

**§ 418E. Insolvent plans****(a) Suspension of certain benefit payments**

Notwithstanding section 411, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accordance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the Pension Benefit Guaranty Corporation under section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974.

**(b) Definitions**

For purposes of this section, for a plan year—

**(1) Insolventcy**

A multiemployer plan is insolvent if the plan's available resources are not sufficient to pay benefits under the plan when due for the plan year, or if the plan is determined to be insolvent under subsection (d).

**(2) Resource benefit level**

The term "resource benefit level" means the level of monthly benefits determined under subsections (c)(1) and (3) and (d)(3) to be the highest level which can be paid out of the plan's available resources.

**(3) Available resources**

The term "available resources" means the plan's cash, marketable assets, contributions, withdrawal liability payments, and earnings, less reasonable administrative expenses and amounts owed for such plan year to the Pension Benefit Guaranty Corporation under section 4261(b)(2) of the Employee Retirement Income Security Act of 1974.

**(4) Insolvency year**

The term "insolvency year" means a plan year in which a plan is insolvent.

**(c) Benefit payments under insolvent plans****(1) Determination of resource benefit level**

The plan sponsor of a plan in reorganization shall determine in writing the plan's resource benefit level for each insolvency year, based on the plan sponsor's reasonable projection of the plan's available resources and the benefits payable under the plan.

**(2) Uniformity of the benefit suspension**

The suspension of benefit payments under this section shall, in accordance with regulations prescribed by the Secretary, apply in substantially uniform proportions to the benefits of all persons in pay status (within the meaning of section 418(b)(6)) under the plan, except that the Secretary may prescribe rules under which benefit suspensions for different participant groups may be varied equitably to reflect variations in contribution rates and other relevant factors including differences in negotiated levels of financial support for plan benefit obligations.

**(3) Resource benefit level below level of basic benefits**

Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource bene-

fit level for a plan year which is below the level of basic benefits, the payment of all benefits other than basic benefits shall be suspended for that plan year.

**(4) Excess resources****(A) In general**

If, by the end of an insolvency year, the plan sponsor determines in writing that the plan's available resources in that insolvency year could have supported benefit payments above the resource benefit level for that insolvency year, the plan sponsor shall distribute the excess resources to the participants and beneficiaries who received benefit payments from the plan in that insolvency year, in accordance with regulations prescribed by the Secretary.

**(B) Excess resources**

For purposes of this paragraph, the term "excess resources" means available resources above the amount necessary to support the resource benefit level, but no greater than the amount necessary to pay benefits for the plan year at the benefit levels under the plan.

**(5) Unpaid benefits**

If, by the end of an insolvency year, any benefit has not been paid at the resource benefit level, amounts up to the resource benefit level which were unpaid shall be distributed to the participants and beneficiaries, in accordance with regulations prescribed by the Secretary, to the extent possible taking into account the plan's total available resources in that insolvency year.

**(6) Retroactive payments**

Except as provided in paragraph (4) or (5), a plan is not required to make retroactive benefit payments with respect to that portion of a benefit which was suspended under this section.

**(d) Plan sponsor determination****(1) Triennial test**

As of the end of the first plan year in which a plan is in reorganization, and at least every 3 plan years thereafter (unless the plan is no longer in reorganization), the plan sponsor shall compare the value of plan assets (determined in accordance with section 418B(b)(3)(B)(ii)) for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next 5 plan years. If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.

**(2) Determination of insolvency**

If, at any time, the plan sponsor of a plan in reorganization reasonably determines, taking

into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan when due for the next plan year, the plan sponsor shall make such determination available to interested parties.

**(3) Determination of resource benefit level**

The plan sponsor of a plan in reorganization shall determine in writing for each insolvency year the resource benefit level and the level of basic benefits no later than 3 months before the insolvency year.

**(e) Notice requirements**

**(1) Impending insolvency**

If the plan sponsor of a plan in reorganization determines under subsection (d)(1) or (2) that the plan may become insolvent (within the meaning of subsection (b)(1)), the plan sponsor shall—

(A) notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of that determination, and

(B) inform the parties described in section 418A(a)(2) and the plan participants and beneficiaries that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

**(2) Resource benefit level**

No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in reorganization shall notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of the resource benefit level determined in writing for that insolvency year.

**(3) Potential need for financial assistance**

In any case in which the plan sponsor anticipates that the resource benefit level for an insolvency year may not exceed the level of basic benefits, the plan sponsor shall notify the Pension Benefit Guaranty Corporation.

**(4) Regulations**

Notice required by this subsection shall be given in accordance with regulations prescribed by the Pension Benefit Guaranty Corporation, except that notice to the Secretary shall be given in accordance with regulations prescribed by the Secretary.

**(5) Corporation may prescribe time**

The Pension Benefit Guaranty Corporation may prescribe a time other than the time prescribed by this section for the making of a determination or the filing of a notice under this section.

**(f) Financial assistance**

**(1) Permissive application**

If the plan sponsor of an insolvent plan for which the resource benefit level is above the level of basic benefits anticipates that, for any month in an insolvency year, the plan will not have funds sufficient to pay basic benefits, the plan sponsor may apply for financial assistance from the Pension Benefit Guaranty Cor-

poration under section 4261 of the Employee Retirement Income Security Act of 1974.

**(2) Mandatory application**

A plan sponsor who has determined a resource benefit level for an insolvency year which is below the level of basic benefits shall apply for financial assistance from the Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

**(g) Financial assistance**

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this subpart in such manner as determined by the Secretary.

(Added Pub. L. 96-364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1282; amended Pub. L. 109-280, title II, §213(a), Aug. 17, 2006, 120 Stat. 917.)

REFERENCES IN TEXT

Section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a), is classified to section 1322a(g)(5) of Title 29, Labor.

Section 4261 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (b)(3) and (f), is classified to section 1431 of Title 29.

AMENDMENTS

2006—Subsec. (d)(1). Pub. L. 109-280 substituted “5 plan years” for “3 plan years” the second place it appeared and inserted at end “If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title II, §213(b), Aug. 17, 2006, 120 Stat. 918, provided that: “The amendments made by this section [amending this section] shall apply with respect to the determinations made in plan years beginning after 2007.”

SUBPART D—TREATMENT OF WELFARE BENEFIT FUNDS

Sec.

419. Treatment of funded welfare benefit plans.

419A. Qualified asset account; limitation on additions to account.

**§ 419. Treatment of funded welfare benefit plans**

**(a) General rule**

Contributions paid or accrued by an employer to a welfare benefit fund—

(1) shall not be deductible under this chapter, but

(2) if they would otherwise be deductible, shall (subject to the limitation of subsection (b)) be deductible under this section for the taxable year in which paid.

**(b) Limitation**

The amount of the deduction allowable under subsection (a)(2) for any taxable year shall not exceed the welfare benefit fund's qualified cost for the taxable year.

**(c) Qualified cost**

For purposes of this section—