

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1998

For provisions directing that if any amendments made by subtitle D [§§1401–1465] of title I of Pub. L. 104–188 require an amendment to any plan or annuity contract, such amendment shall not be required to be made before the first day of the first plan year beginning on or after Jan. 1, 1998, see section 1465 of Pub. L. 104–188, set out as a note under section 401 of this title.

PLAN AMENDMENTS NOT REQUIRED UNTIL  
JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

SUBPART C—INSOLVENT PLANS

Sec.

[418 to 418D. Repealed.]

418E. Insolvent plans.

AMENDMENTS

2014—Pub. L. 113–235, div. O, title I, §108(b)(3)(B), (C), Dec. 16, 2014, 128 Stat. 2789, substituted “Insolvent Plans” for “Special Rules for Multiemployer Plans” in subpart heading and struck out items 418 “Reorganization status”, 418A “Notice of reorganization and funding requirements”, 418B “Minimum contribution requirement”, 418C “Overburden credit against minimum contribution requirement”, and 418D “Adjustments in accrued benefits”.

1980—Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1271, added subpart C heading “Special Rules for Multiemployer Plans” and items 418 to 418E.

**[§§ 418 to 418D. Repealed. Pub. L. 113–235, div. O, title I, §108(b)(1), Dec. 16, 2014, 128 Stat. 2787]**

Section 418, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1271, related to reorganization status.

Section 418A, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1274, related to notice of reorganization and funding requirements.

Section 418B, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1274, related to minimum contribution requirement.

Section 418C, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1278, related to overburden credit against minimum contribution requirement.

Section 418D, added Pub. L. 96–364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1280, related to adjustments in accrued benefits.

EFFECTIVE DATE OF REPEAL

Pub. L. 113–235, div. O, title I, §108(c), Dec. 16, 2014, 128 Stat. 2789, provided that: “The amendments made by this section [amending sections 418E and 431 of this title and sections 1084, 1301, and 1426 of Title 29, Labor, and repealing sections 418 to 418D of this title and sections 1421 to 1425 of Title 29] shall apply with respect to plan years beginning after December 31, 2014.”

**§ 418E. Insolvent plans**

**(a) Suspension of certain benefit payments**

Notwithstanding section 411, in any case in which benefit payments under an insolvent multiemployer plan exceed the resource benefit level, any such payments of benefits which are not basic benefits shall be suspended, in accord-

ance with this section, to the extent necessary to reduce the sum of such payments and the payments of such basic benefits to the greater of the resource benefit level or the level of basic benefits, unless an alternative procedure is prescribed by the Pension Benefit Guaranty Corporation under section 4022A(g)(5) of the Employee Retirement Income Security Act of 1974.

**(b) Definitions**

For purposes of this section, for a plan year—

**(1) Insolvency**

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

**(2) Resource benefit level**

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

**(3) Available resources**

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

**(4) Insolvency year**

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

**(c) Benefit payments under insolvent plans**

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

The plan sponsor of a plan in critical status, as described in subsection<sup>1</sup> 432(b)(2), shall determine in writing the plan’s resource benefit level for each insolvency year, based on the plan sponsor’s reasonable projection of the plan’s available resources and the benefits payable under the plan.

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

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

(B) For purposes of this paragraph—

(i) the term “person in pay status” means—

(I) a participant or beneficiary on the last day of the base plan year who, at any time during such year, was paid an early, late, normal, or disability retirement benefit (or a death benefit related to a retirement benefit), and

<sup>1</sup> So in original. Probably should be “section”.

(II) to the extent provided in regulations prescribed by the Secretary of the Treasury, any other person who is entitled to such a benefit under the plan.

(ii) the base plan year for any plan year is—

(I) if there is a relevant collective bargaining agreement, the last plan year ending at least 6 months before the relevant effective date, or

(II) if there is no relevant collective bargaining agreement, the last plan year ending at least 12 months before the beginning of the plan year.

(iii) a relevant collective bargaining agreement is a collective bargaining agreement—

(I) which is in effect for at least 6 months during the plan year, and

(II) which has not been in effect for more than 36 months as of the end of the plan year.

(iv) the relevant effective date is the earliest of the effective dates for the relevant collective bargaining agreements.

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

Notwithstanding paragraph (2), if a plan sponsor determines in writing a resource benefit level for a plan year which is below the level of basic benefits, the payment of all benefits other than basic benefits shall be suspended for that plan year.

### (4) Excess resources

#### (A) In general

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

#### (B) Excess resources

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

### (5) Unpaid benefits

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

### (6) Retroactive payments

Except as provided in paragraph (4) or (5), a plan is not required to make retroactive bene-

fit payments with respect to that portion of a benefit which was suspended under this section.

