

Subsec. (c)(3). Pub. L. 97-448, §102(j)(6)(A), added par. (3).

Subsec. (j). Pub. L. 97-448, §102(j)(5), inserted reference to an incentive stock option.

1981—Subsec. (d). Pub. L. 97-34, §251(b)(2), inserted reference to section 422A(b)(6).

Subsec. (g). Pub. L. 97-34, §251(b)(3), inserted reference to section 422A(a)(2).

Subsec. (h)(3)(B). Pub. L. 97-34, §251(b)(4), inserted reference to section 422A(b)(5).

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

#### EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-369, div. A, title V, §555(c)(3), July 18, 1984, 98 Stat. 898, as amended by Pub. L. 99-514, title XVIII, §1855(a)(4), Oct. 22, 1986, 100 Stat. 2882, provided that: "The amendment made by subsection (b) [amending this section] shall apply with respect to modifications of options after March 20, 1984."

#### EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 97-448, title I, §102(j)(6), Jan. 12, 1983, 96 Stat. 2373, provided that the amendment made by that section is effective only with respect to transfers after March 15, 1982.

Amendment by section 102(j)(5) of title I of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to options granted on or after Jan. 1, 1976, and exercised on or after Jan. 1, 1981, or outstanding on Jan. 1, 1981, or granted on or after Jan. 1, 1976, and outstanding Aug. 13, 1981, see section 251(c) of Pub. L. 97-34, set out as an Effective Date note under section 422 of this title.

#### EFFECTIVE DATE

Section applicable to taxable years ending after Dec. 31, 1963, except in cases of options granted after Dec. 31, 1963, and before Jan. 1, 1965, in which case par. (1) of subsec. (h) shall not apply to any change in the terms of such option made before Jan. 1, 1965, to permit such option to qualify under pars. (3), (4), and (5) of section 422(b), see section 221(e) of Pub. L. 88-272, set out as an Effective Date of 1964 Amendment note under section 421 of this title.

#### SAVINGS PROVISION

For provisions that nothing in amendment by Pub. L. 101-508 be construed to affect treatment of certain transactions occurring, property acquired, or items of income, loss, deduction, or credit taken into account

prior to Nov. 5, 1990, for purposes of determining liability for tax for periods ending after Nov. 5, 1990, see section 11821(b) of Pub. L. 101-508, set out as a note under section 45K of this title.

#### 【§ 425. Renumbered § 424】

### PART III—RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS

#### Subpart

- A. Minimum funding standards for pension plans.
- B. Benefit limitations under single-employer plans.

#### AMENDMENTS

2006—Pub. L. 109-280, title I, §113(a)(1)(A), Aug. 17, 2006, 120 Stat. 846, substituted "RULES RELATING TO MINIMUM FUNDING STANDARDS AND BENEFIT LIMITATIONS" for "MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER DEFINED BENEFIT PENSION PLANS" in part heading and added subpart analysis.

#### SUBPART A—MINIMUM FUNDING STANDARDS FOR PENSION PLANS

#### Sec.

- 430. Minimum funding standards for single-employer defined benefit pension plans.
- 431. Minimum funding standards for multiemployer plans.<sup>1</sup>
- 432. Additional funding rules for multiemployer plans in endangered status or critical status.
- 433. Minimum funding standards.<sup>2</sup>

#### AMENDMENTS

2006—Pub. L. 109-280, title II, §212(d), Aug. 17, 2006, 120 Stat. 917, added item 432.

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

#### (a) Minimum required contribution

For purposes of this section and section 412(a)(2)(A), except as provided in subsection (f), the term "minimum required contribution" means, with respect to any plan year of a defined benefit plan which is not a multiemployer 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);

(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.

<sup>1</sup>Editorially supplied. Section 431 added by Pub. L. 109-280 without corresponding amendment of subpart analysis.

<sup>2</sup>Editorially supplied. Section 433 added by Pub. L. 113-97 without corresponding amendment of subpart analysis.

**(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.

**(c) Shortfall amortization charge****(1) In general**

For purposes of this section, the shortfall amortization charge for a plan for any plan year is the aggregate total (not less than zero) of the shortfall amortization installments for such plan year with respect to any shortfall amortization base which has not been fully amortized under this subsection.

**(2) Shortfall amortization installment**

For purposes of paragraph (1)—

**(A) Determination**

The shortfall amortization installments are the amounts necessary to amortize the shortfall amortization base of the plan for any plan year in level annual installments over the 7-plan-year period beginning with such plan year.

**(B) Shortfall installment**

The shortfall amortization installment for any plan year in the 7-plan-year period under subparagraph (A) with respect to any shortfall amortization base is the annual installment determined under subparagraph (A) for that year for that base.

**(C) Segment rates**

In determining any shortfall amortization installment under this paragraph, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

**(D) Special election for eligible plan years****(i) In general**

If a plan sponsor elects to apply this subparagraph with respect to the shortfall amortization base of a plan for any eligible plan year (in this subparagraph and para-

graph (7) referred to as an “election year”), then, notwithstanding subparagraphs (A) and (B)—

(I) the shortfall amortization installments with respect to such base shall be determined under clause (ii) or (iii), whichever is specified in the election, and

(II) the shortfall amortization installment for any plan year in the 9-plan-year period described in clause (ii) or the 15-plan-year period described in clause (iii), respectively, with respect to such shortfall amortization base is the annual installment determined under the applicable clause for that year for that base.

**(ii) 2 plus 7 amortization schedule**

The shortfall amortization installments determined under this clause are—

(I) in the case of the first 2 plan years in the 9-plan-year period beginning with the election year, interest on the shortfall amortization base of the plan for the election year (determined using the effective interest rate for the plan for the election year), and

(II) in the case of the last 7 plan years in such 9-plan-year period, the amounts necessary to amortize the remaining balance of the shortfall amortization base of the plan for the election year in level annual installments over such last 7 plan years (using the segment rates under subparagraph (C) for the election year).

**(iii) 15-year amortization**

The shortfall amortization installments determined under this subparagraph are the amounts necessary to amortize the shortfall amortization base of the plan for the election year in level annual installments over the 15-plan-year period beginning with the election year (using the segment rates under subparagraph (C) for the election year).

**(iv) Election****(I) In general**

The plan sponsor of a plan may elect to have this subparagraph apply to not more than 2 eligible plan years with respect to the plan, except that in the case of a plan described in section 106 of the Pension Protection Act of 2006, the plan sponsor may only elect to have this subparagraph apply to a plan year beginning in 2011.

**(II) Amortization schedule**

Such election shall specify whether the amortization schedule under clause (ii) or (iii) shall apply to an election year, except that if a plan sponsor elects to have this subparagraph apply to 2 eligible plan years, the plan sponsor must elect the same schedule for both years.

**(III) Other rules**

Such election shall be made at such time, and in such form and manner, as shall be prescribed by the Secretary, and

may be revoked only with the consent of the Secretary. The Secretary shall, before granting a revocation request, provide the Pension Benefit Guaranty Corporation an opportunity to comment on the conditions applicable to the treatment of any portion of the election year shortfall amortization base that remains unamortized as of the revocation date.

**(v) Eligible plan year**

For purposes of this subparagraph, the term “eligible plan year” means any plan year beginning in 2008, 2009, 2010, or 2011, except that a plan year shall only be treated as an eligible plan year if the due date under subsection (j)(1) for the payment of the minimum required contribution for such plan year occurs on or after the date of the enactment of this subparagraph.

**(vi) Reporting**

A plan sponsor of a plan who makes an election under clause (i) shall—

(I) give notice of the election to participants and beneficiaries of the plan, and

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

**(vii) Increases in required installments in certain cases**

For increases in required contributions in cases of excess compensation or extraordinary dividends or stock redemptions, see paragraph (7).

**(3) Shortfall amortization base**

For purposes of this section, the shortfall amortization base of a plan for a plan year is—

(A) the funding shortfall of such plan for such plan year, minus

(B) the present value (determined using the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2)) of the aggregate total of the shortfall amortization installments and waiver amortization installments which have been determined for such plan year and any succeeding plan year with respect to the shortfall amortization bases and waiver amortization bases of the plan for any plan year preceding such plan year.

**(4) Funding shortfall**

For purposes of this section, the funding shortfall of a plan for any plan year is the excess (if any) of—

(A) the funding target of the plan for the plan year, over

(B) the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) for the plan year which are held by the plan on the valuation date.

**(5) Exemption from new shortfall amortization base**

In any case in which the value of plan assets of the plan (as reduced under subsection

(f)(4)(A)) is equal to or greater than the funding target of the plan for the plan year, the shortfall amortization base of the plan for such plan year shall be zero.

**(6) Early deemed amortization upon attainment of funding target**

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of determining the shortfall amortization charge for such plan year and succeeding plan years, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to such bases) shall be reduced to zero.

**(7) Increases in alternate required installments in cases of excess compensation or extraordinary dividends or stock redemptions**

**(A) In general**

If there is an installment acceleration amount with respect to a plan for any plan year in the restriction period with respect to an election year under paragraph (2)(D), then the shortfall amortization installment otherwise determined and payable under such paragraph for such plan year shall, subject to the limitation under subparagraph (B), be increased by such amount.

**(B) Total installments limited to shortfall base**

Subject to rules prescribed by the Secretary, if a shortfall amortization installment with respect to any shortfall amortization base for an election year is required to be increased for any plan year under subparagraph (A)—

(i) such increase shall not result in the amount of such installment exceeding the present value of such installment and all succeeding installments with respect to such base (determined without regard to such increase but after application of clause (ii)), and

(ii) subsequent shortfall amortization installments with respect to such base shall, in reverse order of the otherwise required installments, be reduced to the extent necessary to limit the present value of such subsequent shortfall amortization installments (after application of this paragraph) to the present value of the remaining unamortized shortfall amortization base.

