists a COB and/or PB as of 1/1/10 of sufficient size such that if they were waived as of 1/1/10 and the resulting AFTAP would be at least 80% then the balances are deemed to be waived and the prisoner is freed.

1.436-1(a)(5)(iv) Example 1 (continued)

What?

Recall that (in 2010) if the assets are not at least equal to 100% of the Target Liability any existing COB and/or PB as of 1/1/10 must be subtracted from the AVA when calculating the 1/1/10 AFTAP. (This 100% is phased in after 2007)

It is possible that a restriction can be avoided by waiving the balances. In fact if the restriction can be avoided by waiving balances then the balances must be waived.

There are other ways to avoid the restrictions but this example was meant to illustrate only this one way.

1.436-1(d)(3)(v) Example 1

- AFTAP for 2010 is less than 80% but greater than 60%. As a result lump sum payments are partially restricted.
- Participant P retires in 2010 at 65 with an accrued benefit of \$10,000 per month payable as a straight life annuity.
- Plan offers cash payment option calculated at 417(e)(3) rates.
- Section 417(e)(3) $PVf_{65} = 11.8$
- PBGC maximum guaranteed monthly life annuity benefit at 65: \$4,500.

P wants to elect a lump sum.

1.436-1(d)(3)(v) Example 1 (continued)

(A) Lump sum value of PBGC maximum:

$$\$12 \times \$4,500 \times 11.8 = \$637,200.$$

(B) Lump sum value P's accrued benefit:

$$\$12 \times \$10,000 \times 11.8 = \$1,416,000.$$

(C) Portion of P's lump sum benefit greater than the life annuity:

$$\$1,416,000 - \$120,000 = \$1,296,000.$$

Lesser of (A) and $50\% \times (B) = \$637,200$.

\$637,200 is the maximum lump sum that may be paid to P given the plan's restricted status.

1.436-1(d)(3)(v) Example 1 (continued)

The plan must offer the option to bifurcate the benefit into its restricted (5,500) and unrestricted (\$4,500) portions.

If P elects to receive the unrestricted portion as a lump sum (\$637,200) then with respect to the restricted portion (\$5,500 life annuity) the plan must permit P to elect any form of payment that would otherwise be permitted.

If P elects to receive the unrestricted portion as a lump sum (\$637,200) then with respect to the restricted portion (\$5,500 life annuity) the plan must permit P to defer commencement.

1.436-1(d)(3)(v) Example 2

Same as Example 1. In addition...

Age 65 Participant Q's accrued benefit consists of ee-portion of \$700 and er-portion of \$2,300. Q's accumulated ee-contributions are \$99,120 and the plan allows for return of ee-contributions.

We won't go into the details of the calculations. (They are really just an obvious variation on the theme of Example 1.)

The interesting thing is that this Example 2 implies that a return of employee contributions could be subject to restriction!

1.436-1(f)(4) Example 1

- 1/1/11 Funding Target: \$2,550,000
- 1/1/11 assets: \$2,000,000
- 2011 EIR: 5.5%
- No COB or PB at 1/1/11
- 3/1/11 78.43% AFTAP certified
- 5/1/11 plan amended to increase benefits. Value at 1/1/11 of increased benefits is \$400,000

This amendment is restricted.

1.436-1(f)(4) Example 1 (continued)

Since no COB or PB exists there is no potential to get out of prison like in 1.436-1(a)(5)(iv) Example 1. (Waiving balances.) Instead, sponsor must pay to play the amendment game.

Since AFTAP before the amendment was less than 80% the full amount of the value of the amendment must be contributed. In other words, it must be fully and immediately funded.

This is quite a change from the old rules were it could be funded over 30 years!

1.436-1(f)(4) Example 1 (continued)

Notice that paying the full value of the amendment (at 1/1/11) will result in an AFTAP of 81.36%.

$$(2,000,000 + \$400,000) \div (\$2,550,000 + \$400,000)$$

Can't just enough to get to 80% be paid?

Nope. It's what the rules say.

1.436-1(f)(4) Example 1 (continued)

The amount of the pay-to-play contribution must be \$400,000 at 1/1/11. If it is paid at a later date then the amount must equal \$400,000 when discounted to 1/1/11 at the EIR of 6.5%.

The contribution on 5/1/11 must be

$$\$400,000 \times 1.055^{4/12} = \$407,203$$

This extra contribution to avoid the restriction may not be also applied towards the 2011 minimum required contribution and may not enrich the PB.

If the contribution is applied to the minimum required contribution (or to enrich the PB) it may not be used to avoid the restriction.

