

§ 1082. Minimum funding standards**(a) Requirement to meet minimum funding standard****(1) In general**

A plan to which this part applies shall satisfy the minimum funding standard applicable to the plan for any plan year.

(2) Minimum funding standard

For purposes of paragraph (1), a plan shall be treated as satisfying the minimum funding standard for a plan year if—

(A) in the case of a defined benefit plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which, in the aggregate, are not less than the minimum required contribution determined under section 1083 of this title for the plan for the plan year,

(B) in the case of a money purchase plan which is a single-employer plan, the employer makes contributions to or under the plan for the plan year which are required under the terms of the plan, and

(C) in the case of a multiemployer plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 1084 of this title as of the end of the plan year.

(b) Liability for contributions**(1) In general**

Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 1083(j) of this title) shall be paid by the employer responsible for making contributions to or under the plan.

(2) Joint and several liability where employer member of controlled group

If the employer referred to in paragraph (1) is a member of a controlled group, each member of such group shall be jointly and severally liable for payment of such contributions.

(3) Multiemployer plans in critical status

Paragraph (1) shall not apply in the case of a multiemployer plan for any plan year in which the plan is in critical status pursuant to section 1085 of this title. This paragraph shall only apply if the plan sponsor adopts a rehabilitation plan in accordance with section 1085(e) of this title and complies with the terms of such rehabilitation plan (and any updates or modifications of the plan).

(c) Variance from minimum funding standards**(1) Waiver in case of business hardship****(A) In general**

If—

(i) an employer is (or in the case of a multiemployer plan, 10 percent or more of the number of employers contributing to or under the plan are) unable to satisfy the minimum funding standard for a plan year

without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

(ii) application of the standard would be adverse to the interests of plan participants in the aggregate,

the Secretary of the Treasury may, subject to subparagraph (C), waive the requirements of subsection (a) for such year with respect to all or any portion of the minimum funding standard. The Secretary of the Treasury shall not waive the minimum funding standard with respect to a plan for more than 3 of any 15 (5 of any 15 in the case of a multiemployer plan) consecutive plan years.

(B) Effects of waiver

If a waiver is granted under subparagraph (A) for any plan year—

(i) in the case of a single-employer plan, the minimum required contribution under section 1083 of this title for the plan year shall be reduced by the amount of the waived funding deficiency and such amount shall be amortized as required under section 1083(e) of this title, and

(ii) in the case of a multiemployer plan, the funding standard account shall be credited under section 1084(b)(3)(C) of this title with the amount of the waived funding deficiency and such amount shall be amortized as required under section 1084(b)(2)(C) of this title.

(C) Waiver of amortized portion not allowed

The Secretary of the Treasury may not waive under subparagraph (A) any portion of the minimum funding standard under subsection (a) for a plan year which is attributable to any waived funding deficiency for any preceding plan year.

(2) Determination of business hardship

For purposes of this subsection, the factors taken into account in determining temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan) shall include (but shall not be limited to) whether or not—

(A) the employer is operating at an economic loss,

(B) there is substantial unemployment or underemployment in the trade or business and in the industry concerned,

(C) the sales and profits of the industry concerned are depressed or declining, and

(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

(3) Waived funding deficiency

For purposes of this part, the term “waived funding deficiency” means the portion of the minimum funding standard under subsection (a) (determined without regard to the waiver) for a plan year waived by the Secretary of the Treasury and not satisfied by employer contributions.

(4) Security for waivers for single-employer plans, consultations

(A) Security may be required

(i) In general

Except as provided in subparagraph (C), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 1301(a)(15) of this title) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1).

(ii) Special rules

Any security provided under clause (i) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Corporation, by a contributing sponsor (within the meaning of section 1301(a)(13) of this title), or a member of such sponsor's controlled group (within the meaning of section 1301(a)(14) of this title).

(B) Consultation with the Pension Benefit Guaranty Corporation

Except as provided in subparagraph (C), the Secretary of the Treasury shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

(i) provide the Pension Benefit Guaranty Corporation with—

(I) notice of the completed application for any waiver or modification, and

(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

(ii) consider—

(I) any comments of the Corporation under clause (i)(II), and

(II) any views of any employee organization (within the meaning of section 1002(4) of this title) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safeguarding and reporting requirements of section 6103(p) of title 26.

(C) Exception for certain waivers

(i) In general

The preceding provisions of this paragraph shall not apply to any plan with respect to which the sum of—

(I) the aggregate unpaid minimum required contributions for the plan year and all preceding plan years, and

(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 1083(e)(2) of this title,

is less than \$1,000,000.

(ii) Treatment of waivers for which applications are pending

The amount described in clause (i)(I) shall include any increase in such amount

which would result if all applications for waivers of the minimum funding standard under this subsection which are pending with respect to such plan were denied.

(iii) Unpaid minimum required contribution

For purposes of this subparagraph—

(I) In general

The term “unpaid minimum required contribution” means, with respect to any plan year, any minimum required contribution under section 1083 of this title for the plan year which is not paid on or before the due date (as determined under section 1083(j)(1) of this title) for the plan year.