**(C) Installment acceleration amount**

For purposes of this paragraph—

**(i) In general**

The term “installment acceleration amount” means, with respect to any plan year in a restriction period with respect to an election year, the sum of—

(I) the aggregate amount of excess employee compensation determined under subparagraph (D) with respect to all employees for the plan year, plus

(II) the aggregate amount of extraordinary dividends and redemptions determined under subparagraph (E) for the plan year.

**(ii) Annual limitation**

The installment acceleration amount for any plan year shall not exceed the excess (if any) of—

(I) the sum of the shortfall amortization installments for the plan year and all preceding plan years in the amortization period elected under paragraph (2)(D) with respect to the shortfall amortization base with respect to an election year, determined without regard to paragraph (2)(D) and this paragraph, over

(II) the sum of the shortfall amortization installments for such plan year and all such preceding plan years, determined after application of paragraph (2)(D) (and in the case of any preceding plan year, after application of this paragraph).

**(iii) Carryover of excess installment acceleration amounts****(I) In general**

If the installment acceleration amount for any plan year (determined without regard to clause (ii)) exceeds the limitation under clause (ii), then, subject to subclause (II), such excess shall be treated as an installment acceleration amount with respect to the succeeding plan year.

**(II) Cap to apply**

If any amount treated as an installment acceleration amount under subclause (I) or this subclause with respect to any succeeding plan year, when added to other installment acceleration amounts (determined without regard to clause (ii)) with respect to the plan year, exceeds the limitation under clause (ii), the portion of such amount representing such excess shall be treated as an installment acceleration amount with respect to the next succeeding plan year.

**(III) Limitation on years to which amounts carried for**

No amount shall be carried under subclause (I) or (II) to a plan year which begins after the first plan year following the last plan year in the restriction period (or after the second plan year following such last plan year in the case of an election year with respect to which 15-year amortization was elected under paragraph (2)(D)).

**(IV) Ordering rules**

For purposes of applying subclause (II), installment acceleration amounts for the plan year (determined without regard to any carryover under this clause) shall be applied first against the limitation under clause (ii) and then carryovers to such plan year shall be applied against such limitation on a first-in, first-out basis.

**(D) Excess employee compensation**

For purposes of this paragraph—

**(i) In general**

The term “excess employee compensation” means, with respect to any employee for any plan year, the excess (if any) of—

(I) the aggregate amount includible in income under this chapter for remuneration during the calendar year in which such plan year begins for services performed by the employee for the plan sponsor (whether or not performed during such calendar year), over

(II) \$1,000,000.

**(ii) Amounts set aside for nonqualified deferred compensation**

If during any calendar year assets are set aside or reserved (directly or indirectly) in a trust (or other arrangement as determined by the Secretary), or transferred to such a trust or other arrangement, by a plan sponsor for purposes of paying deferred compensation of an employee under a nonqualified deferred compensation plan (as defined in section 409A) of the plan sponsor, then, for purposes of clause (i), the amount of such assets shall be treated as remuneration of the employee includible in income for the calendar year unless such amount is otherwise includible in income for such year. An amount to which the preceding sentence applies shall not be taken into account under this paragraph for any subsequent calendar year.

**(iii) Only remuneration for certain post-2009 services counted**

Remuneration shall be taken into account under clause (i) only to the extent attributable to services performed by the employee for the plan sponsor after February 28, 2010.

**(iv) Exception for certain equity payments****(I) In general**

There shall not be taken into account under clause (i)(I) any amount includible in income with respect to the granting after February 28, 2010, of service recipient stock (within the meaning of section 409A) that, upon such grant, is subject to a substantial risk of forfeiture (as defined under section 83(c)(1)) for at least 5 years from the date of such grant.

**(II) Secretarial authority**

The Secretary may by regulation provide for the application of this clause in the case of a person other than a corporation.

**(v) Other exceptions**

The following amounts includible in income shall not be taken into account under clause (i)(I):

**(I) Commissions**

Any remuneration payable on a commission basis solely on account of income directly generated by the individual performance of the individual to whom such remuneration is payable.

**(II) Certain payments under existing contracts**

Any remuneration consisting of non-qualified deferred compensation, restricted stock, stock options, or stock appreciation rights payable or granted under a written binding contract that was in effect on March 1, 2010, and which was not modified in any material respect before such remuneration is paid.

**(vi) Self-employed individual treated as employee**

The term “employee” includes, with respect to a calendar year, a self-employed individual who is treated as an employee under section 401(c) for the taxable year ending during such calendar year, and the term “compensation” shall include earned income of such individual with respect to such self-employment.

**(vii) Indexing of amount**

In the case of any calendar year beginning after 2010, the dollar amount under clause (i)(II) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year, determined by substituting “calendar year 2009” for “calendar year 1992” in subparagraph (B) thereof.

If the amount of any increase under clause (i) is not a multiple of \$1,000, such increase shall be rounded to the next lowest multiple of \$1,000.

**(E) Extraordinary dividends and redemptions****(i) In general**

The amount determined under this subparagraph for any plan year is the excess (if any) of the sum of the dividends declared during the plan year by the plan sponsor plus the aggregate amount paid for the redemption of stock of the plan sponsor redeemed during the plan year over the greater of—

(I) the adjusted net income (within the meaning of section 4043 of the Employee Retirement Income Security Act of 1974) of the plan sponsor for the preceding plan year, determined without regard to any reduction by reason of interest, taxes, depreciation, or amortization, or

(II) in the case of a plan sponsor that determined and declared dividends in the same manner for at least 5 consecutive years immediately preceding such plan year, the aggregate amount of dividends determined and declared for such plan year using such manner.

**(ii) Only certain post-2009 dividends and redemptions counted**

For purposes of clause (i), there shall only be taken into account dividends declared, and redemptions occurring, after February 28, 2010.

**(iii) Exception for intra-group dividends**

Dividends paid by one member of a controlled group (as defined in section

412(d)(3)) to another member of such group shall not be taken into account under clause (i).

**(iv) Exception for certain redemptions**

Redemptions that are made pursuant to a plan maintained with respect to employees, or that are made on account of the death, disability, or termination of employment of an employee or shareholder, shall not be taken into account under clause (i).

**(v) Exception for certain preferred stock****(I) In general**

Dividends and redemptions with respect to applicable preferred stock shall not be taken into account under clause (i) to the extent that dividends accrue with respect to such stock at a specified rate in all events and without regard to the plan sponsor’s income, and interest accrues on any unpaid dividends with respect to such stock.

**(II) Applicable preferred stock**

For purposes of subclause (I), the term “applicable preferred stock” means preferred stock which was issued before March 1, 2010 (or which was issued after such date and is held by an employee benefit plan subject to the provisions of title I of<sup>1</sup> Employee Retirement Income Security Act of 1974).

**(F) Other definitions and rules**

For purposes of this paragraph—

**(i) Plan sponsor**

The term “plan sponsor” includes any member of the plan sponsor’s controlled group (as defined in section 412(d)(3)).

**(ii) Restriction period**

The term “restriction period” means, with respect to any election year—

(I) except as provided in subclause (II), the 3-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009), and

(II) if the plan sponsor elects 15-year amortization for the shortfall amortization base for the election year, the 5-year period beginning with the election year (or, if later, the first plan year beginning after December 31, 2009).

**(iii) Elections for multiple plans**

If a plan sponsor makes elections under paragraph (2)(D) with respect to 2 or more plans, the Secretary shall provide rules for the application of this paragraph to such plans, including rules for the ratable allocation of any installment acceleration amount among such plans on the basis of each plan’s relative reduction in the plan’s shortfall amortization installment for the first plan year in the amortization period described in subparagraph (A) (determined without regard to this paragraph).

<sup>1</sup> So in original. Probably should be followed by “the”.

**(iv) Mergers and acquisitions**

The Secretary shall prescribe rules for the application of paragraph (2)(D) and this paragraph in any case where there is a merger or acquisition involving a plan sponsor making the election under paragraph (2)(D).

**(d) Rules relating to funding target**

For purposes of this section—

**(1) Funding target**

Except as provided in subsection (i)(1) with respect to plans in at-risk status, the funding target of a plan for a plan year is the present value of all benefits accrued or earned under the plan as of the beginning of the plan year.

**(2) Funding target attainment percentage**

The “funding target attainment percentage” of a plan for a plan year is the ratio (expressed as a percentage) which—

(A) the value of plan assets for the plan year (as reduced under subsection (f)(4)(B)), bears to

(B) the funding target of the plan for the plan year (determined without regard to subsection (i)(1)).

**(e) Waiver amortization charge****(1) Determination of waiver amortization charge**

The waiver amortization charge (if any) for a plan for any plan year is the aggregate total of the waiver amortization installments for such plan year with respect to the waiver amortization bases for each of the 5 preceding plan years.

**(2) Waiver amortization installment**

For purposes of paragraph (1)—

**(A) Determination**

The waiver amortization installments are the amounts necessary to amortize the waiver amortization base of the plan for any plan year in level annual installments over a period of 5 plan years beginning with the succeeding plan year.

**(B) Waiver installment**

The waiver amortization installment for any plan year in the 5-year period under subparagraph (A) with respect to any waiver amortization base is the annual installment determined under subparagraph (A) for that year for that base.

**(3) Interest rate**

In determining any waiver amortization installment under this subsection, the plan sponsor shall use the segment rates determined under subparagraph (C) of subsection (h)(2), applied under rules similar to the rules of subparagraph (B) of subsection (h)(2).

**(4) Waiver amortization base**

The waiver amortization base of a plan for a plan year is the amount of the waived funding deficiency (if any) for such plan year under section 412(c).

**(5) Early deemed amortization upon attainment of funding target**

In any case in which the funding shortfall of a plan for a plan year is zero, for purposes of

determining the waiver amortization charge for such plan year and succeeding plan years, the waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to such bases) shall be reduced to zero.

