

number by any of the following methods:

- *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail*: Edward M. DeHarde, Senior Policy Analyst, Insurance Policy Group, Office of Personnel Management, 1900 E Street, NW., Room 3415, Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The purpose of this proposed regulation is to clarify requirements with respect to the rate setting process for community rated carriers and to require rate reconciliation for the final contract term for community rated carriers that leave the FEHBP.

In prior years, carriers were not subjected to rate reconciliation in the final year of their contracts. Information technology and electronic transmission and storage of data now make it possible to efficiently perform rate reconciliation for the final contract year. Therefore, OPM will begin conducting such rate reconciliation on community rated contracts that terminate after January 1, 2009.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because all the small plan FEHBP contracts fall below the threshold for submitting cost or pricing data.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Lists of Subjects in 48 CFR Parts 1652

Government employees, Government procurement, Health insurance, Reporting and recordkeeping requirements.

Office of Personnel Management.

Michael W. Hager,
Acting Director.

Accordingly, OPM proposes to amend chapter 16 of title 48, CFR as follows:

PART 1652—CONTRACT CLAUSES

1. The authority citation for part 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

Subpart 1652.2—Texts of FEHBP Clauses

2. Amend § 1652.216–70 by revising paragraphs (b)(2) through (b)(4) and (b)(6), and adding paragraphs (b)(7) and (b)(8) to read as follows:

1652.216–70 Accounting and price adjustment.

* * * * *

(b) * * *

(2) The subscription rates agreed to in this contract shall be equivalent to the subscription rates given to the carrier's similarly sized subscriber groups (SSSGs) as defined in FEHBP 1602.170–13. The subscription rates shall be determined according to the carrier's established policy which must be applied consistently to the FEHBP and to the carrier's similarly sized subscriber groups (SSSGs). If an SSSG receives a rate lower than that determined according to the carrier's methodology, it is considered a discount. The FEHBP must receive a discount equal to or greater than the carrier's largest SSSG discount.

(3) If, at the time of the rate reconciliation, the subscription rates are found to be lower than the equivalent rates for the lower of the two SSSGs, the carrier may include an adjustment to the Federal group's rates for the next contract period, except as noted in paragraph (b)(7) of this clause.

(4) If, at the time of the rate reconciliation, the subscription rates are found to be higher than the equivalent rates for the lower of the two SSSGs, the Carrier shall reimburse the Fund, for example, by reducing the FEHB rates for the next contract term to reflect the difference between the estimated rates and the rates which are derived using the methodology of the lower rated SSSG, except as noted in paragraph (b)(7) of this clause.

* * * * *

(6) For contract years beginning on or after January 1, 2009, in the event this contract is not renewed, the final rate reconciliation will be performed. The carrier must promptly pay any amount owed to OPM. Any amount recoverable by the carrier is limited to the amount in the contingency reserve for the terminating plan as of December 31 of the terminating year.

(7) Carriers may provide additional guaranteed discounts to the FEHBP that are not given to SSSGs. Any such guaranteed discounts must be clearly identified as guaranteed discounts. After the beginning of the contract year for which the rates are set, these guaranteed FEHBP discounts may not be adjusted.

(8) Carriers may not impose surcharges (loadings not defined based on an established rating method) on the FEHBP subscription rates or use surcharges in the rate reconciliation

process irrespective of whether surcharges are applied to the SSSGs.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Harmonization of Cost Accounting Standards 412 and 413 With the Pension Protection Act of 2006

ACTION: . Advance Notice of Proposed Rulemaking.

SUMMARY: The Office of Federal Procurement Policy, Cost Accounting Standards Board, invites public comments concerning an Advance Notice of Proposed Rulemaking on the harmonization of Cost Accounting Standards 412 and 413 with the Pension Protection Act of 2006.

DATES: Comments must be in writing and must be received by November 3, 2008.