### (d) Plan sponsor determination

#### (1) Triennial test

As of the end of the first plan year in which a plan is in critical status, as described in subsection<sup>1</sup> 432(b)(2),<sup>2</sup> and at least every 3 plan years thereafter (unless the plan is no longer in critical status, as described in subsection<sup>1</sup> 432(b)(2),<sup>2</sup> the plan sponsor shall compare the value of plan assets for that plan year with the total amount of benefit payments made under the plan for that plan year. Unless the plan sponsor determines that the value of plan assets exceeds 3 times the total amount of benefit payments, the plan sponsor shall determine whether the plan will be insolvent in any of the next 5 plan years. If the plan sponsor makes such a determination that the plan will be insolvent in any of the next 5 plan years, the plan sponsor shall make the comparison under this paragraph at least annually until the plan sponsor makes a determination that the plan will not be insolvent in any of the next 5 plan years.

#### (2) Determination of insolvency

If, at any time, the plan sponsor of a plan in critical status, as described in subsection<sup>1</sup> 432(b)(2), reasonably determines, taking into account the plan's recent and anticipated financial experience, that the plan's available resources are not sufficient to pay benefits under the plan when due for the next plan year, the plan sponsor shall make such determination available to interested parties.

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

The plan sponsor of a plan in critical status, as described in subsection<sup>1</sup> 432(b)(2), shall determine in writing for each insolvency year the resource benefit level and the level of basic benefits no later than 3 months before the insolvency year.

(4) For purposes of this subsection, the value of plan assets shall be the value of the available plan assets determined under regulations prescribed by the Secretary of the Treasury.

### (e) Notice requirements

#### (1) Impending insolvency

If the plan sponsor of a plan in critical status, as described in subsection<sup>1</sup> 432(b)(2), determines under subsection (d)(1) or (2) that the plan may become insolvent (within the meaning of subsection (b)(1)), the plan sponsor shall—

(A) notify the Secretary,<sup>3</sup> the parties described in section 101(f)(1) of the Employee Retirement Income Security Act of 1974 of that determination, and

(B) inform the parties described in section 101(f)(1) of the Employee Retirement Income Security Act of 1974 that if insolvency occurs certain benefit payments will be suspended, but that basic benefits will continue to be paid.

<sup>2</sup> So in original.

<sup>3</sup> So in original. The comma probably should be "and".

**(2) Resource benefit level**

No later than 2 months before the first day of each insolvency year, the plan sponsor of a plan in critical status, as described in subsection<sup>1</sup> 432(b)(2), shall notify the Secretary, the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries of the resource benefit level determined in writing for that insolvency year.

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

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

**(4) Regulations**

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

**(5) Corporation may prescribe time**

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

**(f) Financial assistance****(1) Permissive application**

If the plan sponsor of an insolvent plan for which the resource benefit level is above the level of basic benefits anticipates that, for any month in an insolvency year, the plan will not have funds sufficient to pay basic benefits, the plan sponsor may apply for financial assistance from the Pension Benefit Guaranty Corporation under section 4261 of the Employee Retirement Income Security Act of 1974.

**(2) Mandatory application**

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

**(g) Financial assistance**

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

(h) Subsections (a) and (c) shall not apply to a plan that, for the plan year, is operating under section 432(e)(9), regarding benefit suspensions by certain multiemployer plans in critical and declining status.

(Added Pub. L. 96-364, title II, §202(a), Sept. 26, 1980, 94 Stat. 1282; amended Pub. L. 109-280, title II, §213(a), Aug. 17, 2006, 120 Stat. 917; Pub. L. 113-235, div. O, title I, §108(b)(2), Dec. 16, 2014, 128 Stat. 2787.)

## REFERENCES IN TEXT

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

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

Section 101(f)(1) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (e)(1), is classified to section 1021(f)(1) of Title 29, Labor.

## AMENDMENTS

2014—Subsec. (c)(1). Pub. L. 113-235, §108(b)(2)(A), substituted “critical status, as described in subsection 432(b)(2),” for “reorganization”.

Subsec. (c)(2). Pub. L. 113-235, §108(b)(2)(B), designated existing provisions as subpar. (A), struck out “(within the meaning of section 418(b)(6))” after “pay status”, and added subpar. (B).

Subsec. (d). Pub. L. 113-235, §108(b)(2)(A), substituted “critical status, as described in subsection 432(b)(2),” for “reorganization” wherever appearing.

Subsec. (d)(1). Pub. L. 113-235, §108(b)(2)(C)(i), which directed amendment of par. (1) by striking out “(determined in accordance with section 418B(3)(B)(ii))”, was executed by striking out “(determined in accordance with section 418B(b)(3)(B)(ii))” after “compare the value of plan assets” to reflect the probable intent of Congress.

Subsec. (d)(4). Pub. L. 113-235, §108(b)(2)(C)(ii), added par. (4).

Subsec. (e)(1). Pub. L. 113-235, §108(b)(2)(A), substituted “critical status, as described in subsection 432(b)(2),” for “reorganization”.

