

such Code, if the plan is neither in endangered nor critical status by reason of an election made under subsection (a)—

“(i) the plan sponsor of a multiemployer plan shall not be required to provide notice under such sections, and

“(ii) the plan sponsor shall provide to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor a notice of the election and such other information as the Secretary of the Treasury (in consultation with the Secretary of Labor) may require—

“(I) if the election is made before the date the annual certification is submitted to the Secretary or the Secretary’s delegate under section 305(b)(3) of such Act and section 432(b)(3) of such Code, not later than 30 days after the date of the certification, and

“(II) if the election is made after such date, not later than 30 days after the date of the election.

“(B) NOTICE OF ENDANGERED STATUS.—Notwithstanding section 305(b)(3)(D) of such Act and section 431(b)(3)(D) of such Code, if the plan is certified to be in critical status for any plan year but is in endangered status by reason of an election made under subsection (a), the notice provided under such sections shall be the notice which would have been provided if the plan had been certified to be in endangered status.”

TEMPORARY EXTENSION OF THE FUNDING IMPROVEMENT AND REHABILITATION PERIODS FOR MULTIEMPLOYER PENSION PLANS IN CRITICAL AND ENDANGERED STATUS FOR 2008 OR 2009

Pub. L. 110-458, title II, §205, Dec. 23, 2008, 122 Stat. 5120, provided that:

“(a) IN GENERAL.—If the plan sponsor of a multiemployer plan which is in endangered or critical status for a plan year beginning in 2008 or 2009 (determined after application of section 204 [of Pub. L. 110-458, set out above]) elects the application of this section, then, for purposes of section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986—

“(1) except as provided in paragraph (2), the plan’s funding improvement period or rehabilitation period, whichever is applicable, shall be 13 years rather than 10 years, and

“(2) in the case of a plan in seriously endangered status, the plan’s funding improvement period shall be 18 years rather than 15 years.

“(b) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

“(1) ELECTION.—An election under this section shall be made at such time, and in such manner and form, as (in consultation with the Secretary of Labor) the Secretary of the Treasury or the Secretary’s delegate may prescribe.

“(2) DEFINITIONS.—Any term which is used in this section which is also used in section 305 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1085] and section 432 of the Internal Revenue Code of 1986 shall have the same meaning as when used in such sections.

“(c) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2007.”

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

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

## § 433. Minimum funding standards

### (a) General rule

For purposes of section 412, the term “accumulated funding deficiency” for a CSEC plan means the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which section 412 applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years.

### (b) Funding standard account

#### (1) Account required

Each plan to which this section 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 in existence on January 1, 1974, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 40 plan years,

(ii) in the case of a plan which comes into existence after January 1, 1974, but before the first day of the first plan year beginning after December 31, 2013, the unfunded past service liability under the plan on the first day of the first plan year to which section 412 applies, over a period of 30 plan years,

(iii) 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,

(iv) separately, with respect to each plan year, the net experience loss (if any) under the plan, over a period of 5 plan years, and

(v) 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 10 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 5 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 paragraph (3)(D), and

(E) the amount necessary to amortize in equal annual installments (until fully amortized) over a period of 20 years the contributions which would be required to be made under the plan but for the provisions of sec-

tion 412(c)(7)(A)(i)(I) (as in effect on the day before the enactment of the Pension Protection Act of 2006).

**(3) Credits to account**

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

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

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

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

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 5 plan years, and

(iii) separately, with respect to each plan year, the net gain (if any) resulting from changes in actuarial assumptions used under the plan, over a period of 10 plan years,

(C) the amount of the waived funding deficiency (within the meaning of section 412(c)(3)) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

**(4) Combining and offsetting amounts to be amortized**

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

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

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

**(5) Interest**

**(A) In general**

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

**(B) Exception**

The interest rate used for purposes of computing the amortization charge described in subsection (b)(2)(C) or for purposes of any arrangement under subsection (d) for any plan year shall be the greater of—

(i) 150 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or

(ii) the rate of interest determined under subparagraph (A).

**(6) Amortization schedules in effect**

Amortization schedules for amounts described in paragraphs (2) and (3) that are in effect as of the last day of the last plan year beginning before January 1, 2014, by reason of section 104 of the Pension Protection Act of 2006 shall remain in effect pursuant to their terms and this section, except that such amounts shall not be amortized again under this section.

**(c) Special rules**

**(1) Determinations to be made under funding method**

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

**(2) Valuation of assets**

**(A) In general**

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

**(B) Dedicated bond portfolio**

The Secretary may by regulations provide that the value of any dedicated bond portfolio of a plan shall be determined by using the interest rate under section 412(b)(5) (as in effect on the day before the enactment of the Pension Protection Act of 2006).

**(3) Actuarial assumptions must be reasonable**

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

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

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

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

For purposes of this section, if—

(A) a change in benefits under the Social Security Act or in other retirement benefits created under Federal or State law, or

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

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

**(5) Funding method and plan year**

**(A) Funding methods available**

All funding methods available to CSEC plans under section 412 (as in effect on the day before the enactment of the Pension Protection Act of 2006) shall continue to be available under this section.

**(B) Changes**

If the funding method for a plan is changed, the new funding method shall become the funding method used to determine costs and liabilities under the plan only if the change is approved by the Secretary. If the plan year for a plan is changed, the new plan year shall become the plan year for the plan only if the change is approved by the Secretary.

**(C) Approval required for certain changes in assumptions by certain single-employer plans subject to additional funding requirement**

**(i) In general**

No actuarial assumption (other than the assumptions described in subsection (h)(3)) used to determine the current liability for a plan to which this subparagraph applies may be changed without the approval of the Secretary.