**(f) Reduction of minimum required contribution by prefunding balance and funding standard carryover balance****(1) Election to maintain balances****(A) Prefunding balance**

The plan sponsor of a defined benefit plan which is not a multiemployer plan may elect to maintain a prefunding balance.

**(B) Funding standard carryover balance****(i) In general**

In the case of a defined benefit plan (other than a multiemployer plan) described in clause (ii), the plan sponsor may elect to maintain a funding standard carryover balance, until such balance is reduced to zero.

**(ii) Plans maintaining funding standard account in 2007**

A plan is described in this clause if the plan—

(I) was in effect for a plan year beginning in 2007, and

(II) had a positive balance in the funding standard account under section 412(b) as in effect for such plan year and determined as of the end of such plan year.

**(2) Application of balances**

A prefunding balance and a funding standard carryover balance maintained pursuant to this paragraph—

(A) shall be available for crediting against the minimum required contribution, pursuant to an election under paragraph (3),

(B) shall be applied as a reduction in the amount treated as the value of plan assets for purposes of this section, to the extent provided in paragraph (4), and

(C) may be reduced at any time, pursuant to an election under paragraph (5).

**(3) Election to apply balances against minimum required contribution****(A) In general**

Except as provided in subparagraphs (B) and (C), in the case of any plan year in which the plan sponsor elects to credit against the minimum required contribution for the current plan year all or a portion of the prefunding balance or the funding standard carryover balance for the current plan year (not in excess of such minimum required contribution), the minimum required contribution for the plan year shall be reduced as of the first day of the plan year by the amount so credited by the plan sponsor. For purposes of the preceding sentence, the minimum required contribution shall be determined after taking into account any waiver under section 412(c).

**(B) Coordination with funding standard carryover balance**

To the extent that any plan has a funding standard carryover balance greater than

zero, no amount of the prefunding balance of such plan may be credited under this paragraph in reducing the minimum required contribution.

**(C) Limitation for underfunded plans**

The preceding provisions of this paragraph shall not apply for any plan year if the ratio (expressed as a percentage) which—

(i) the value of plan assets for the preceding plan year (as reduced under paragraph (4)(C)), bears to

(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent. In the case of plan years beginning in 2008, the ratio under this subparagraph may be determined using such methods of estimation as the Secretary may prescribe.

**(D) Special rule for certain years of plans maintained by charities**

**(i) In general**

For purposes of applying subparagraph (C) for plan years beginning after August 31, 2009, and before September 1, 2011, the ratio determined under such subparagraph for the preceding plan year of a plan shall be the greater of—

(I) such ratio, as determined without regard to this subsection, or

(II) the ratio for such plan for the plan year beginning after August 31, 2007 and before September 1, 2008, as determined under rules prescribed by the Secretary.

**(ii) Special rule**

In the case of a plan for which the valuation date is not the first day of the plan year—

(I) clause (i) shall apply to plan years beginning after December 31, 2007, and before January 1, 2010, and

(II) clause (i)(II) shall apply based on the last plan year beginning before September 1, 2007, as determined under rules prescribed by the Secretary.

**(iii) Limitation to charities**

This subparagraph shall not apply to any plan unless such plan is maintained exclusively by one or more organizations described in section 501(c)(3).

**(4) Effect of balances on amounts treated as value of plan assets**

In the case of any plan maintaining a prefunding balance or a funding standard carryover balance pursuant to this subsection, the amount treated as the value of plan assets shall be deemed to be such amount, reduced as provided in the following subparagraphs:

**(A) Applicability of shortfall amortization base**

For purposes of subsection (c)(5), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance, but only if an election under paragraph (3) applying any portion of the prefunding balance in reducing the mini-

um required contribution is in effect for the plan year.

**(B) Determination of excess assets, funding shortfall, and funding target attainment percentage**

**(i) In general**

For purposes of subsections (a), (c)(4)(B), and (d)(2)(A), the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance and the funding standard carryover balance.

**(ii) Special rule for certain binding agreements with PBGC**

For purposes of subsection (c)(4)(B), the value of plan assets shall not be deemed to be reduced for a plan year by the amount of the specified balance if, with respect to such balance, there is in effect for a plan year a binding written agreement with the Pension Benefit Guaranty Corporation which provides that such balance is not available to reduce the minimum required contribution for the plan year. For purposes of the preceding sentence, the term “specified balance” means the prefunding balance or the funding standard carryover balance, as the case may be.

**(C) Availability of balances in plan year for crediting against minimum required contribution**

For purposes of paragraph (3)(C)(i) of this subsection, the value of plan assets is deemed to be such amount, reduced by the amount of the prefunding balance.

**(5) Election to reduce balance prior to determinations of value of plan assets and crediting against minimum required contribution**

**(A) In general**

The plan sponsor may elect to reduce by any amount the balance of the prefunding balance and the funding standard carryover balance for any plan year (but not below zero). Such reduction shall be effective prior to any determination of the value of plan assets for such plan year under this section and application of the balance in reducing the minimum required contribution for such plan for such plan year pursuant to an election under paragraph (2).

**(B) Coordination between prefunding balance and funding standard carryover balance**

To the extent that any plan has a funding standard carryover balance greater than zero, no election may be made under subparagraph (A) with respect to the prefunding balance.

**(6) Prefunding balance**

**(A) In general**

A prefunding balance maintained by a plan shall consist of a beginning balance of zero, increased and decreased to the extent provided in subparagraphs (B) and (C), and adjusted further as provided in paragraph (8).

**(B) Increases****(i) In general**

As of the first day of each plan year beginning after 2008, the prefunding balance of a plan shall be increased by the amount elected by the plan sponsor for the plan year. Such amount shall not exceed the excess (if any) of—

(I) the aggregate total of employer contributions to the plan for the preceding plan year, over—

(II) the minimum required contribution for such preceding plan year.

**(ii) Adjustments for interest**

Any excess contributions under clause (i) shall be properly adjusted for interest accruing for the periods between the first day of the current plan year and the dates on which the excess contributions were made, determined by using the effective interest rate for the preceding plan year and by treating contributions as being first used to satisfy the minimum required contribution.

**(iii) Certain contributions necessary to avoid benefit limitations disregarded**

The excess described in clause (i) with respect to any preceding plan year shall be reduced (but not below zero) by the amount of contributions an employer would be required to make under subsection (b), (c), or (e) of section 436 to avoid a benefit limitation which would otherwise be imposed under such paragraph for the preceding plan year. Any contribution which may be taken into account in satisfying the requirements of more than 1 of such paragraphs shall be taken into account only once for purposes of this clause.

**(C) Decreases**

The prefunding balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

**(7) Funding standard carryover balance****(A) In general**

A funding standard carryover balance maintained by a plan shall consist of a beginning balance determined under subparagraph (B), decreased to the extent provided in subparagraph (C), and adjusted further as provided in paragraph (8).

**(B) Beginning balance**

The beginning balance of the funding standard carryover balance shall be the positive balance described in paragraph (1)(B)(ii)(II).

**(C) Decreases**

The funding standard carryover balance of a plan shall be decreased (but not below zero) by—

(i) as of the first day of each plan year after 2008, the amount of such balance credited under paragraph (2) (if any) in reducing the minimum required contribution of the plan for the preceding plan year, and

(ii) as of the time specified in paragraph (5)(A), any reduction in such balance elected under paragraph (5).

**(8) Adjustments for investment experience**

In determining the prefunding balance or the funding standard carryover balance of a plan as of the first day of the plan year, the plan sponsor shall, in accordance with regulations prescribed by the Secretary, adjust such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

**(9) Elections**

Elections under this subsection shall be made at such times, and in such form and manner, as shall be prescribed in regulations of the Secretary.

**(g) Valuation of plan assets and liabilities****(1) Timing of determinations**

Except as otherwise provided under this subsection, all determinations under this section for a plan year shall be made as of the valuation date of the plan for such plan year.

**(2) Valuation date**

For purposes of this section—

**(A) In general**

Except as provided in subparagraph (B), the valuation date of a plan for any plan year shall be the first day of the plan year.

**(B) Exception for small plans**

If, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.

**(C) Application of certain rules in determination of plan size**

For purposes of this paragraph—

**(i) Plans not in existence in preceding year**

In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

**(ii) Predecessors**

Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.



**(3) Determination of value of plan assets**

For purposes of this section—

**(A) In general**

Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

**(B) Averaging allowed**

A plan may determine the value of plan assets on the basis of the averaging of fair market values, but only if such method—

(i) is permitted under regulations prescribed by the Secretary,

(ii) does not provide for averaging of such values over more than the period beginning on the last day of the 25th month preceding the month in which the valuation date occurs and ending on the valuation date (or a similar period in the case of a valuation date which is not the 1st day of a month), and

(iii) does not result in a determination of the value of plan assets which, at any time, is lower than 90 percent or greater than 110 percent of the fair market value of such assets at such time.

Any such averaging shall be adjusted for contributions, distributions, and expected earnings (as determined by the plan's actuary on the basis of an assumed earnings rate specified by the actuary but not in excess of the third segment rate applicable under subsection (h)(2)(C)(iii)), as specified by the Secretary.

**(4) Accounting for contribution receipts**

For purposes of determining the value of assets under paragraph (3)—

**(A) Prior year contributions**

If—

(i) an employer makes any contribution to the plan after the valuation date for the plan year in which the contribution is made, and

(ii) the contribution is for a preceding plan year,

the contribution shall be taken into account as an asset of the plan as of the valuation date, except that in the case of any plan year beginning after 2008, only the present value (determined as of the valuation date) of such contribution may be taken into account. For purposes of the preceding sentence, present value shall be determined using the effective interest rate for the preceding plan year to which the contribution is properly allocable.

**(B) Special rule for current year contributions made before valuation date**

If any contributions for any plan year are made to or under the plan during the plan year but before the valuation date for the plan year, the assets of the plan as of the valuation date shall not include—

(i) such contributions, and

(ii) interest on such contributions for the period between the date of the contributions and the valuation date, determined

by using the effective interest rate for the plan year.