(II) Ordering rule

For purposes of subclause (I), any payment to or under a plan for any plan year shall be allocated first to unpaid minimum required contributions for all preceding plan years on a first-in, first-out basis and then to the minimum required contribution under section 1083 of this title for the plan year.

(5) Special rules for single-employer plans

(A) Application must be submitted before date 2½ months after close of year

In the case of a single-employer plan, no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

(B) Special rule if employer is member of controlled group

In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

(i) with respect to such employer, and

(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if such Secretary determines such analysis is not necessary because the taking into account of such member would not significantly affect the determination under this paragraph.

(6) Advance notice

(A) In general

The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 1301(a)(21) of this title). Such notice shall include a de-

scription of the extent to which the plan is funded for benefits which are guaranteed under subchapter III and for benefit liabilities.

(B) Consideration of relevant information

The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under subparagraph (A).

(7) Restriction on plan amendments

(A) In general

No amendment of a plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 1084(d) of this title is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) which reduces the accrued benefit of any participant has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(B) Exception

Subparagraph (A) shall not apply to any plan amendment which—

- (i) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,
- (ii) only repeals an amendment described in subsection (d)(2), or
- (iii) is required as a condition of qualification under part I of subchapter D of chapter 1 of title 26.

(8) Cross reference

For corresponding duties of the Secretary of the Treasury with regard to implementation of title 26, see section 412(c) of title 26.

(d) Miscellaneous rules

(1) Change in method or year

If the funding method or a plan year for a plan is changed, the change shall take effect only if approved by the Secretary of the Treasury.

(2) Certain retroactive plan amendments

For purposes of this section, any amendment applying to a plan year which—

(A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of

adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of the Treasury notifying him of such amendment and such Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of the Treasury unless such Secretary determines that such amendment is necessary because of a temporary substantial business hardship (as determined under subsection (c)(2)) or a substantial business hardship (as so determined) in the case of a multiemployer plan and that a waiver under subsection (c) (or, in the case of a multiemployer plan, any extension of the amortization period under section 1084(d) of this title) is unavailable or inadequate.

(3) Controlled group

For purposes of this section, the term “controlled group” means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of title 26.

(Pub. L. 93-406, title I, §302, as added and amended Pub. L. 109-280, title I, §101(b), title II, §202(d), Aug. 17, 2006, 120 Stat. 784, 885; Pub. L. 110-458, title I, §§101(a)(1), 102(b)(1)(A), Dec. 23, 2008, 122 Stat. 5093, 5100.)

AMENDMENT OF SECTION

For termination of amendment by section 221(c) of Pub. L. 109-280, see Effective and Termination Dates of 2006 Amendment note below.

PRIOR PROVISIONS

A prior section 1082, Pub. L. 93-406, title I, §302, Sept. 2, 1974, 88 Stat. 869; Pub. L. 96-364, title III, §304(b), Sept. 26, 1980, 94 Stat. 1293; Pub. L. 100-203, title IX, §§9301(b), 9303(b), (d)(2), 9304(a)(2), (b)(2), (e)(2), 9305(b)(2), 9307(a)(2), (b)(2), (e)(2), Dec. 22, 1987, 101 Stat. 1330-332, 1330-337, 1330-342, 1330-344, 1330-346, 1330-349, 1330-352, 1330-356 to 1330-358; Pub. L. 100-647, title II, §2005(a)(2)(B), (d)(2), Nov. 10, 1988, 102 Stat. 3610, 3612; Pub. L. 101-239, title VII, §§7881(a)(1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), (b)(1)(B), (2)(B), (3)(B), (4)(B), (6)(B)(i), (d)(1)(B), (2), (4), 7891(a)(1), 7892(b), 7894(d)(2), (5), Dec. 19, 1989, 103 Stat. 2435-2439, 2445, 2447, 2449, 2450; Pub. L. 101-508, title XII, §12012(c), Nov. 5, 1990, 104 Stat. 1388-572; Pub. L. 103-465, title VII, §§761(a)(1)-(9)(A), (10), 762(a), 763(a), 764(a), 768(b), Dec. 8, 1994, 108 Stat. 5024-5031, 5033-5036, 5041; Pub. L. 105-34, title XV, §1521(b), (c)(2), (3)(B), title XVI, §1604(b)(2)(B), Aug. 5, 1997, 111 Stat. 1069, 1070, 1097; Pub. L. 107-16, title VI, §§651(b), 661(b), June 7, 2001, 115 Stat. 129, 142; Pub. L. 107-147, title IV, §§405(b), 411(v)(2), Mar. 9, 2002, 116 Stat. 52; Pub. L. 108-218, title I, §§101(a)(1)-(3), 102(a), 104(a)(1), Apr. 10, 2004, 118 Stat. 596, 597, 599, 604; Pub. L. 109-135, title IV, §412(x)(2), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109-280, title III, §301(a)(1), (2), Aug. 17, 2006, 120 Stat. 919, related to minimum funding standards, prior to repeal by Pub. L. 109-280, title I, §101(a), (d), Aug. 17, 2006, 120 Stat. 784, 789, applicable to plan years beginning after 2007.