Subsec. (e)(1)(A). Pub. L. 113-235, §108(b)(2)(D)(i), which directed substitution of “the parties described in section 101(f)(1) of the Employee Retirement Income Security Act of 1974” for “the corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries”, was executed by making the substitution for “the Pension Benefit Guaranty Corporation, the parties described in section 418A(a)(2), and the plan participants and beneficiaries” to reflect the probable intent of Congress.

Subsec. (e)(1)(B). Pub. L. 113-235, §108(b)(2)(D)(ii), substituted “section 101(f)(1) of the Employee Retirement Income Security Act of 1974” for “section 418A(a)(2) and the plan participants and beneficiaries”.

Subsec. (e)(2). Pub. L. 113-235, §108(b)(2)(A), substituted “critical status, as described in subsection 432(b)(2),” for “reorganization”.

Subsec. (h). Pub. L. 113-235, §108(b)(2)(E), added subsec. (h).

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

## EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 108(c) of div. O of Pub. L. 113-235, set out as an Effective Date of Repeal note under section 418 of this title.

## EFFECTIVE DATE OF 2006 AMENDMENT

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

## EFFECTIVE DATE

Section effective, with respect to each plan, on the first day of the first plan year beginning on or after the earlier of the date on which the last collective-bargaining agreement providing for employer contributions under the plan, which was in effect on Sept. 26, 1980, ex-

pires, without regard to extensions agreed to after such date, or 3 years after Sept. 26, 1980, see section 210 of Pub. L. 96-364, set out as a note under section 194A of this title.

SUBPART D—TREATMENT OF WELFARE BENEFIT FUNDS

Sec. 419.	Treatment of funded welfare benefit plans.
419A.	Qualified asset account; limitation on additions to account.

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

**(a) General rule**

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

- (1) shall not be deductible under this chapter, but
- (2) if they would otherwise be deductible, shall (subject to the limitation of subsection (b)) be deductible under this section for the taxable year in which paid.

**(b) Limitation**

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

**(c) Qualified cost**

For purposes of this section—

**(1) In general**

Except as otherwise provided in this subsection, the term “qualified cost” means, with respect to any taxable year, the sum of—

- (A) the qualified direct cost for such taxable year, and
- (B) subject to the limitation of section 419A(b), any addition to a qualified asset account for the taxable year.

**(2) Reduction for funds after-tax income**

In the case of any welfare benefit fund, the qualified cost for any taxable year shall be reduced by such fund's after-tax income for such taxable year.

**(3) Qualified direct cost**

**(A) In general**

The term “qualified direct cost” means, with respect to any taxable year, the aggregate amount (including administrative expenses) which would have been allowable as a deduction to the employer with respect to the benefits provided during the taxable year, if—

- (i) such benefits were provided directly by the employer, and
- (ii) the employer used the cash receipts and disbursements method of accounting.

**(B) Time when benefits provided**

For purposes of subparagraph (A), a benefit shall be treated as provided when such benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for any provision of this chapter excluding such benefit from gross income).

**(C) 60-month amortization of child care facilities**

**(i) In general**

In determining qualified direct costs with respect to any child care facility for

purposes of subparagraph (A), in lieu of depreciation the adjusted basis of such facility shall be allowable as a deduction ratably over a period of 60 months beginning with the month in which the facility is placed in service.

**(ii) Child care facility**

The term “child care facility” means any tangible property which qualifies under regulations prescribed by the Secretary as a child care center primarily for children of employees of the employer; except that such term shall not include any property—

- (I) not of a character subject to depreciation; or
- (II) located outside the United States.

**(4) After-tax income**

**(A) In general**

The term “after-tax income” means, with respect to any taxable year, the gross income of the welfare benefit fund reduced by the sum of—

- (i) the deductions allowed by this chapter which are directly connected with the production of such gross income, and
- (ii) the tax imposed by this chapter on the fund for the taxable year.

**(B) Treatment of certain amounts**

In determining the gross income of any welfare benefit fund—

- (i) contributions and other amounts received from employees shall be taken into account, but
- (ii) contributions from the employer shall not be taken into account.

**(5) Item only taken into account once**

No item may be taken into account more than once in determining the qualified cost of any welfare benefit fund.

**(d) Carryover of excess contributions**

If—

- (1) the amount of the contributions paid (or deemed paid under this subsection) by the employer during any taxable year to a welfare benefit fund, exceeds
- (2) the limitation of subsection (b),

such excess shall be treated as an amount paid by the employer to such fund during the succeeding taxable year.

**(e) Welfare benefit fund**

For purposes of this section—

**(1) In general**

The term “welfare benefit fund” means any fund—

- (A) which is part of a plan of an employer, and
- (B) through which the employer provides welfare benefits to employees or their beneficiaries.

**(2) Welfare benefit**

The term “welfare benefit” means any benefit other than a benefit with respect to which—

- (A) section 83(h) applies,