**(h) Actuarial assumptions and methods****(1) In general**

Subject to this subsection, the determination of any present value or other computation under this section shall be made 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.

**(2) Interest rates****(A) Effective interest rate**

For purposes of this section, the term "effective interest rate" means, with respect to any plan for any plan year, the single rate of interest which, if used to determine the present value of the plan's accrued or earned benefits referred to in subsection (d)(1), would result in an amount equal to the funding target of the plan for such plan year.

**(B) Interest rates for determining funding target**

For purposes of determining the funding target and target normal cost of a plan for any plan year, the interest rate used in determining the present value of the benefits of the plan shall be—

(i) in the case of benefits reasonably determined to be payable during the 5-year period beginning on the valuation date for the plan year, the first segment rate with respect to the applicable month,

(ii) in the case of benefits reasonably determined to be payable during the 15-year period beginning at the end of the period described in clause (i), the second segment rate with respect to the applicable month, and

(iii) in the case of benefits reasonably determined to be payable after the period described in clause (ii), the third segment rate with respect to the applicable month.

**(C) Segment rates**

For purposes of this paragraph—

**(i) First segment rate**

The term "first segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

**(ii) Second segment rate**

The term "second segment rate" means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on

bonds maturing during the 15-year period beginning at the end of the period described in clause (i).

**(iii) Third segment rate**

The term “third segment rate” means, with respect to any month, the single rate of interest which shall be determined by the Secretary for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during periods beginning after the period described in clause (i).

**(iv) Segment rate stabilization**

**(I) In general**

If a segment rate described in clause (i), (ii), or (iii) with respect to any applicable month (determined without regard to this clause) is less than the applicable minimum percentage, or more than the applicable maximum percentage, of the average of the segment rates described in such clause for years in the 25-year period ending with September 30 of the calendar year preceding the calendar year in which the plan year begins, then the segment rate described in such clause with respect to the applicable month shall be equal to the applicable minimum percentage or the applicable maximum percentage of such average, whichever is closest. The Secretary shall determine such average on an annual basis and may prescribe equivalent rates for years in any such 25-year period for which the rates described in any such clause are not available.

**(II) Applicable minimum percentage; applicable maximum percentage**

For purposes of subclause (I), the applicable minimum percentage and the applicable maximum percentage for a plan year beginning in a calendar year shall be determined in accordance with the following table:

If the calendar year is:	The applicable minimum percentage is:	The applicable maximum percentage is:
2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020 .....	90%	110%
2021 .....	85%	115%
2022 .....	80%	120%
2023 .....	75%	125%
After 2023 .....	70%	130%

**(D) Corporate bond yield curve**

For purposes of this paragraph—

**(i) In general**

The term “corporate bond yield curve” means, with respect to any month, a yield curve which is prescribed by the Secretary for such month and which reflects the average, for the 24-month period ending with the month preceding such month, of monthly yields on investment grade corporate bonds with varying maturities and

that are in the top 3 quality levels available.

**(ii) Election to use yield curve**

Solely for purposes of determining the minimum required contribution under this section, the plan sponsor may, in lieu of the segment rates determined under subparagraph (C), elect to use interest rates under the corporate bond yield curve. For purposes of the preceding sentence such curve shall be determined without regard to the 24-month averaging described in clause (i). Such election, once made, may be revoked only with the consent of the Secretary.

**(E) Applicable month**

For purposes of this paragraph, the term “applicable month” means, with respect to any plan for any plan year, the month which includes the valuation date of such plan for such plan year or, at the election of the plan sponsor, any of the 4 months which precede such month. Any election made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

**(F) Publication requirements**

The Secretary shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 417(e)(3)(D)(i)<sup>2</sup> for such month) and each of the rates determined under subparagraph (C) and the averages determined under subparagraph (C)(iv) for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan’s projection of future interest rates.

**(3) Mortality tables**

**(A) In general**

Except as provided in subparagraph (C) or (D), the Secretary shall by regulation prescribe mortality tables to be used in determining any present value or making any computation under this section. Such tables shall be based on the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

**(B) Periodic revision**

The Secretary shall (at least every 10 years) make revisions in any table in effect under subparagraph (A) to reflect the actual experience of pension plans and projected trends in such experience.

**(C) Substitute mortality table**

**(i) In general**

Upon request by the plan sponsor and approval by the Secretary, a mortality table

<sup>2</sup> See References in Text note below.

which meets the requirements of clause (iii) shall be used in determining any present value or making any computation under this section during the period of consecutive plan years (not to exceed 10) specified in the request.

**(ii) Early termination of period**

Notwithstanding clause (i), a mortality table described in clause (i) shall cease to be in effect as of the earliest of—

(I) the date on which there is a significant change in the participants in the plan by reason of a plan spinoff or merger or otherwise, or

(II) the date on which the plan actuary determines that such table does not meet the requirements of clause (iii).

**(iii) Requirements**

A mortality table meets the requirements of this clause if—

(I) there is a sufficient number of plan participants, and the pension plans have been maintained for a sufficient period of time, to have credible information necessary for purposes of subclause (II), and

(II) such table reflects the actual experience of the pension plans maintained by the sponsor and projected trends in general mortality experience.

**(iv) All plans in controlled group must use separate table**

Except as provided by the Secretary, a plan sponsor may not use a mortality table under this subparagraph for any plan maintained by the plan sponsor unless—

(I) a separate mortality table is established and used under this subparagraph for each other plan maintained by the plan sponsor and if the plan sponsor is a member of a controlled group, each member of the controlled group, and

(II) the requirements of clause (iii) are met separately with respect to the table so established for each such plan, determined by only taking into account the participants of such plan, the time such plan has been in existence, and the actual experience of such plan.

**(v) Deadline for submission and disposition of application**

**(I) Submission**

The plan sponsor shall submit a mortality table to the Secretary for approval under this subparagraph at least 7 months before the 1st day of the period described in clause (i).

**(II) Disposition**

Any mortality table submitted to the Secretary for approval under this subparagraph shall be treated as in effect as of the 1st day of the period described in clause (i) unless the Secretary, during the 180-day period beginning on the date of such submission, disapproves of such table and provides the reasons that such table fails to meet the requirements of

clause (iii). The 180-day period shall be extended upon mutual agreement of the Secretary and the plan sponsor.

**(D) Separate mortality tables for the disabled**

Notwithstanding subparagraph (A)—

**(i) In general**

The Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (A)) under this subsection for individuals who are entitled to benefits under the plan on account of disability. The 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 clause (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 and the regulations thereunder.

**(iii) Periodic revision**

The Secretary shall (at least every 10 years) make revisions in any table in effect under clause (i) to reflect the actual experience of pension plans and projected trends in such experience.

**(4) Probability of benefit payments in the form of lump sums or other optional forms**

For purposes of determining any present value or making any computation under this section, there shall be taken into account—

(A) the probability that future benefit payments under the plan will be made in the form of optional forms of benefits provided under the plan (including lump sum distributions, determined on the basis of the plan's experience and other related assumptions), and

(B) any difference in the present value of such future benefit payments resulting from the use of actuarial assumptions, in determining benefit payments in any such optional form of benefits, which are different from those specified in this subsection.

**(5) Approval of large changes in actuarial assumptions**

**(A) In general**

No actuarial assumption used to determine the funding target for a plan to which this paragraph applies may be changed without the approval of the Secretary.

**(B) Plans to which paragraph applies**

This paragraph shall apply to a plan only if—

(i) the plan is a defined benefit plan (other than a multiemployer plan) to which title IV of the Employee Retirement Income Security Act of 1974 applies,

(ii) the aggregate unfunded vested benefits as of the close of the preceding plan

year (as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV (disregarding plans with no unfunded vested benefits) exceed \$50,000,000, and

(iii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

**(i) Special rules for at-risk plans**

**(1) Funding target for plans in at-risk status**

**(A) In general**

In the case of a plan which is in at-risk status for a plan year, the funding target of the plan for the plan year shall be equal to the sum of—

(i) the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B), and

(ii) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor determined under subparagraph (C).

**(B) Additional actuarial assumptions**

The actuarial assumptions described in this subparagraph are as follows:

(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 10 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk funding target and at-risk target normal cost are being determined.

(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i) which would result in the highest present value of benefits).

**(C) Loading factor**

The loading factor applied with respect to a plan under this paragraph for any plan year is the sum of—

(i) \$700, times the number of participants in the plan, plus

(ii) 4 percent of the funding target (determined without regard to this paragraph) of the plan for the plan year.

**(2) Target normal cost of at-risk plans**

In the case of a plan which is in at-risk status for a plan year, the target normal cost of the plan for such plan year shall be equal to the sum of—

(A) the excess of—

(i) 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, determined using the additional actuarial assumptions described in paragraph (1)(B), plus

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

(ii) the amount of mandatory employee contributions expected to be made during the plan year, plus

(B) in the case of a plan which also has been in at-risk status for at least 2 of the 4 preceding plan years, a loading factor equal to 4 percent of the amount determined under subsection (b)(1)(A)(i) with respect to the plan for the plan year.

**(3) Minimum amount**

In no event shall—

(A) the at-risk funding target be less than the funding target, as determined without regard to this subsection, or

(B) the at-risk target normal cost be less than the target normal cost, as determined without regard to this subsection.

**(4) Determination of at-risk status**

For purposes of this subsection—

**(A) In general**

A plan is in at-risk status for a plan year if—

(i) the funding target attainment percentage for the preceding plan year (determined under this section without regard to this subsection) is less than 80 percent, and

(ii) the funding target attainment percentage for the preceding plan year (determined under this section by using the additional actuarial assumptions described in paragraph (1)(B) in computing the funding target) is less than 70 percent.