AMENDMENTS

2008—Subsec. (b)(3). Pub. L. 110-458, § 102(b)(1)(A), substituted “the plan sponsor adopts” for “the plan adopts”.

Subsec. (c)(1)(A)(i). Pub. L. 110-458, § 101(a)(1)(A), substituted “the plan are” for “the plan is”.

Subsec. (c)(7)(A). Pub. L. 110-458, § 101(a)(1)(B), inserted “which reduces the accrued benefit of any participant” after “subsection (d)(2)”.

Subsec. (d)(1). Pub. L. 110-458, § 101(a)(1)(C), struck out “, the valuation date,” after “funding method”.

2006—Subsec. (b)(3). Pub. L. 109-280, §§ 202(d), 221(c), temporarily added par. (3). See Effective and Termination Dates of 2006 Amendment note below.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of Title 26, Internal Revenue Code.

EFFECTIVE AND TERMINATION DATES OF 2006 AMENDMENT

Pub. L. 109-280, title II, § 202(f), Aug. 17, 2006, 120 Stat. 885, provided that:

“(1) IN GENERAL.—The amendments made by this section [enacting section 1085 of this title and amending this section and section 1132 of this title] shall apply with respect to plan years beginning after 2007.

“(2) SPECIAL RULE FOR CERTAIN NOTICES.—In any case in which a plan’s actuary certifies that it is reasonably expected that a multiemployer plan will be in critical status under section 305(b)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085(b)(3)], as added by this section, with respect to the first plan year beginning after 2007, the notice required under subparagraph (D) of such section may be provided at any time after the date of enactment [Aug. 17, 2006], so long as it is provided on or before the last date for providing the notice under such subparagraph.

“(3) SPECIAL RULE FOR CERTAIN RESTORED BENEFITS.—In the case of a multiemployer plan—

“(A) with respect to which benefits were reduced pursuant to a plan amendment adopted on or after January 1, 2002, and before June 30, 2005, and

“(B) which, pursuant to the plan document, the trust agreement, or a formal written communication from the plan sponsor to participants provided before June 30, 2005, provided for the restoration of such benefits,

the amendments made by this section shall not apply to such benefit restorations to the extent that any restriction on the providing or accrual of such benefits would otherwise apply by reason of such amendments.”

Amendment by section 202(d) of Pub. L. 109-280 inapplicable to plan years beginning after Dec. 31, 2014, with exception for certain funding improvement and rehabilitation plans, see section 221(c) of Pub. L. 109-280, set out as a note under section 412 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Pub. L. 109-280, title I, § 101(d), Aug. 17, 2006, 120 Stat. 789, provided that: “The amendments made by this section [enacting this section and repealing former section 1082 of this title and sections 1083 to 1085, 1085a, 1085b, and 1086 of this title] shall apply to plan years beginning after 2007.”

REGULATIONS

Secretary authorized, effective Sept. 2, 1974, to promulgate regulations wherever provisions of this subchapter call for the promulgation of regulations, see section 1031 of this title.

APPLICABILITY OF AMENDMENTS BY SUBTITLES A AND B OF TITLE I OF PUB. L. 109-280

For special rules on applicability of amendments by subtitles A (§§ 101-108) and B (§§ 111-116) of title I of Pub.

L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

SPECIAL RULE FOR CERTAIN BENEFITS FUNDED UNDER AN AGREEMENT APPROVED BY THE PENSION BENEFIT GUARANTY CORPORATION

For applicability of amendment by section 202(d) of Pub. L. 109-280 to a multiemployer plan that is a party to an agreement that was approved by the Pension Benefit Guaranty Corporation prior to June 30, 2005, and that increases benefits and provides for certain withdrawal liability rules, see section 206 of Pub. L. 109-280, set out as a note under section 412 of Title 26, Internal Revenue Code.

§ 1083. Minimum funding standards for single-employer defined benefit pension plans

(a) Minimum required contribution

For purposes of this section and section 1082(a)(2)(A) of this title, except as provided in subsection (f), the term “minimum required contribution” means, with respect to any plan year of a single-employer plan—

(1) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) is less than the funding target of the plan for the plan year, the sum of—

(A) the target normal cost of the plan for the plan year,

(B) the shortfall amortization charge (if any) for the plan for the plan year determined under subsection (c), and

(C) the waiver amortization charge (if any) for the plan for the plan year as determined under subsection (e); or

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) equals or exceeds the funding target of the plan for the plan year, the target normal cost of the plan for the plan year reduced (but not below zero) by such excess.

(b) Target normal cost

For purposes of this section:

(1) In general

Except as provided in subsection (i)(2) with respect to plans in at-risk status, the term “target normal cost” means, for any plan year, the excess of—

(A) the sum of—

(i) the present value of all benefits which are expected to accrue or to be earned under the plan during the plan year, plus

(ii) the amount of plan-related expenses expected to be paid from plan assets during the plan year, over

(B) the amount of mandatory employee contributions expected to be made during the plan year.

(2) Special rule for increase in compensation

For purposes of this subsection, if any benefit attributable to services performed in a preceding plan year is increased by reason of any increase in compensation during the current plan year, the increase in such benefit shall be treated as having accrued during the current plan year.