1.436-1(f)(4) Example 1 (continued)

Contributions will now come in two flavors: “430 Contributions” and “436 Contributions.”

- 430 Contributions are for satisfying the minimum required contributions or for going into the PB.
- 436 Contributions are for avoiding benefits restrictions.

Sponsors will need to tell actuaries what a contribution is for and, presumably, the actuary must so identify them on the Schedule SB.

Nothing like this existed under the old law where, for example, a contribution made to get to 90% could also be used to satisfy the minimum required contribution or could go into the Credit Balance.

1.436-1(f)(4) Example 2

This example is a minor variation on the theme of Example 1.
There is nothing really interesting here.

1.436-1(f)(4) Example 3

Same as Example 1 except that

- 2010 certified AFTAP = 82%
- 2011 AFTAP not certified until 9/1/11
- Third 2011 segment rate = 6.0%

On 4/1/11 the 2011 AFTAP is presumed to be 72%.

Uh-oh! The 5/1 amendment is restricted. (If the amendment had been before 4/1 it would not have been restricted.)

A 436 Contribution of

$$\text{\$ } \$400,000 \times 1.06^{4/12} = \$407,845$$

on 5/1 is necessary to lift the restriction.

1.436-1(f)(4) Example 3 (continued)

Suppose that the EIR for 2011 turns out to be 5.5%.

Then the 5/1 436 Contribution (to avoid the restriction) is \$407,203. (See Example 1)

The extra \$642 may be reclassified as a 430 Contribution.

1.436-1(g)(7) Example 1

- 1/1/11 assets: \$3,300,000
- 1/1/11 COB: \$0, 1/1/11 PB: \$300,000
- 2010 certified AFTAP = 75%

Plan is subject to accelerate benefit restrictions.

If the PB is large enough and waiving all or a portion of it would result in an 80% AFTAP then the sponsor is deemed to have elected to waive the PB.

How do we proceed given the 2011 Funding Target is not given?

(This is just like an exam problem!)

1.436-1(g)(7) Example 1 (continued)

Enter, two new terms:

- Interim Value of Adjusted Plan Assets (IAA)
- Presumed Adjusted Funding Target (PAFT)

$$\text{IAA} = \$3,300,000 - \$300,000 = \$3,000,000$$

$$\text{PAFT} = \$3,000,000 \div 0.75 = \$4,000,000$$

The resulting Presumed AFTAP is, of course, 75%.

It must be increased to 80% for the restriction to be lifted.

1.436-1(g)(7) Example 1 (continued)

What does the IAA need to be to make the AFTAP 80%?

$$X \div \$4,000,000 = 80\%, X = \$3,200,000.$$

The IAA would be \$3,200,000 if the PB were \$100,000.

The law deems the sponsor to have waived \$200,00 of the \$300,000 PB so the restriction does not apply. (For the first Quarter.)

1.436-1(g)(7) Example 1 (continued)

Aside:

- The law is clearly written to say that this forced waiving of balances will occur if the plan merely has cash as an option and the waiving will eliminate the restricted status.
- The law clearly provides no exception for de minimis lump sums. (This is in a Technical Corrections Bill.)
- Together these mean that a plan could be forced to waive its balances for the crime of merely having a de minimis cash provision.
- A well funded plan with a big COB could be forced to give up all or a portion of the COB. That's just nasty! (Think of all the plans that built up huge CBs keeping a 90% Funded Current Liability Percentage.)

1.436-1(g)(7) Example 2

Continuation of Example 1

4/1/11 rolls around with no 2011 AFTAP certification. So as of 4/1/11 the 2011 AFAP is presumed to be 65%. (Notice it is not presumed to be $80\% - 10\% = 70\%$.)

IAA = \$3,000,000. (This does not reflect the forced reduction in the PB that occurred 1/1/11.)

PAFT = $\$3,000,000 \div .65 = \$4,615,385$.

In order to avoid the restriction the Presumed AFTAP must be 80% which means the IAA must be $\$4,615,385 \times .80 = \$3,692,308$.

1.436-1(g)(7) Example 2 (continued)

Now we are allowed to take into consideration the earlier waiver of the PB so the preliminary IAA = \$3,200,000.

To get to \$3,692,308 requires \$492,308 more assets to avoid the restriction.

The remaining PB is \$100,000. Not enough so that if it were waived the restriction would be lifted. The sponsor is not forced to waive the \$100,000 PB because it wouldn't avoid the restriction.

In order to avoid the restriction a 436 Contribution would have to be made.