**(B) Transition rule**

In the case of plan years beginning in 2008, 2009, and 2010, subparagraph (A)(i) shall be applied by substituting the following percentages for "80 percent":

(i) 65 percent in the case of 2008.

(ii) 70 percent in the case of 2009.

(iii) 75 percent in the case of 2010.

In the case of plan years beginning in 2008, the funding target attainment percentage for the preceding plan year under subparagraph (A) may be determined using such methods of estimation as the Secretary may provide.

**(C) Special rule for employees offered early retirement in 2006**

**(i) In general**

For purposes of subparagraph (A)(ii), the additional actuarial assumptions described in paragraph (1)(B) shall not be taken into account with respect to any employee if—

(I) such employee is employed by a specified automobile manufacturer,

(II) such employee is offered a substantial amount of additional cash compensation, substantially enhanced retirement benefits under the plan, or materially reduced employment duties on the condition that by a specified date (not later than December 31, 2010) the employee retires (as defined under the terms of the plan),

(III) such offer is made during 2006 and pursuant to a bona fide retirement incentive program and requires, by the terms of the offer, that such offer can be accepted not later than a specified date (not later than December 31, 2006), and

(IV) such employee does not elect to accept such offer before the specified date on which the offer expires.

**(ii) Specified automobile manufacturer**

For purposes of clause (i), the term "specified automobile manufacturer" means—

(I) any manufacturer of automobiles, and

(II) any manufacturer of automobile parts which supplies such parts directly to a manufacturer of automobiles and which, after a transaction or series of transactions ending in 1999, ceased to be a member of a controlled group which included such manufacturer of automobiles.

**(5) Transition between applicable funding targets and between applicable target normal costs**

**(A) In general**

In any case in which a plan which is in at-risk status for a plan year has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

(i) the amount determined under this section without regard to this subsection, plus

(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

**(B) Transition percentage**

For purposes of subparagraph (A), the transition percentage shall be determined in accordance with the following table:

If the consecutive number of years (including the plan year) the plan is in at-risk status is—	The transition percentage is—
1 .....	20
2 .....	40
3 .....	60
4 .....	80.

**(C) Years before effective date**

For purposes of this paragraph, plan years beginning before 2008 shall not be taken into account.

**(6) Small plan exception**

If, on each day during the preceding plan year, a plan had 500 or fewer participants, the plan shall not be treated as in at-risk status for the plan year. For purposes of this paragraph, all defined benefit plans (other than multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account and the rules of subsection (g)(2)(C) shall apply.

**(j) Payment of minimum required contributions**

**(1) In general**

For purposes of this section, the due date for any payment of any minimum required contribution for any plan year shall be 8½ months after the close of the plan year.

**(2) Interest**

Any payment required under paragraph (1) for a plan year that is made on a date other than the valuation date for such plan year shall be adjusted for interest accruing for the period between the valuation date and the payment date, at the effective rate of interest for the plan for such plan year.

**(3) Accelerated quarterly contribution schedule for underfunded plans**

**(A) Failure to timely make required installment**

In any case in which the plan has a funding shortfall for the preceding plan year, the employer maintaining the plan shall make the required installments under this paragraph and if the employer fails to pay the full amount of a required installment for the plan year, then the amount of interest charged under paragraph (2) on the underpayment for the period of underpayment shall be determined by using a rate of interest equal to the rate otherwise used under paragraph (2) plus 5 percentage points. In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.

**(B) Amount of underpayment, period of underpayment**

For purposes of subparagraph (A)—

**(i) Amount**

The amount of the underpayment shall be the excess of—

(I) the required installment, over

(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

**(ii) Period of underpayment**

The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.

**(iii) Order of crediting contributions**

For purposes of clause (i)(II), contributions shall be credited against unpaid re-

quired installments in the order in which such installments are required to be paid.

**(C) Number of required installments; due dates**

For purposes of this paragraph—

**(i) Payable in 4 installments**

There shall be 4 required installments for each plan year.

**(ii) Time for payment of installments**

The due dates for required installments are set forth in the following table:

<b>In the case of the following required installment:</b>	<b>The due date is:</b>
1st .....	April 15
2nd .....	July 15
3rd .....	October 15
4th .....	January 15 of the following year.

**(D) Amount of required installment**

For purposes of this paragraph—

**(i) In general**

The amount of any required installment shall be 25 percent of the required annual payment.

**(ii) Required annual payment**

For purposes of clause (i), the term “required annual payment” means the lesser of—

(I) 90 percent of the minimum required contribution (determined without regard to this subsection) to the plan for the plan year under this section, or

(II) 100 percent of the minimum required contribution (determined without regard to this subsection or to any waiver under section 412(c)) to the plan for the preceding plan year.

Subclause (II) shall not apply if the preceding plan year referred to in such clause was not a year of 12 months.

**(E) Fiscal years, short years, and years with alternate valuation date**

**(i) Fiscal years**

In applying this paragraph to a plan year beginning on any date other than January 1, there shall be substituted for the months specified in this paragraph, the months which correspond thereto.

**(ii) Short plan year**

This subparagraph shall be applied to plan years of less than 12 months in accordance with regulations prescribed by the Secretary.

**(iii) Plan with alternate valuation date**

The Secretary shall prescribe regulations for the application of this paragraph in the case of a plan which has a valuation date other than the first day of the plan year.

**(F) Quarterly contributions not to include certain increased contributions**

Subparagraph (D) shall be applied without regard to any increase under subsection (c)(7).

**(4) Liquidity requirement in connection with quarterly contributions**

**(A) In general**

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment under paragraph (3) to the extent that the value of the liquid assets paid in such installment is less than the liquidity shortfall (whether or not such liquidity shortfall exceeds the amount of such installment required to be paid but for this paragraph).

**(B) Plans to which paragraph applies**

This paragraph shall apply to a plan (other than a plan described in subsection (g)(2)(B)) which—

(i) is required to pay installments under paragraph (3) for a plan year, and

(ii) has a liquidity shortfall for any quarter during such plan year.

**(C) Period of underpayment**

For purposes of paragraph (3)(A), any portion of an installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

**(D) Limitation on increase**

If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

**(E) Definitions**

For purposes of this paragraph—

**(i) Liquidity shortfall**

The term “liquidity shortfall” means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

(I) the base amount with respect to such quarter, over

(II) the value (as of such last day) of the plan’s liquid assets.

**(ii) Base amount**

**(I) In general**

The term “base amount” means, with respect to any quarter, an amount equal to 3 times the sum of the adjusted disbursements from the plan for the 12 months ending on the last day of such quarter.

**(II) Special rule**

If the amount determined under subclause (I) exceeds an amount equal to 2 times the sum of the adjusted disbursements from the plan for the 36 months ending on the last day of the quarter and an enrolled actuary certifies to the satis-

faction of the Secretary that such excess is the result of nonrecurring circumstances, the base amount with respect to such quarter shall be determined without regard to amounts related to those nonrecurring circumstances.

**(iii) Disbursements from the plan**

The term “disbursements from the plan” means all disbursements from the trust, including purchases of annuities, payments of single sums and other benefits, and administrative expenses.

**(iv) Adjusted disbursements**

The term “adjusted disbursements” means disbursements from the plan reduced by the product of—

(I) the plan’s funding target attainment percentage for the plan year, and

(II) the sum of the purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall provide in regulations.

**(v) Liquid assets**

The term “liquid assets” means cash, marketable securities, and such other assets as specified by the Secretary in regulations.

**(vi) Quarter**

The term “quarter” means, with respect to any required installment, the 3-month period preceding the month in which the due date for such installment occurs.

**(F) Regulations**

The Secretary may prescribe such regulations as are necessary to carry out this paragraph.

**(k) Imposition of lien where failure to make required contributions**

**(1) In general**

In the case of a plan to which this subsection applies (as provided under paragraph (2)), if—

(A) any person fails to make a contribution payment required by section 412 and this section before the due date for such payment, and

(B) the unpaid balance of such payment (including interest), when added to the aggregate unpaid balance of all preceding such payments for which payment was not made before the due date (including interest), exceeds \$1,000,000,

then there shall be a lien in favor of the plan in the amount determined under paragraph (3) upon all property and rights to property, whether real or personal, belonging to such person and any other person who is a member of the same controlled group of which such person is a member.

**(2) Plans to which subsection applies**

This subsection shall apply to a defined benefit plan (other than a multiemployer plan) covered under section 4021 of the Employee Retirement Income Security Act of 1974 for any plan year for which the funding target attainment percentage (as defined in subsection (d)(2)) of such plan is less than 100 percent.

**(3) Amount of lien**

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of contribution payments required under this section and section 412 for which payment has not been made before the due date.

**(4) Notice of failure; lien**

**(A) Notice of failure**

A person committing a failure described in paragraph (1) shall notify the Pension Benefit Guaranty Corporation of such failure within 10 days of the due date for the required contribution payment.

**(B) Period of lien**

The lien imposed by paragraph (1) shall arise on the due date for the required contribution payment and shall continue until the last day of the first plan year in which the plan ceases to be described in paragraph (1)(B). Such lien shall continue to run without regard to whether such plan continues to be described in paragraph (2) during the period referred to in the preceding sentence.

**(C) Certain rules to apply**

Any amount with respect to which a lien is imposed under paragraph (1) shall be treated as taxes due and owing the United States and rules similar to the rules of subsections (c), (d), and (e) of section 4068 of the Employee Retirement Income Security Act of 1974 shall apply with respect to a lien imposed by subsection (a) and the amount with respect to such lien.

**(5) Enforcement**

Any lien created under paragraph (1) may be perfected and enforced only by the Pension Benefit Guaranty Corporation, or at the direction of the Pension Benefit Guaranty Corporation, by the contributing sponsor (or any member of the controlled group of the contributing sponsor).

**(6) Definitions**

For purposes of this subsection—

**(A) Contribution payment**

The term “contribution payment” means, in connection with a plan, a contribution payment required to be made to the plan, including any required installment under paragraphs (3) and (4) of subsection (j).

