

Subsec. (c)(5)(B)(iv). Pub. L. 110-458, §202(a)(1), redesignated cl. (iv) as (iii).

Subsec. (c)(5)(B)(iv)(II). Pub. L. 110-458, §101(b)(1)(C), inserted “for such year” after “beginning in 2007”.

Subsec. (f)(4)(A). Pub. L. 110-458, §101(b)(1)(D), substituted “paragraph (3)” for “paragraph (2)”.

Subsec. (g)(3)(B). Pub. L. 110-458, §121(a), amended concluding provisions generally. Prior to amendment, concluding provisions read as follows: “Any such averaging shall be adjusted for contributions and distributions (as provided by the Secretary of the Treasury).”

Subsec. (h)(2)(F). Pub. L. 110-458, §101(b)(1)(E), substituted “section 1055(g)(3)(B)(iii)(I) of this title for such month” for “section 1055(g)(3)(B)(iii)(I) of this title for such month” and “subparagraph (C)” for “subparagraph (B)”.

Subsec. (i)(2)(A). Pub. L. 110-458, §101(b)(1)(F)(i)(I), added subpar. (A) and struck out former subpar. (A) which read as follows: “the present value of all benefits which are expected to accrue or be earned under the plan during the plan year, determined using the additional actuarial assumptions described in paragraph (1)(B), plus”.

Subsec. (i)(2)(B). Pub. L. 110-458, §101(b)(1)(F)(i)(II), substituted “the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year” for “the target normal cost (determined without regard to this paragraph) of the plan for the plan year”.

Subsec. (i)(4)(B). Pub. L. 110-458, §101(b)(1)(F)(ii), substituted “subparagraph (A)” for “subparagraph (A)(ii)” in concluding provisions.

Subsec. (j)(3)(A). Pub. L. 110-458, §101(b)(1)(G)(i), inserted last sentence.

Subsec. (j)(3)(E). Pub. L. 110-458, §101(b)(1)(G)(ii), (iii), substituted “, short years, and years with alternate valuation date” for “and short years” in heading and added cl. (iii).

Subsec. (k)(6)(B). Pub. L. 110-458, §101(b)(1)(H), struck out “, except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section” after “subsection (j)”.

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112-141 applicable with respect to plan years beginning after Dec. 31, 2011, except as otherwise provided, see section 40211(c) of Pub. L. 112-141, set out as a note under section 404 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by section 201(a) of Pub. L. 111-192 applicable to plan years beginning after Dec. 31, 2007, see section 201(c) of Pub. L. 111-192, set out as a note under section 430 of Title 26, Internal Revenue Code.

Amendment by section 204(a) of Pub. L. 111-192 applicable to plan years beginning after Aug. 31, 2009, with certain exceptions, see section 204(c) of Pub. L. 111-192, set out as a note under section 430 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by section 101(b)(1)(A), (F)(i) of Pub. L. 110-458 applicable to plan years beginning after Dec. 31, 2008, and applicable to a plan for the first plan year beginning after Dec. 31, 2007, under certain conditions, see section 101(b)(3) of Pub. L. 110-458, set out as a note under section 430 of Title 26, Internal Revenue Code.

Amendment by section 101(b)(1)(B)-(E), (F)(ii)-(H) of 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.

Amendment by section 121(a) of Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, see section 121(c) of Pub. L. 110-458, set out as a note under section 430 of Title 26, Internal Revenue Code.

Amendment by section 202(a) of Pub. L. 110-458 applicable as if included in the enactment of this section, see section 202(c) of Pub. L. 110-458, set out as a note under section 430 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Pub. L. 109-280, title I, §102(c), Aug. 17, 2006, 120 Stat. 809, provided that: “The amendments made by this section [enacting this section] shall apply with respect to plan years beginning after 2007.”

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.

MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS

For modification of transition rule to pension funding requirements in the case of a plan that was not required to pay a variable rate premium for the plan year beginning in 1996, has not, in any plan year beginning after 1995, merged with another plan (other than a plan sponsored by an employer that was in 1996 within the controlled group of the plan sponsor), and is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service, see section 115(a)-(c) of Pub. L. 109-280, set out as a note under section 430 of Title 26, Internal Revenue Code.