ADDRESSES: The full text of the Advance Notice of Proposed Rulemaking, including the Board's response to public comments on the Staff Discussion Paper and the draft proposed amendments to Cost Accounting Standards 412 and 413, is available at: http://www.whitehouse.gov/omb/procurement/casb/2008_anprm.pdf and <http://www.regulations.gov>.

All comments to this Advance Notice of Proposed Rulemaking must be in writing. Due to delays in the receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted in any one of three ways:

1. Comments may be directly sent via <http://www.regulations.gov>—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type "CAS Pension Harmonization ANPRM" (without quotes) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments;

2. Comments may be included in an e-mail message sent to casb2@omb.eop.gov. The comments may be submitted in the text of the e-mail message or as an attachment; or

3. Comments may also be submitted via facsimile to (202) 395–5105.

Be sure to include your name, title, organization, postal address, telephone number, and e-mail address in the text of your public comment and reference "CAS Pension Harmonization ANPRM" in the subject line. Comments received by the date specified above will be included as part of the official record.

Please note that all public comments received will be available in their entirety at http://www.whitehouse.gov/omb/procurement/casb/index_public_comments.html and <http://www.regulations.gov> after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Eric Shipley, Project Director, Cost Accounting Standards Board (telephone: 410-786-6381).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

Rules, Regulations and Standards issued by the Cost Accounting Standards Board (Board) are codified at 48 CFR Chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standard (CAS or Standard), complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard.
2. Promulgate an Advance Notice of Proposed Rulemaking.
3. Promulgate a Notice of Proposed Rulemaking.
4. Promulgate a Final Rule.

This Advance Notice of Proposed Rulemaking is step two of the four-step process.

B. Background and Summary

The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board, is today releasing an Advance Notice of Proposed Rulemaking (ANPRM) on the harmonization of Cost Accounting Standards (CAS) 412 and 413 with the Pension Protection Act (PPA) of 2006 (Pub. L. 109-280, 120 Stat. 780). The Office of Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of Government contracts

as a result of the adoption of a proposed Standard prior to the promulgation of any new or revised CAS.

The PPA amended the minimum funding requirements and tax-deductibility of contributions to pension plans under the Employee Retirement Income Security Act of 1974 (ERISA). The PPA requires the Board to revise Standards 412 and 413 of the CAS to harmonize with the amended ERISA minimum required contribution not later than January 1, 2010.

On July 3, 2007, the Board published a Staff Discussion Paper (72 FR 36508) in accordance with 41 U.S.C. 422(g) to solicit public views with respect to the Board's statutory requirement to "harmonize" CAS 412 and 413 with the PPA. Differences between CAS 412 and 413 and the PPA, as well as issues associated with pension harmonization were identified in the Staff Discussion Paper (SDP). Respondents were invited to identify and comment on any issues related to pension harmonization that they felt were important. The SDP identified issues related to pension harmonization and did not necessarily represent the position of the Board.

The SDP noted basic conceptual differences between the CAS and the PPA that affect all contracts and awards subject to CAS 412 and 413. The PPA utilizes a settlement or liquidation approach to value pension plan assets and liabilities, including the use of accrued benefit obligations and interest rates based on current corporate bond rates. On the other hand, CAS utilizes the going concern approach to plan asset and liability valuations, *i.e.*, assumes the company (or in this case the pension plan and trust) will continue in business, and follows accrual accounting principles that incorporate long-term, going concern assumptions about future asset returns, future years of employees' service, and future salary increases. These assumptions about future events are absent from the settlement approach.

The full text of the public comments to the SDP is available at: http://www.whitehouse.gov/omb/procurement/casb/index_public_comments.html under "Combined Public Comments on the Staff Discussion Paper on the Harmonization of Cost Accounting Standards 412 and 413 with the Pension Protection Act of 2006," and <http://www.regulations.gov>.