1.436-1(g)(7) Example 3

Continuation of Examples 1 and 2.

On 7/1/11 the actuary calculates the Funding Target to be \$3,700,000. What's the 2011 AFTAP?

Is it $(\$3,300,000 - \$300,000) \div \$3,700,000 = 81.08\%$?

No. Once \$200,000 of the PB is waived (whether by force or voluntarily) it is gone even if you later learn you didn't need to waive it.

2011 AFTAP = $(\$3,300,000 - \$100,000) \div \$3,700,000 = 86.49\%$

Having waived it the AFTAP is larger. That's good. But the PB is smaller meaning there is less of that may be available to use in lieu of cash later on.

1.436-1(g)(7) Example 4

- 1/1/11 assets: \$2,500,000
- 1/1/11 COB: \$0, 1/1/11 PB: \$150,000
- 2010 certified AFTAP = 83%
- 1/10/11 the plan is amended to increase benefits effective 2/1/11. The amendment would increase the Funding target by \$350,000.

$$\text{IAA} = \$2,500,000 - \$150,000 = \$2,350,000$$

$$\text{PAFT} = \$2,350,000 \div .83 = \$2,831,325$$

$$\$2,831,325 + \$350,000 = \$3,181,325$$

$$\text{Presumed AFTAP} = \$2,350,000 \div \$3,181,325 = 73.87\%$$

1.436-1(g)(7) Example 4 (continued)

To avoid the restriction the AFTAP must be 80%.

Waiving the PB will not achieve this:

$$\$2,500,000 \div \$3,181,325 = 78.58\%$$

So the amendment cannot take effect without further action.

The sponsor could make a 436 Contribution to get to 80%.

$$(\$X + \$2,350,000) \div \$3,181,325 = .8, X = \$195,060$$

(Yes, the actual cash contribution made must be sufficient so that when it is discounted back to 1/1 it equals \$195,060. Example 5 gets into this.)

1.436-1(g)(7) Example 5

Continuation of Example 4

Sponsor wants to make a 436 Contribution on 2/1/11 to lift the restriction.

EIR for 2011: 5.25%

The actual cash contribution made must be sufficient so that when it is discounted back to 1/1 it equals \$195,060.

Section 436 Contribution = \$195,894.

1.436-1(g)(7) Example 5 (continued)

4/1/11 arrives and the 2011 AFTAP is not yet certified. So the 2011 AFTAP is presumed to be 73%.

Does this require another Section 436 Contribution to get it up to 80%?

No. Since the amendment was effective before 4/1 no additional contribution is required for the amendment to remain in effect.

1.436-1(g)(7) Example 5 (continued)

On 7/1/11 the actual Funding Target is known: \$2,700,000. This does not include the effect of the 1/10/11 amendment.

The actual 2011 AFTAP without taking into account the amendment is

$$(\$2,500,000 - \$150,000) \div \$2,700,000 = 87.04\%$$

The 2011 AFTAP taking into account the amendment) is

$$\begin{aligned} &(\$2,500,000 - \$150,000) \div (\$2,700,000 + \$350,000) \\ &= 77.05\% \end{aligned}$$

(Notice the difference between this situation and that of 1.436-1(f)(4) Example 1)

1.436-1(g)(7) Example 5 (continued)

The additional assets needed to make the 2011 AFTAP are

$$(\$2,350,000 + \$X) \div \$3,050,000 = 80\%$$

$$X = \$90,000$$

Adjusting for interest at 5.25% to 2/1 yields a Section 436 contribution of \$90,385.

But a Section 436 Contribution of \$195,894 was already made on 2/1 to avoid the restrictions. What about that?

The extra \$105,509 may be recharacterized as a Section 430 Contribution.

Note the difference between 1.436-1(f)(4) Example 1 and 1.436-1(g)(7) Example 5.

- In Example 1 the AFTAP before the amendment was less than 80%. The amendment just made it lower.
- In Example 5 the AFTAP before the amendment was at least 80%. The amendment dropped it below 80%.

In Example 1 the 436 Contribution was 100% of the additional liability, even though such a contribution resulted in an AFTAP of over 80%.

In Example 5 the 436 Contribution was what was necessary to keep the AFTAP at least 80%.

(Now can you guess what Example 6 is?)

1.436-1(g)(7) Example 6

The same as Example 5 except that the actual 2011 Funding Target is \$3,000,000 so the actual 2011 AFTAP before reflecting the amendment is

$$\$2,350,000 \div \$3,000,000 = 78.33\%.$$

Because this is less than 80% the 436 Contribution to avoid the restriction is the full amount of the liability increase due to the amendment: \$350,000.