**(B) Due date; required installment**

The terms “due date” and “required installment” have the meanings given such terms by subsection (j).

**(C) Controlled group**

The term “controlled group” means any group treated as a single employer under subsections (b), (c), (m), and (o) of section 414.

**(I) Qualified transfers to health benefit accounts**

In the case of a qualified transfer (as defined in section 420), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.

(Added Pub. L. 109–280, title I, §112(a), Aug. 17, 2006, 120 Stat. 826; amended Pub. L. 110–458, title I, §§101(b)(2), 121(b), title II, §202(b), Dec. 23, 2008, 122 Stat. 5095, 5113, 5118; Pub. L. 111–192, title II, §201(b), 204(b), June 25, 2010, 124 Stat. 1290, 1301; Pub. L. 112–141, div. D, title II, §40211(a)(1), (2)(B), July 6, 2012, 126 Stat. 846, 847; Pub. L. 113–159, title II, §2003(a), (d)(1), Aug. 8, 2014, 128 Stat. 1849, 1851; Pub. L. 113–295, div. A, title II, §221(a)(57)(C)(i), (D)(i), Dec. 19, 2014, 128 Stat. 4046; Pub. L. 114–74, title V, §504(a), Nov. 2, 2015, 129 Stat. 593.)

#### INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

*For inflation adjustment of certain items in this section, see Internal Revenue Notices listed in a table under section 401 of this title.*

#### REFERENCES IN TEXT

Section 106 of the Pension Protection Act of 2006, referred to in subsec. (c)(2)(D)(iv)(I), is section 106 of Pub. L. 109–280, which is set out as a note under section 401 of this title.

The date of the enactment of this subparagraph, referred to in subsec. (c)(2)(D)(v), is the date of enactment of Pub. L. 111–192, which was approved June 25, 2010.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(7)(E)(i)(I), (v)(II), (h)(5)(B)(i), (ii), and (k)(2), (4)(C), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829. Title I of the Act is classified generally to subchapter I (§1001 et seq.) of chapter 18 of Title 29, Labor. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29. Sections 4001, 4006, 4021, 4043, and 4068 of the Act are classified to sections 1301, 1306, 1321, 1343, and 1368, respectively, of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 417(e)(3)(D)(i), referred to in subsec. (h)(2)(F), was redesignated subsec. (e)(3)(D) by Pub. L. 113–295, div. A, title II, §221(a)(57)(B)(i), Dec. 19, 2014, 128 Stat. 4046.

The Social Security Act, referred to in subsec. (h)(3)(D)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

#### AMENDMENTS

2015—Subsec. (h)(2)(C)(iv)(II). Pub. L. 114–74 amended table generally. Prior to amendment, table related to applicable minimum and maximum percentages for calendar years 2012 to 2020 and after.

2014—Subsec. (c)(5). Pub. L. 113–295, §221(a)(57)(C)(i), struck out subpar. (A) designation and heading and subpar. (B) which related to a transition rule for plan years beginning after 2007 and before 2011.

Subsec. (h)(2)(B)(i). Pub. L. 113–159, §2003(d)(1), substituted “the valuation date for the plan year” for “the first day of the plan year”.

Subsec. (h)(2)(C)(iv)(II). Pub. L. 113–159, §2003(a), amended table generally. Prior to amendment, table related to applicable minimum and maximum percentages for calendar years 2012 to 2015 and after.

Subsec. (h)(2)(G). Pub. L. 113–295, §221(a)(57)(D)(i), struck out subpar. (G) which related to a transition rule for plan years beginning in 2008 or 2009.

2012—Subsec. (h)(2)(C)(iv). Pub. L. 112–141, §40211(a)(1), added cl. (iv).

Subsec. (h)(2)(F). Pub. L. 112–141, §40211(a)(2)(B), inserted “and the averages determined under subparagraph (C)(iv)” after “subparagraph (C)”.

2010—Subsec. (c)(1). Pub. L. 111–192, §201(b)(3)(A), substituted “any shortfall amortization base which has

not been fully amortized under this subsection” for “the shortfall amortization bases for such plan year and each of the 6 preceding plan years”.

Subsec. (c)(2)(D). Pub. L. 111–192, §201(b)(1), added subpar. (D).

Subsec. (c)(7). Pub. L. 111–192, §201(b)(2), added par. (7).

Subsec. (f)(3)(D). Pub. L. 111–192, §204(b), added subpar. (D).

Subsec. (j)(3)(F). Pub. L. 111–192, §201(b)(3)(B), added subpar. (F).

2008—Subsec. (b). Pub. L. 110–458, §101(b)(2)(A), amended subsec. (b) generally. Prior to amendment, text read as follows: “For purposes of this section, 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 present value of all benefits which are expected to accrue or to be earned under the plan during the plan year. 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.”

Subsec. (c)(5)(B)(i). Pub. L. 110–458, §202(b)(2), added cl. (i) and struck out former cl. (i). Prior to amendment, text read as follows: “Except as provided in clauses (iii) and (iv), in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year for purposes of subparagraph (A).”

Subsec. (c)(5)(B)(iii). Pub. L. 110–458, §202(b)(1), redesignated cl. (iv) as (iii) and struck out former cl. (iii). Prior to amendment, text read as follows: “Clause (i) shall not apply with respect to any plan year beginning after 2008 unless the shortfall amortization base for each of the preceding years beginning after 2007 was zero (determined after application of this subparagraph).”

Pub. L. 110–458, §101(b)(2)(B), inserted “beginning” before “after 2008”.

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

Subsec. (c)(5)(B)(iv)(II). Pub. L. 110–458, §101(b)(2)(C), inserted “for such year” after “beginning in 2007”.

Subsec. (f)(3)(A). Pub. L. 110–458, §101(b)(2)(D)(i), struck out “as of the first day of the plan year” after “credited by the plan sponsor”.

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

Subsec. (f)(6)(B)(iii). Pub. L. 110–458, §101(b)(2)(D)(iii), substituted “subsection (b), (c), or (e) of section 436” for “paragraph (1), (2), or (4) of section 206(g)”.

Subsec. (f)(6)(C). Pub. L. 110–458, §101(b)(2)(D)(iv), struck out “the sum of” after “by” in introductory provisions.

Subsec. (f)(8). Pub. L. 110–458, §101(b)(2)(D)(v), struck out “of the Treasury” after “by the Secretary”.

Subsec. (g)(3)(B). Pub. L. 110–458, §121(b), 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).”

Subsec. (h)(2)(B). Pub. L. 110–458, §101(b)(2)(E)(i), (ii), in introductory provisions, inserted “and target normal cost” after “funding target” and substituted “benefits” for “liabilities”.

Subsec. (h)(2)(F). Pub. L. 110–458, §101(b)(2)(E)(iii), (iv), substituted “section 417(e)(3)(D)(i) for such month” for “section 417(e)(3)(D)(i) for such month” and “subparagraph (C)” for “subparagraph (B)”.

Subsec. (i)(2)(A). Pub. L. 110–458, §101(b)(2)(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)(2)(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)(2)(F)(ii), substituted “subparagraph (A)” for “subparagraph (A)(ii)” in concluding provisions.

Subsec. (j)(3)(A). Pub. L. 110-458, §101(b)(2)(G)(i), inserted at end “In the case of plan years beginning in 2008, the funding shortfall for the preceding plan year may be determined using such methods of estimation as the Secretary may provide.”

Subsec. (j)(3)(D)(ii)(II). Pub. L. 110-458, §101(b)(2)(G)(ii), substituted “section 412(c)” for “section 302(c)”.

Subsec. (j)(3)(E). Pub. L. 110-458, §101(b)(2)(G)(iii), (iv), substituted “, short years, and years with alternate valuation date” for “and short years” in heading and added cl. (iii).

Subsec. (k)(1). Pub. L. 110-458, §101(b)(2)(H)(i), inserted “(as provided under paragraph (2))” after “applies” in introductory provisions.

Subsec. (k)(6)(B). Pub. L. 110-458, §101(b)(2)(H)(ii), 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 section 430” before period at end.

#### EFFECTIVE DATE OF 2015 AMENDMENT

Pub. L. 114-74, title V, §504(c), Nov. 2, 2015, 129 Stat. 594, provided that: “The amendments made by this section [amending this section and sections 1021 and 1083 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2015.”

#### EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113-295, set out as a note under section 1 of this title.

Pub. L. 113-159, title II, §2003(e), Aug. 8, 2014, 128 Stat. 1851, provided that:

“(1) IN GENERAL.—The amendments made by subsections (a), (b), and (d) [amending this section and sections 1021 and 1083 of Title 29, Labor] shall apply with respect to plan years beginning after December 31, 2012.

“(2) ELECTIONS.—A plan sponsor may elect not to have the amendments made by subsections (a), (b), and (d) apply to any plan year beginning before January 1, 2014, either (as specified in the election)—

“(A) for all purposes for which such amendments apply, or

“(B) solely for purposes of determining the adjusted funding target attainment percentage under sections 436 of the Internal Revenue Code of 1986 [26 U.S.C. 436] and 206(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1054(g) [probably should be 29 U.S.C. 1056(g)]) for such plan year.

A plan shall not be treated as failing to meet the requirements of section 204(g) of such Act [29 U.S.C. 1054(g)] and section 411(d)(6) of such Code [26 U.S.C. 411(d)(6)] solely by reason of an election under this paragraph.”

#### EFFECTIVE DATE OF 2012 AMENDMENT

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

#### EFFECTIVE DATE OF 2010 AMENDMENT

Pub. L. 111-192, title II, §201(c), June 25, 2010, 124 Stat. 1296, provided that: “The amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall apply to plan years beginning after December 31, 2007.”

Pub. L. 111-192, title II, §204(c), June 25, 2010, 124 Stat. 1302, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall apply to plan years beginning after August 31, 2009.