§ 1084. Minimum funding standards for multiemployer plans

(a) In general

For purposes of section 1082 of this title, the accumulated funding deficiency of a multiemployer plan for any plan year is—

(1) except as provided in paragraph (2), the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account of the plan for all plan years (beginning with the first plan year for which this part applies to the plan) over the total credits to such account for such years, and

(2) if the multiemployer plan is in reorganization for any plan year, the accumulated funding deficiency of the plan determined under section 1423 of this title.

(b) Funding standard account

(1) Account required

Each multiemployer plan to which this part applies shall establish and maintain a funding standard account. Such account shall be credited and charged solely as provided in this section.

(2) Charges to account

For a plan year, the funding standard account shall be charged with the sum of—

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

(B) the amounts necessary to amortize in equal annual installments (until fully amortized)—

(i) in the case of a plan which comes into existence on or after January 1, 2008, the unfunded past service liability under the plan on the first day of the first plan year

to which this section applies, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net increase (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(iii) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 15 plan years, and

(iv) separately, with respect to each plan year, the net loss (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount necessary to amortize each waived funding deficiency (within the meaning of section 1082(c)(3) of this title) for each prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

(D) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 5 plan years any amount credited to the funding standard account under section 1082(b)(3)(D) of this title (as in effect on the day before August 17, 2006), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of section 1082(c)(7)(A)(i)(I) of this title (as in effect on the day before August 17, 2006).

(3) Credits to account

For a plan year, the funding standard account shall be credited with the sum of—

(A) the amount considered contributed by the employer to or under the plan for the plan year,

(B) the amount necessary to amortize in equal annual installments (until fully amortized)—

(i) separately, with respect to each plan year, the net decrease (if any) in unfunded past service liability under the plan arising from plan amendments adopted in such year, over a period of 15 plan years,

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 15 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 15 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 1082(c)(3) of this title) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 1085 of this title (as in effect on the

day before August 17, 2006), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

(4) Special rule for amounts first amortized in plan years before 2008

In the case of any amount amortized under section 1082(b) of this title (as in effect on the day before August 17, 2006) over any period beginning with a plan year beginning before 2008, in lieu of the amortization described in paragraphs (2)(B) and (3)(B), such amount shall continue to be amortized under such section as so in effect.

(5) Combining and offsetting amounts to be amortized

Under regulations prescribed by the Secretary of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

(A) may be combined into one amount under such paragraph to be amortized over a period determined on the basis of the remaining amortization period for all items entering into such combined amount, and

(B) may be offset against amounts required to be amortized under the other such paragraph, with the resulting amount to be amortized over a period determined on the basis of the remaining amortization periods for all items entering into whichever of the two amounts being offset is the greater.

(6) Interest

The funding standard account (and items therein) shall be charged or credited (as determined under regulations prescribed by the Secretary of the Treasury) with interest at the appropriate rate consistent with the rate or rates of interest used under the plan to determine costs.

(7) Special rules relating to charges and credits to funding standard account

For purposes of this part—

(A) Withdrawal liability

Any amount received by a multiemployer plan in payment of all or part of an employer's withdrawal liability under part 1 of subtitle E of subchapter III shall be considered an amount contributed by the employer to or under the plan. The Secretary of the Treasury may prescribe by regulation additional charges and credits to a multiemployer plan's funding standard account to the extent necessary to prevent withdrawal liability payments from being unduly reflected as advance funding for plan liabilities.

(B) Adjustments when a multiemployer plan leaves reorganization

If a multiemployer plan is not in reorganization in the plan year but was in reorganization in the immediately preceding plan year, any balance in the funding standard account at the close of such immediately preceding plan year—

(i) shall be eliminated by an offsetting credit or charge (as the case may be), but

(ii) shall be taken into account in subsequent plan years by being amortized in equal annual installments (until fully amortized) over 30 plan years.

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 1423(a) of this title as of the end of the last plan year that the plan was in reorganization.

(C) Plan payments to supplemental program or withdrawal liability payment fund

Any amount paid by a plan during a plan year to the Pension Benefit Guaranty Corporation pursuant to section 1402 of this title or to a fund exempt under section 501(c)(22) of title 26 pursuant to section 1403 of this title shall reduce the amount of contributions considered received by the plan for the plan year.

(D) Interim withdrawal liability payments

Any amount paid by an employer pending a final determination of the employer's withdrawal liability under part 1 of subtitle E of subchapter III and subsequently refunded to the employer by the plan shall be charged to the funding standard account in accordance with regulations prescribed by the Secretary of the Treasury.