This is so even though such a contribution will result in an AFTAP of more than 80%:

$$\begin{aligned} &(\$2,350,000 + \$350,000) \div (\$3,000,000 + \$350,000) \\ &= 80.60\%. \end{aligned}$$

1.436-1(h)(6) Examples

These are all straightforward examples of how the presumed AFTAP rules work for purposes of benefit restrictions. There is nothing tricky or surprising that is worth noting except...

Example 2 describes a situation where the AFTAP drops below 60% as of 4/1 and the example only cites the accelerated benefit restrictions. It does not even mention the benefit accrual restrictions.

I would not jump to any conclusions here. (For example, that the accrual restriction doesn't apply when the AFTP drops below 60% because of the “ - 10% Rule.”) This was probably just an oversight as the accrual restriction is cited in later, similar examples.

1.436-1(h)(6) Examples

These are all straightforward examples of how the presumed AFTAP rules work for purposes of benefit restrictions. There is nothing tricky or surprising that is worth noting except...

Example 3 describes a situation where the 2011 AFTAP drops below 60% as of 10/1 and the actuary certifies actual AFTAP as 72% on 11/15. Since the certification was made after 10/1 it doesn't help. (The post-10/1 AFTAP certification is not a "436 Measurement Date.")

The AFTAP continues to be less than 60% until 1/1/12 when the 2012 AFTAP is presumed to be 72%. (1/1/12 is a 436 Measurement Date.)

1.436-1(h)(6) Examples

Example 6 reminds us that...

Participants who were not able to elect an accelerated form of payment because the AFTAP was less than 80% are able to elect a new starting date if the plan contains provisions that allow this. To add such provisions “after the fact” could be a restricted plan amendment. (See 1.436-1(a)(4)(iv) Example.)

Benefit accruals that were frozen because the AFTAP was less than 60% may be restored if the plan contains provisions allowing this. To add such provisions “after the fact” could be a restricted plan amendment. However, be mindful of the 12-month rule.

1.436-1(h)(7) Example 1

- 2010 certified AFTAP = 65%.
- 3/21/11 2011 Certified AFTAP Range: [60% , 80%)
- 8/1/11 2011 Certified AFTAP: 75.86%

Come 4/1/11 even though the actual 2011 AFTAP is not certified the Range Certification keeps the 2011 AFTAP from being presumed to be 55%.

Actual 2011 is in the Range no there is no “Material Change.”

1.436-1(h)(7) Example 2

- 2010 certified AFTAP = 65%.
- 3/21/11 2011 Certified AFTAP Range: [60% , 80%)
- 8/1/11 2011 Certified AFTAP: 75.86%
- 9/1/2011 Sponsor makes a 436 Contribution for 2010
- Revised 2001 Certified AFAP: 81% (taking into account the 436 Contribution)

Even though the Certified AFTAP is outside of the Range it is not a Material Change. It fall outside the range only because of an additional contribution fore the prior year that was made after the initial (Range) certification.

1.436-1(h)(7) Example 3 – I Wish

I wish they had given an Example like this. (Maybe they thought it was so obvious an Example wasn't needed.)

- 2010 certified AFTAP = 65%.
- 3/21/11 2011 Certified AFTAP Range: [60% , 80%)
- 8/1/11 2011 Certified AFTAP: 59%

This is a Material Change. Big trouble! Plan disqualification?

1.436-1(h)(7) Example 4 – I Wish

- 2010 certified AFTAP = 65%.
- 3/21/11 2011 Certified AFTAP Range: [60% , 80%)
- 8/1/11 2011 Certified AFTAP: 90%

This is a Material Change. Big trouble!

What? 90% is great! No restrictions at all apply!

Doesn't matter how good the final AFTAP is. It's outside the Range therefore a Material Change therefore big trouble.

Plan disqualification?

Material Change 1.436-1(h)(4)(iii)

A change is Material if the operation of the plan with respect to the 436 benefit restrictions would have been different. Changes due to additional contributions made after the initial certification don't count.

Example 3 I Wish. Based on actual AFTAP the plan is subject to the full restriction on accelerated distributions and accruals are frozen. (Plus all the other under-80% restrictions.) Based on the Range Certification only the partial restriction on accelerated distributions applied. (Plus the other “under-80%” restrictions.)

Example 4 I Wish. Based on actual AFTAP no 436 restrictions apply at all. Based on the Range Certification the partial restriction on accelerated distributions applied. (Plus the other “under-80%” restrictions.)