“(2) SPECIAL RULE.—In the case of a plan for which the valuation date is not the first day of the plan year, the amendments made by this section shall apply to plan years beginning after December 31, 2008.”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-458, title I, §101(b)(3), Dec. 23, 2008, 122 Stat. 5096, provided that:

“(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by paragraphs (1)(A) [amending section 1083 of Title 29, Labor], (1)(F)(i) [amending section 1083 of Title 29], (2)(A) [amending this section], and (2)(F)(i) [amending this section] shall apply to plan years beginning after December 31, 2008.”

“(B) ELECTION FOR EARLIER APPLICATION.—The amendments made by such paragraphs shall apply to a plan for the first plan year beginning after December 31, 2007, if the plan sponsor makes the election under this subparagraph. An election under this subparagraph shall be made at such time and in such manner as the Secretary of the Treasury or the Secretary’s delegate may prescribe, and, once made, may be revoked only with the consent of the Secretary.”

Amendment by section 101(b)(2)(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 this title.

Pub. L. 110-458, title I, §121(c), Dec. 23, 2008, 122 Stat. 5114, provided that: “The amendments made by this section [amending this section and section 1083 of Title 29, Labor] shall take effect as if included in the provisions of the 2006 Act [Pub. L. 109-280] to which the amendments relate.”

Pub. L. 110-458, title II, §202(c), Dec. 23, 2008, 122 Stat. 5118, provided that: “The amendments made by subsections (a) and (b) [amending this section and section 1083 of Title 29, Labor] shall apply as if included in the enactment of sections 102 and 112, respectively, of the Pension Protection Act of 2006 [Pub. L. 109-280].”

#### EFFECTIVE DATE

Pub. L. 109-280, title I, §112(b), Aug. 17, 2006, 120 Stat. 846, provided that: “The amendments made by this section [enacting this section] shall apply with respect to plan years beginning after December 31, 2007.”

#### MORTALITY TABLES

Pub. L. 114-74, title V, §503, Nov. 2, 2015, 129 Stat. 593, provided that:

“(a) CREDIBILITY.—For purposes of subclause (I) of section 430(h)(3)(C)(iii) of the Internal Revenue Code of 1986 and subclause (I) of section 303(h)(3)(C)(iii) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(h)(3)(C)(iii)], the determination of whether plans have credible information shall be made in accordance with established actuarial credibility theory, which—

“(1) is materially different from rules under such section of such Code, including Revenue Procedure 2007-37, that are in effect on the date of the enactment of this Act [Nov. 2, 2015]; and

“(2) permits the use of tables that reflect adjustments to the tables described in subparagraphs (A) and (B) of section 430(h)(3) of such Code, and subparagraphs (A) and (B) of section 303(h)(3) of such Act, if such adjustments are based on the experience described in subclause (II) of section 430(h)(3)(C)(iii) of such Code and in subclause (II) of section 303(h)(3)(C)(iii) of such Act.

“(b) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2015.”

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

For special rules on applicability of 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 this title.

MODIFICATION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS

Pub. L. 109-280, title I, §115(a)-(c), Aug. 17, 2006, 120 Stat. 855, 856, provided that:

- “(a) IN GENERAL.—In the case of a plan that—
“(1) was not required to pay a variable rate premium for the plan year beginning in 1996.
“(2) 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
“(3) is sponsored by a company that is engaged primarily in the interurban or interstate passenger bus service,

the rules described in subsection (b) shall apply for any plan year beginning after December 31, 2007.

“(b) MODIFIED RULES.—The rules described in this subsection are as follows:

- “(1) For purposes of section 430(j)(3) of the Internal Revenue Code of 1986 and section 303(j)(3) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083(j)(3)], the plan shall be treated as not having a funding shortfall for any plan year.
“(2) For purposes of—
“(A) determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of such Act [29 U.S.C. 1306(a)(3)(E)(iii)], and
“(B) determining any present value or making any computation under section 412 of such Code or section 302 of such Act [29 U.S.C. 1082],

the mortality table shall be the mortality table used by the plan.

- “(3) [Former] Section 430(c)(5)(B) of such Code and [former] section 303(c)(5)(B) of such Act [29 U.S.C. 1083(c)(5)(B)] (relating to phase-in of funding target for exemption from new shortfall amortization base) shall each be applied by substituting ‘2012’ for ‘2011’ therein and by substituting for the table therein the following:

Table with 2 columns: 'In the case of a plan year beginning in calendar year:' and 'The applicable percentage is:'. Rows for years 2008 (90 percent), 2009 (92 percent), 2010 (94 percent), and 2011 (96 percent).

“(c) DEFINITIONS.—Any term used in this section which is also used in section 430 of such Code or section 303 of such Act [29 U.S.C. 1083] shall have the meaning provided such term in such section. If the same term has a different meaning in such Code and such Act [29 U.S.C. 1001 et seq.], such term shall, for purposes of this section, have the meaning provided by such Code when applied with respect to such Code and the meaning provided by such Act when applied with respect to such Act.”

SPECIAL FUNDING RULES FOR CERTAIN PLANS MAINTAINED BY COMMERCIAL AIRLINES

Pub. L. 109-280, title IV, §402, Aug. 17, 2006, 120 Stat. 922, as amended by Pub. L. 110-28, title VI, §§6614(a), 6615(a), May 25, 2007, 121 Stat. 181; Pub. L. 110-458, title I, §§104(b), 126(a), Dec. 23, 2008, 122 Stat. 5104, 5116, provided that:

- “(a) IN GENERAL.—The plan sponsor of an eligible plan may elect to either—
“(1) have the rules of subsection (b) apply, or
“(2) have section 303 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1083] and section 430 of the Internal Revenue Code of 1986 applied to its first taxable year beginning in 2008 by amortizing the shortfall amortization base for such taxable

year over a period of 10 plan years (rather than 7 plan years) beginning with such plan year and by using, in determining the funding target for each of the 10 plan years during such period, an interest rate of 8.25 percent (rather than the segment rates calculated on the basis of the corporate bond yield curve).

- “(b) ALTERNATIVE FUNDING SCHEDULE.—
“(1) IN GENERAL.—If an election is made under subsection (a)(1) to have this subsection apply to an eligible plan and the requirements of paragraphs (2) and (3) are met with respect to the plan—

“(A) in the case of any applicable plan year beginning before January 1, 2008, the plan shall not have an accumulated funding deficiency for purposes of section 302 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082] and sections 412 and 4971 of the Internal Revenue Code of 1986 if contributions to the plan for the plan year are not less than the minimum required contribution determined under subsection (e) for the plan for the plan year, and

“(B) in the case of any applicable plan year beginning on or after January 1, 2008, the minimum required contribution determined under sections 303 of such Act [29 U.S.C. 1083] and 430 of such Code shall, for purposes of sections 302 and 303 of such Act and sections 412, 430, and 4971 of such Code, be equal to the minimum required contribution determined under subsection (e) for the plan for the plan year.

- “(2) ACCRUAL RESTRICTIONS.—
“(A) IN GENERAL.—The requirements of this paragraph are met if, effective as of the first day of the first applicable plan year and at all times thereafter while an election under this section is in effect, the plan provides that—

- “(i) the accrued benefit, any death or disability benefit, and any social security supplement described in the last sentence of section 411(a)(9) of such Code and section 204(b)(1)(G) of such Act [29 U.S.C. 1054(b)(1)(G)], of each participant are frozen at the amount of such benefit or supplement immediately before such first day, and
“(ii) all other benefits under the plan are eliminated,

but only to the extent the freezing or elimination of such benefits would have been permitted under section 411(d)(6) of such Code and section 204(g) of such Act if they had been implemented by a plan amendment adopted immediately before such first day.

“(B) INCREASES IN SECTION 415 LIMITS.—If a plan provides that an accrued benefit of a participant which has been subject to any limitation under section 415 of such Code will be increased if such limitation is increased, the plan shall not be treated as meeting the requirements of this section unless, effective as of the first day of the first applicable plan year (or, if later, the date of the enactment of this Act [Aug. 17, 2006]) and at all times thereafter while an election under this section is in effect, the plan provides that any such increase shall not take effect. A plan shall not fail to meet the requirements of section 411(d)(6) of such Code and section 204(g) of such Act solely because the plan is amended to meet the requirements of this subparagraph.

- “(3) RESTRICTION ON APPLICABLE BENEFIT INCREASES.—

“(A) IN GENERAL.—The requirements of this paragraph are met if no applicable benefit increase takes effect at any time during the period beginning on July 26, 2005, and ending on the day before the first day of the first applicable plan year.

“(B) APPLICABLE BENEFIT INCREASE.—For purposes of this paragraph, the term ‘applicable benefit increase’ means, with respect to any plan year, any increase in liabilities of the plan by plan amendment (or otherwise provided in regulations provided by the Secretary) which, but for this paragraph, would occur during the plan year by reason of—

- “(i) any increase in benefits,
- “(ii) any change in the accrual of benefits, or
- “(iii) any change in the rate at which benefits become nonforfeitable under the plan.

“(4) EXCEPTION FOR IMPUTED DISABILITY SERVICE.—Paragraphs (2) and (3) shall not apply to any accrual or increase with respect to imputed service provided to a participant during any period of the participant’s disability occurring on or after the effective date of the plan amendment providing the restrictions under paragraph (2) (or on or after July 26, 2005, in the case of the restrictions under paragraph (3)) if the participant—

“(A) was receiving disability benefits as of such date, or

“(B) was receiving sick pay and subsequently determined to be eligible for disability benefits as of such date.

“(c) DEFINITIONS.—For purposes of this section—

“(1) ELIGIBLE PLAN.—The term ‘eligible plan’ means a defined benefit plan (other than a multiemployer plan) to which sections 302 of such Act [29 U.S.C. 1082] and 412 of such Code applies which is sponsored by an employer—

“(A) which is a commercial passenger airline, or

“(B) the principal business of which is providing catering services to a commercial passenger airline.