(E) Election for deferral of charge for portion of net experience loss

If an election is in effect under section 1082(b)(7)(F) of this title (as in effect on the day before August 17, 2006) for any plan year, the funding standard account shall be charged in the plan year to which the portion of the net experience loss deferred by such election was deferred with the amount so deferred (and paragraph (2)(B)(iii) shall not apply to the amount so charged).

(F) 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 section and section 1082 of this title in such manner as is determined by the Secretary of the Treasury.

(G) Short-term benefits

To the extent that any plan amendment increases the unfunded past service liability under the plan by reason of an increase in benefits which are not payable as a life annuity but are payable under the terms of the plan for a period that does not exceed 14 years from the effective date of the amendment, paragraph (2)(B)(ii) shall be applied separately with respect to such increase in unfunded past service liability by substituting the number of years of the period during which such benefits are payable for "15".

(8) Special relief rules

Notwithstanding any other provision of this subsection—

(A) Amortization of net investment losses

(i) In general

A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may treat the portion of any experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period—

(I) beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and

(II) ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

(ii) Coordination with extensions

If this subparagraph applies for any plan year—

(I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and

(II) if an extension was granted under subsection (d) for any plan year before the election to have this subparagraph apply to the plan year, such extension shall not result in such amortization period exceeding 30 years.

(iii) Net investment losses

For purposes of this subparagraph—

(I) In general

Net investment losses shall be determined in the manner prescribed by the Secretary of the Treasury on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement).

(II) Criminally fraudulent investment arrangements

The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary of the Treasury for purposes of section 165 of title 26.

(B) Expanded smoothing period

(i) In general

A multiemployer plan with respect to which the solvency test under subparagraph (C) is met may change its asset valuation method in a manner which—

(I) spreads the difference between expected and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years,

(II) provides that for either or both of the first 2 plan years beginning after August 31, 2008, the value of plan assets at any time shall not be less than 80 percent or greater than 130 percent of the fair market value of such assets at such time, or

(III) makes both changes described in subclauses (I) and (II) to such method.

(ii) Asset valuation methods

If this subparagraph applies for any plan year—

(I) the Secretary of the Treasury shall not treat the asset valuation method of the plan as unreasonable solely because of the changes in such method described in clause (i), and

(II) such changes shall be deemed approved by such Secretary under section 1082(d)(1) of this title and section 412(d)(1) of title 26.

(iii) Amortization of reduction in unfunded accrued liability

If this subparagraph and subparagraph (A) both apply for any plan year, the plan shall treat any reduction in unfunded accrued liability resulting from the application of this subparagraph as a separate experience amortization base, to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years rather than the period such liability would otherwise be amortized over.

(C) Solvency test

The solvency test under this paragraph is met only if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under this paragraph.

(D) Restriction on benefit increases

If subparagraph (A) or (B) apply to a multiemployer plan for any plan year, then, in addition to any other applicable restrictions on benefit increases, a plan amendment increasing benefits may not go into effect during either of the 2 plan years immediately following such plan year unless—

(i) the plan actuary certifies that—

(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the application of this paragraph to the plan, and

(II) the plan's funded percentage and projected credit balances for such 2 plan years are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

(ii) the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of title 26 or to comply with other applicable law.

(E) Reporting

A plan sponsor of a plan to which this paragraph applies shall—

(i) give notice of such application to participants and beneficiaries of the plan, and

(ii) inform the Pension Benefit Guaranty Corporation of such application in such form and manner as the Director of the Pension Benefit Guaranty Corporation may prescribe.

(c) Additional rules

(1) Determinations to be made under funding method

For purposes of this part, normal costs, accrued liability, past service liabilities, and experience gains and losses shall be determined under the funding method used to determine costs under the plan.

(2) Valuation of assets

(A) In general

For purposes of this part, the value of the plan's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value and which is permitted under regulations prescribed by the Secretary of the Treasury.

(B) Election with respect to bonds

The value of a bond or other evidence of indebtedness which is not in default as to principal or interest may, at the election of the plan administrator, be determined on an amortized basis running from initial cost at purchase to par value at maturity or earliest call date. Any election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury shall by regulations provide, shall apply to all such evidences of indebtedness, and may be revoked only with the consent of such Secretary.