The Board believes that the accounting for pension costs for contract costing purposes should continue to reflect the long-term nature of the pension plan for a going-concern. The Cost Accounting Standards are intended

to provide cost data not only to determine the incurred cost for the current period, but also to provide consistent and reasonable cost data for forward-pricing contracts over the near future. Financial statement accounting, on the other hand, is intended to report the change in an entity's financial position and results of operations during the current period. ERISA does not prescribe a unique cost or expense for a period. The minimum required contribution rules of ERISA, as amended by the PPA, instead require that the plan achieves funding of its current settlement liability within a short period of time. On the other hand, the ERISA tax-deductible maximum contribution is based on the plan's long-term benefit levels plus a reserve against adverse experience. ERISA permits the entity a wide contribution range that allows the company to set long-term financial management decisions on the funding of the ongoing pension plan.

The Board recognizes that contract cost accounting for a going concern must, nevertheless, address the risk associated with inadequate funding of a plan's settlement liability and therefore proposes implementation of a minimum liability based on the accrued benefits valued based on corporate bond rates. Furthermore, harmonization with the PPA minimum required contribution, which is based on the ERISA "funding target" and "target normal cost," will help alleviate the disparity in timing between ERISA's minimum funding requirements and recognition of such required funding in contract costing. Once harmonization is achieved, maintaining the going concern basis for contract costing allows contractors to set long-term funding goals that avoid undue cost/contribution volatility.

The Board continues to believe that issues of benefit design, investment strategy, and financial management decisions for the pension plan fall under the contractor's purview. The Board also believes that the Cost Accounting Standards must remain sufficiently robust to accommodate evolving changes in financial statement reporting and theory as well as Congressional changes to ERISA.

After considering the effects of accelerating recognition of actuarial gains and losses, the Board proposes changing the amortization period for gains and losses to a 10-year amortization period from its current 15-year period to provide more timely adjustment of plan experience while not introducing unmanageable volatility. This shorter amortization period also more closely follows the 7-year period

required by ERISA to fully fund the plan's settlement liability.

In assessing the potential for volatility that would adversely impact forward pricing, the Board noted that for pension plans that are close to being fully funded, the sudden and unpredictable elimination or emergence of significant pension costs has been problematic for many years.

Accordingly, the Board proposes to revise the "assignable cost limitation" so that it does not apply until the actuarial value of assets equals or exceeds 125% of the actuarial accrued liability plus normal cost. In addition, the actuarial gains that give rise to surplus assets will be amortized over 10 years and will reduce the surplus in an orderly and timely fashion.

The Board proposes a specific transition method for implementing harmonization. This transition method would apply to all contractors subject to CAS 412 and 413 through full CAS-coverage or Federal Procurement Regulation (FAR) § 31.205-6(j). The proposed transition will phase-in revisions to the liability and normal cost measurement and to the amortization periods during the first 5 years as new contracts are priced and awarded so that the cost effects of harmonization are gradually recognized.

The proposed transition phase-in lasts for a specific 5-year period that tracks

the typical contracting cycle. More importantly, the proposed transition phase-in should provide at least partial harmonization relief for contractors with contracts that are exempt from CAS-Coverage. At the same time the proposed phase-in provisions are intended to make the possible cost increases due to harmonization more manageable for the procuring agencies.

The draft proposed rule allows companies to use the same actuarial methods and valuation software for ERISA, financial statement and government contract costing purposes. Except for the interest rate, the same general set of actuarial assumptions can be used for all three purposes. This will allow agencies and government auditors to place reliance on data from ERISA and financial statement valuations, and allow contractors to avoid unnecessary actuarial effort and expense.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96-511, does not apply to this draft proposed rule, because this rule imposes no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The records required by this draft proposed rule are those normally maintained by contractors who claim reimbursement of

post-retirement benefit costs under government contracts.

D. Executive Order 12866 and the Regulatory Flexibility Act

Because most contractors must measure and report their post-retirement benefit liabilities and expenses in order to comply with the requirements of SFAS 106 for financial accounting purposes, the economic impact of this draft proposed rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this draft proposed rule will not result in the promulgation of an "economically significant rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this draft proposed rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this draft proposed rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

Paul A. Denett,

Chairperson, Cost Accounting Standards Board.

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