“(2) APPLICABLE PLAN YEAR.—The term ‘applicable plan year’ means each plan year to which the election under subsection (a)(1) applies under subsection (d)(1)(A).

“(d) ELECTIONS AND RELATED TERMS.—

“(1) YEARS FOR WHICH ELECTION MADE.—

“(A) ALTERNATIVE FUNDING SCHEDULE.—If an election under subsection (a)(1) was made with respect to an eligible plan, the plan sponsor may select either a plan year beginning in 2006 or a plan year beginning in 2007 as the first plan year to which such election applies. The election shall apply to such plan year and all subsequent years. The election shall be made—

“(i) not later than December 31, 2006, in the case of an election for a plan year beginning in 2006, or

“(ii) not later than December 31, 2007, in the case of an election for a plan year beginning in 2007.

“(B) 10 YEAR AMORTIZATION.—An election under subsection (a)(2) shall be made not later than December 31, 2007.

“(C) ELECTION OF NEW PLAN YEAR FOR ALTERNATIVE FUNDING SCHEDULE.—In the case of an election under subsection (a)(1), the plan sponsor may specify a new plan year in such election and the plan year of the plan may be changed to such new plan year without the approval of the Secretary of the Treasury.

“(2) MANNER OF ELECTION.—A plan sponsor shall make any election under subsection (a) in such manner as the Secretary of the Treasury may prescribe. Such election, once made, may be revoked only with the consent of such Secretary.

“(e) MINIMUM REQUIRED CONTRIBUTION.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

“(1) IN GENERAL.—In the case of any applicable plan year during the amortization period, the minimum required contribution shall be the amount necessary to amortize the unfunded liability of the plan, determined as of the first day of the plan year, in equal annual installments (until fully amortized) over the remainder of the amortization period. Such amount shall be separately determined for each applicable plan year.

“(2) YEARS AFTER AMORTIZATION PERIOD.—In the case of any plan year beginning after the end of the amortization period, section 302(a)(2)(A) of such Act [29 U.S.C. 1082(a)(2)(A)] and section 412(a)(2)(A) of such Code shall apply to such plan, but the prefunding balance and funding standard carryover balance as of the first day of the first of such years

under section 303(f) of such Act [29 U.S.C. 1083(f)] and section 430(f) of such Code shall be zero.

“(3) DEFINITIONS.—For purposes of this section—

“(A) UNFUNDED LIABILITY.—The term ‘unfunded liability’ means the unfunded accrued liability under the plan, determined under the unit credit funding method.

“(B) AMORTIZATION PERIOD.—The term ‘amortization period’ means the 17-plan year period beginning with the first applicable plan year.

“(4) OTHER RULES.—In determining the minimum required contribution and amortization amount under this subsection—

“(A) the provisions of section 302(c)(3) of such Act and section 412(c)(3) of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall apply,

“(B) a rate of interest of 8.85 percent shall be used for all calculations requiring an interest rate, and

“(C) the value of plan assets shall be determined under sections 303(g)(3) of such Act [29 U.S.C. 1083(g)(3)] and 430(g)(3) of such Code.

“(5) SPECIAL RULE FOR CERTAIN PLAN SPINOFFS.—For purposes of subsection (b), if, with respect to any eligible plan to which this subsection applies—

“(A) any applicable plan year includes the date of the enactment of this Act,

“(B) a plan was spun off from the eligible plan during the plan year but before such date of enactment,

the minimum required contribution under paragraph (1) for the eligible plan for such applicable plan year shall be an aggregate amount determined as if the plans were a single plan for that plan year (based on the full 12-month plan year in effect prior to the spin-off). The employer shall designate the allocation of such aggregate amount between such plans for the applicable plan year.

“(f) SPECIAL RULES FOR CERTAIN BALANCES AND WAIVERS.—In the case of an eligible plan with respect to which an election is made under subsection (a)(1)—

“(1) FUNDING STANDARD ACCOUNT AND CREDIT BALANCES.—Any charge or credit in the funding standard account under section 302 of such Act [29 U.S.C. 1082] or section 412 of such Code, and any prefunding balance or funding standard carryover balance under section 303 of such Act [29 U.S.C. 1083] or section 430 of such Code, as of the day before the first day of the first applicable plan year, shall be reduced to zero.

“(2) WAIVED FUNDING DEFICIENCIES.—Any waived funding deficiency under sections 302 and 303 of such Act or section 412 of such Code, as in effect before the date of enactment of this section [Aug. 17, 2006], shall be deemed satisfied as of the first day of the first applicable plan year and the amount of such waived funding deficiency shall be taken into account in determining the plan’s unfunded liability under subsection (e)(3)(A). In the case of a plan amendment adopted to satisfy the requirements of subsection (b)(2), the plan shall not be deemed to violate section 304(b) of such Act [29 U.S.C. 1084(b)] or section 412(f) of such Code, as so in effect, by reason of such amendment or any increase in benefits provided to such plan’s participants under a separate plan that is a defined contribution plan or a multiemployer plan.

“(g) OTHER RULES FOR PLANS MAKING ELECTION UNDER THIS SECTION.—

“(1) SUCCESSOR PLANS TO CERTAIN PLANS.—If—

“(A) an election under paragraph (1) or (2) of subsection (a) is in effect with respect to any eligible plan, and

“(B) the eligible plan is maintained by an employer that establishes or maintains 1 or more other defined benefit plans (other than any multiemployer plan), and such other plans in combination provide benefit accruals to any substantial number of successor employees,

the Secretary of the Treasury may, in the Secretary’s discretion, determine that any trust of which any other such plan is a part does not constitute a quali-

fied trust under section 401(a) of the Internal Revenue Code of 1986 unless all benefit obligations of the eligible plan have been satisfied. For purposes of this paragraph, the term ‘successor employee’ means any employee who is or was covered by the eligible plan and any employees who perform substantially the same type of work with respect to the same business operations as an employee covered by such eligible plan.

“(2) SPECIAL RULES FOR TERMINATIONS.—

“(A) PBGC LIABILITY LIMITED.—[Amended section 1322 of Title 29, Labor.]

“(B) TERMINATION PREMIUM.—In applying section 4006(a)(7)(A) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1306(a)(7)(A)] to an eligible plan during any period in which an election under subsection (a)(1) is in effect—

“(i) ‘\$2,500’ shall be substituted for ‘\$1,250’ in such section if such plan terminates during the 5-year period beginning on the first day of the first applicable plan year with respect to such plan, and

“(ii) such section shall be applied without regard to subparagraph (B) of section 8101(d)(2) of the Deficit Reduction Act of 2005 [Pub. L. 109-171, 29 U.S.C. 1306 note] (relating to special rule for plans terminated in bankruptcy).

The substitution described in clause (i) shall not apply with respect to any plan if the Secretary of Labor determines that such plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

“(3) LIMITATION ON DEDUCTIONS UNDER CERTAIN PLANS.—Section 404(a)(7)(C)(iv) of the Internal Revenue Code of 1986, as added by this Act, shall not apply with respect to any taxable year of a plan sponsor of an eligible plan if any applicable plan year with respect to such plan ends with or within such taxable year.

“(4) NOTICE.—In the case of a plan amendment adopted in order to comply with this section, any notice required under section 204(h) of such Act [29 U.S.C. 1054(h)] or section 4980F(e) of such Code shall be provided within 15 days of the effective date of such plan amendment. This subsection shall not apply to any plan unless such plan is maintained pursuant to one or more collective bargaining agreements between employee representatives and 1 or more employers.

“(h) EXCLUSION OF CERTAIN EMPLOYEES FROM MINIMUM COVERAGE REQUIREMENTS.—

“(1) IN GENERAL.—[Amended section 410 of this title.]

“(2) EFFECTIVE DATE.—The amendment made by this subsection [amending section 410 of this title] shall apply to years beginning before, on, or after the date of the enactment of this Act [Aug. 17, 2006].

“(i) EXTENSION OF SPECIAL RULE FOR ADDITIONAL FUNDING REQUIREMENTS.—In the case of an employer which is a commercial passenger airline, section 302(d)(12) of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1082(d)(12)] and section 412(l)(12) of the Internal Revenue Code of 1986, as in effect before the date of the enactment of this Act [Aug. 17, 2006], shall each be applied—

“(1) by substituting ‘January 1, 2008’ for ‘December 28, 2005’ in subparagraph (D)(i) thereof, and

“(2) without regard to subparagraph (D)(ii).

“(j) EFFECTIVE DATE.—Except as otherwise provided in this section, the provisions of and amendments made by this section [amending section 410 of this title and section 1322 of Title 29, Labor] shall apply to plan years ending after the date of the enactment of this Act [Aug. 17, 2006].”

[Pub. L. 110-458, title I, §126(b), Dec. 23, 2008, 122 Stat. 5116, provided that: “The amendment made by this section [amending section 402(e)(4)(C) of Pub. L. 109-280, set out above] shall apply to plan years beginning after December 31, 2007.”]

[Pub. L. 110-28, title VI, §6614(b), May 25, 2007, 121 Stat. 181, provided that: “The amendment made by sub-

section (a) [amending section 402(i)(1) of Pub. L. 109-280, set out above] shall take effect as if included in section 402 of the Pension Protection Act of 2006 [Pub. L. 109-280].”]

[Pub. L. 110-28, title VI, §6615(b), May 25, 2007, 121 Stat. 181, provided that: “The amendment made by this section [amending section 402(a)(2) of Pub. L. 109-280, set out above] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109-280] to which such amendment relates.”]

### § 431. Minimum funding standards for multiemployer plans

#### (a) In general

For purposes of section 412, the accumulated funding deficiency of a multiemployer plan for any plan year is 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.

#### (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 412(c)(3)) 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 412(b)(3)(D) (as in effect