(3) Actuarial assumptions must be reasonable

For purposes of this section, all costs, liabilities, rates of interest, and other factors under the plan shall be determined on the basis of actuarial assumptions and methods—

(A) each of which is reasonable (taking into account the experience of the plan and reasonable expectations), and

(B) which, in combination, offer the actuary's best estimate of anticipated experience under the plan.

(4) Treatment of certain changes as experience gain or loss

For purposes of this section, if—

(A) a change in benefits under the Social Security Act [42 U.S.C. 301 et seq.] or in other retirement benefits created under Federal or State law, or

(B) a change in the definition of the term "wages" under section 3121 of title 26, or a change in the amount of such wages taken into account under regulations prescribed for purposes of section 401(a)(5) of title 26,

results in an increase or decrease in accrued liability under a plan, such increase or decrease shall be treated as an experience loss or gain.

(5) Full funding

If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency in excess of the full funding limitation—

(A) the funding standard account shall be credited with the amount of such excess, and

(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and sub-

paragraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

(6) Full-funding limitation

(A) In general

For purposes of paragraph (5), the term “full-funding limitation” means the excess (if any) of—

- (i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over
- (ii) the lesser of—

- (I) the fair market value of the plan’s assets, or

- (II) the value of such assets determined under paragraph (2).

(B) Minimum amount

(i) In general

In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—

- (I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over
- (II) the value of the plan’s assets determined under paragraph (2).

(ii) Assets

For purposes of clause (i), assets shall not be reduced by any credit balance in the funding standard account.

(C) Full funding limitation

For purposes of this paragraph, unless otherwise provided by the plan, the accrued liability under a multiemployer plan shall not include benefits which are not non-forfeitable under the plan after the termination of the plan (taking into consideration section 411(d)(3) of title 26).

(D) Current liability

For purposes of this paragraph—

(i) In general

The term “current liability” means all liabilities to employees and their beneficiaries under the plan.

(ii) Treatment of unpredictable contingent event benefits

For purposes of clause (i), any benefit contingent on an event other than—

- (I) age, service, compensation, death, or disability, or

- (II) an event which is reasonably and reliably predictable (as determined by the Secretary of the Treasury),

shall not be taken into account until the event on which the benefit is contingent occurs.

(iii) Interest rate used

The rate of interest used to determine current liability under this paragraph shall be the rate of interest determined under subparagraph (E).

(iv) Mortality tables

(I) Commissioners’ standard table

In the case of plan years beginning before the first plan year to which the first tables prescribed under subclause (II) apply, the mortality table used in determining current liability under this paragraph shall be the table prescribed by the Secretary of the Treasury which is based on the prevailing commissioners’ standard table (described in section 807(d)(5)(A) of title 26) used to determine reserves for group annuity contracts issued on January 1, 1993.

(II) Secretarial authority

The Secretary of the Treasury may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, such Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(v) Separate mortality tables for the disabled

Notwithstanding clause (iv)—

(I) In general

The Secretary of the Treasury shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine current liability under this subsection for individuals who are entitled to benefits under the plan on account of disability. Such Secretary shall establish separate tables for individuals whose disabilities occur in plan years beginning before January 1, 1995, and for individuals whose disabilities occur in plan years beginning on or after such date.

(II) Special rule for disabilities occurring after 1994

In the case of disabilities occurring in plan years beginning after December 31, 1994, the tables under subclause (I) shall apply only with respect to individuals described in such subclause who are disabled within the meaning of title II of the Social Security Act [42 U.S.C. 401 et seq.] and the regulations thereunder.

(vi) Periodic review

The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subparagraph and shall, to the extent such Secretary determines necessary, by regulation update the tables to reflect the actual experience of pension plans and projected trends in such experience.

(E) Required change of interest rate

For purposes of determining a plan’s current liability for purposes of this paragraph—

(i) In general

If any rate of interest used under the plan under subsection (b)(6) to determine cost is not within the permissible range, the plan shall establish a new rate of interest within the permissible range.

(ii) Permissible range

For purposes of this subparagraph—

(I) In general

Except as provided in subclause (II), the term “permissible range” means a rate of interest which is not more than 5 percent above, and not more than 10 percent below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

(II) Secretarial authority

If the Secretary of the Treasury finds that the lowest rate of interest permissible under subclause (I) is unreasonably high, such Secretary may prescribe a lower rate of interest, except that such rate may not be less than 80 percent of the average rate determined under such subclause.

(iii) Assumptions

Notwithstanding paragraph (3)(A), the interest rate used under the plan shall be—

(I) determined without taking into account the experience of the plan and reasonable expectations, but

(II) consistent with the assumptions which reflect the purchase rates which would be used by insurance companies to satisfy the liabilities under the plan.

(7) Annual valuation**(A) In general**

For purposes of this section, a determination of experience gains and losses and a valuation of the plan's liability shall be made not less frequently than once every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary of the Treasury.

(B) Valuation date**(i) Current year**

Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

(ii) Use of prior year valuation

The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(iii) Adjustments

Information under clause (ii) shall, in accordance with regulations, be actuarially

adjusted to reflect significant differences in participants.

(iv) Limitation

A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

(8) Time when certain contributions deemed made

For purposes of this section, any contributions for a plan year made by an employer after the last day of such plan year, but not later than two and one-half months after such day, shall be deemed to have been made on such last day. For purposes of this subparagraph, such two and one-half month period may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury.

(d) Extension of amortization periods for multi-employer plans**(1) Automatic extension upon application by certain plans****(A) In general**

If the plan sponsor of a multiemployer plan—

(i) submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), and

(ii) includes with the application a certification by the plan's actuary described in subparagraph (B),

the Secretary of the Treasury shall extend the amortization period for the period of time (not in excess of 5 years) specified in the application. Such extension shall be in addition to any extension under paragraph (2).

(B) Criteria

A certification with respect to a multiemployer plan is described in this subparagraph if the plan's actuary certifies that, based on reasonable assumptions—

(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

(ii) the plan sponsor has adopted a plan to improve the plan's funding status,

(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

(iv) the notice required under paragraph (3)(A) has been provided.

(C) Termination

The preceding provisions of this paragraph shall not apply with respect to any application submitted after December 31, 2014.

(2) Alternative extension**(A) In general**

If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary of the Treasury may extend the amortization period for a period of time (not in excess of 10 years reduced by the number of years of any extension under paragraph (1) with respect to such unfunded liability) if the Secretary of the Treasury makes the determination described in subparagraph (B). Such extension shall be in addition to any extension under paragraph (1).

(B) Determination

The Secretary of the Treasury may grant an extension under subparagraph (A) if such Secretary determines that—

(i) such extension would carry out the purposes of this chapter and would provide adequate protection for participants under the plan and their beneficiaries, and

(ii) the failure to permit such extension would—

(I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and

(II) be adverse to the interests of plan participants in the aggregate.

(C) Action by Secretary of the Treasury

The Secretary of the Treasury shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If such Secretary rejects the application for an extension under this paragraph, such Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

(3) Advance notice**(A) In general**

The Secretary of the Treasury shall, before granting an extension 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 extension to each affected party (as defined in section 1301(a)(21) of this title) with respect to the affected plan. Such notice shall include a description 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 paragraph (1).

(Pub. L. 93-406, title I, § 304, as added Pub. L. 109-280, title II, § 201(a), Aug. 17, 2006, 120 Stat. 858; amended Pub. L. 111-192, title II, § 211(a)(1), June 25, 2010, 124 Stat. 1302.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(4)(A), (6)(D)(v)(II), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

This chapter, referred to in subsec. (d)(2)(B)(i), was in the original “this Act”, meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

PRIOR PROVISIONS

A prior section 1084, Pub. L. 93-406, title I, § 304, Sept. 2, 1974, 88 Stat. 873; Pub. L. 99-272, title XI, §§ 11015(b)(1)(B), 11016(c)(3), Apr. 7, 1986, 100 Stat. 267, 273; Pub. L. 100-203, title IX, § 9306(c)(2)(B), Dec. 22, 1987, 101 Stat. 1330-355; Pub. L. 101-239, title VII, §§ 7891(a)(1), 7894(d)(3), Dec. 19, 1989, 103 Stat. 2445, 2449, related to extension of amortization periods, 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

2010—Subsec. (b)(8). Pub. L. 111-192 added par. (8).

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-192 effective as of the first day of the first plan year ending after Aug. 31, 2008, with certain exceptions, see section 211(b) of Pub. L. 111-192, set out as a note under section 431 of Title 26, Internal Revenue Code.

EFFECTIVE DATE

Section applicable to plan years beginning after 2007, with special rule for certain amortization extensions, see section 201(d) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 1081 of this title.

SHORTFALL FUNDING METHOD

Pub. L. 109-280, title II, § 201(b), Aug. 17, 2006, 120 Stat. 867, as amended by Pub. L. 110-458, title I, § 102(a), Dec. 23, 2008, 122 Stat. 5100, provided that:

“(1) IN GENERAL.—A multiemployer plan meeting the criteria of paragraph (2) may adopt, use, or cease using, the shortfall funding method and such adoption, use, or cessation of use of such method, shall be deemed approved by the Secretary of the Treasury under section 302(d)(1) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(1)] and section 412(d)(1) of the Internal Revenue Code of 1986 [26 U.S.C. 412(d)(1)].

“(2) CRITERIA.—A multiemployer pension plan meets the criteria of this clause if—

“(A) the plan has not adopted, or ceased using, the shortfall funding method during the 5-year period ending on the day before the date the plan is to use the method under paragraph (1); and

“(B) the plan is not operating under an amortization period extension under section 304(d) of such Act [29 U.S.C. 1084(d)] and did not operate under such an extension during such 5-year period.

“(3) SHORTFALL FUNDING METHOD DEFINED.—For purposes of this subsection, the term ‘shortfall funding method’ means the shortfall funding method described in Treasury Regulations section 1.412(c)(1)–2 (26 CFR 1.412(c)(1)–2).

“(4) BENEFIT RESTRICTIONS TO APPLY.—The benefit restrictions under section 302(c)(7) of such Act [29 U.S.C. 1082(c)(7)] and section 412(c)(7) of such Code [26 U.S.C. 412(c)(7)] shall apply during any period a multiemployer plan is on the shortfall funding method pursuant to this subsection.

“(5) USE OF SHORTFALL METHOD NOT TO PRECLUDE OTHER OPTIONS.—Nothing in this subsection shall be construed to affect a multiemployer plan’s ability to adopt the shortfall funding method with the Secretary’s permission under otherwise applicable regulations or to affect a multiemployer plan’s right to change funding methods, with or without the Secretary’s consent, as provided in applicable rules and regulations.”

[Pub. L. 109-280, §201(b), set out above, applicable to plan years beginning after 2007, with special rule for certain amortization extensions, see section 201(d) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 1081 of this title.]

[Pub. L. 109-280, §201(b), set out above, 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 an Effective and Termination Dates of 2006 Amendment note under section 412 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 this section 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.

§ 1085. Additional funding rules for multiemployer plans in endangered status or critical status

(a) General rule

For purposes of this part, in the case of a multiemployer plan in effect on July 16, 2006—

(1) if the plan is in endangered status—

(A) the plan sponsor shall adopt and implement a funding improvement plan in accordance with the requirements of subsection (c), and

(B) the requirements of subsection (d) shall apply during the funding plan adoption period and the funding improvement period, and

(2) if the plan is in critical status—

(A) the plan sponsor shall adopt and implement a rehabilitation plan in accordance with the requirements of subsection (e), and

(B) the requirements of subsection (f) shall apply during the rehabilitation plan adoption period and the rehabilitation period.

(b) Determination of endangered and critical status

For purposes of this section—

(1) Endangered status

A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and, as of the beginning of the plan year, either—

(A) the plan’s funded percentage for such plan year is less than 80 percent, or

(B) the plan has an accumulated funding deficiency for such plan year, or is projected to have such an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 1084(d) of this title.

For purposes of this section, a plan shall be treated as in seriously endangered status for a plan year if the plan is described in both subparagraphs (A) and (B).

(2) Critical status

A multiemployer plan is in critical status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is described in 1 or more of the following subparagraphs as of the beginning of the plan year:

(A) A plan is described in this subparagraph if—

(i) the funded percentage of the plan is less than 65 percent, and

(ii) the sum of—

(I) the fair market value of plan assets, plus

(II) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 6 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all nonforfeitable benefits projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).

(B) A plan is described in this subparagraph if—

(i) the plan has an accumulated funding deficiency for the current plan year, not taking into account any extension of amortization periods under section 1084(d) of this title, or

(ii) the plan is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less), not taking into account any extension of amortization periods under section 1084(d) of this title.

(C) A plan is described in this subparagraph if—

(i) (I) the plan’s normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

(II) the present value of the reasonably anticipated employer and employee contributions for the current plan year,

(ii) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, and

(iii) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 1084(d) of this title.