**(ii) Plans to which subparagraph applies**

This subparagraph shall apply to a plan only if—

(I) the plan is a CSEC plan,

(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<sup>1</sup> (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 current liability of the plan before such change.

**(6) Full funding**

If, as of the close of a plan year, a plan would (without regard to this paragraph) have an accumulated funding deficiency (determined without regard to the alternative minimum funding standard account permitted under subsection (e)) in excess of the full funding limitation—

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

(B) all amounts described in paragraphs (2)(B), (C), and (D) and (3)(B) of subsection (b) which are required to be amortized shall be considered fully amortized for purposes of such paragraphs.

**(7) Full-funding limitation**

For purposes of paragraph (6), the term “full-funding limitation” means the excess (if any) of—

(A) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

(B) the lesser of—

(i) the fair market value of the plan's assets, or

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

(C) MINIMUM AMOUNT.—

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

(I) 90 percent of the current liability (determined without regard to paragraph (4) of subsection (h)) of the plan (including the expected increase in such current liability due to benefits accruing during the plan year), over

(II) the value of the plan's assets determined under paragraph (2).

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

**(8) Annual valuation**

**(A) In general**

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

**(B) Valuation date**

**(i) Current year**

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

**(ii) Use of prior year valuation**

The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan's current liability.

**(iii) Adjustments**

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

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

adjusted to reflect significant differences in participants.

**(iv) Limitation**

A change in funding method to use a prior year valuation, as provided in clause (ii), may not be made unless as of the valuation date within the prior plan year, the value of the assets of the plan are not less than 125 percent of the plan's current liability.

**(9) Time when certain contributions deemed made**

For purposes of this section, any contributions for a plan year made by an employer during the period—

- (A) beginning on the day after the last day of such plan year, and
- (B) ending on the day which is 8½ months after the close of the plan year,

shall be deemed to have been made on such last day.

**(10) Anticipation of benefit increases effective in the future**

In determining projected benefits, the funding method of a collectively bargained CSEC plan described in section 413(a) shall anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan.

**(d) Extension of amortization periods**

The period of years required to amortize any unfunded liability (described in any clause of subsection (b)(2)(B)) of any plan may be extended by the Secretary for a period of time (not in excess of 10 years) if the Secretary determines that such extension would carry out the purposes of the Employee Retirement Income Security Act of 1974 and provide adequate protection for participants under the plan and their beneficiaries, and if the Secretary determines that the failure to permit such extension would result in—

- (1) a substantial risk to the voluntary continuation of the plan, or
- (2) a substantial curtailment of pension benefit levels or employee compensation.

**(e) Alternative minimum funding standard**

**(1) In general**

A CSEC plan which uses a funding method that requires contributions in all years not less than those required under the entry age normal funding method may maintain an alternative minimum funding standard account for any plan year. Such account shall be credited and charged solely as provided in this subsection.

**(2) Charges and credits to account**

For a plan year the alternative minimum funding standard account shall be—

- (A) charged with the sum of—
  - (i) the lesser of normal cost under the funding method used under the plan or normal cost determined under the unit credit method,
  - (ii) the excess, if any, of the present value of accrued benefits under the plan

over the fair market value of the assets, and

- (iii) an amount equal to the excess (if any) of credits to the alternative minimum standard account for all prior plan years over charges to such account for all such years, and

(B) credited with the amount considered contributed by the employer to or under the plan for the plan year.

**(3) Interest**

The alternative minimum funding standard account (and items therein) shall be charged or credited with interest in the manner provided under subsection (b)(5) with respect to the funding standard account.

**(f) Quarterly contributions required**

**(1) In general**

If a CSEC plan which has a funded current liability percentage for the preceding plan year of less than 100 percent fails to pay the full amount of a required installment for the plan year, then the rate of interest charged to the funding standard account under subsection (b)(5) with respect to the amount of the underpayment for the period of the underpayment shall be equal to the greater of—

- (A) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), or
- (B) the rate of interest used under the plan in determining costs.

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

For purposes of paragraph (1)—

**(A) 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.

**(B) Period of underpayment**

The period for which interest is charged under this subsection with regard 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 (determined without regard to subsection (c)(9)).

**(C) Order of crediting contributions**

For purposes of subparagraph (A)(ii), contributions shall be credited against unpaid required installments in the order in which such installments are required to be paid.

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

For purposes of this subsection—

**(A) Payable in 4 installments**

There shall be 4 required installments for each plan year.

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

|                                                            |                         |
|------------------------------------------------------------|-------------------------|
| <b>In the case of the following required installments:</b> | <b>The due date is:</b> |
|------------------------------------------------------------|-------------------------|

|           |          |
|-----------|----------|
| 1st ..... | April 15 |
|-----------|----------|

| <b>In the case of the following required installments:</b> | <b>The due date is:</b>           |
|------------------------------------------------------------|-----------------------------------|
| 2nd .....                                                  | July 15                           |
| 3rd .....                                                  | October 15                        |
| 4th .....                                                  | January 15 of the following year. |

#### **(4) Amount of required installment**

For purposes of this subsection—

##### **(A) In general**

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

##### **(B) Required annual payment**

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

- (i) 90 percent of the amount required to be contributed to or under the plan by the employer for the plan year under section 412 (without regard to any waiver under subsection (c) thereof), or
- (ii) 100 percent of the amount so required for the preceding plan year.

Clause (ii) shall not apply if the preceding plan year was not a year of 12 months.

#### **(5) Liquidity requirement**

##### **(A) In general**

A plan to which this paragraph applies shall be treated as failing to pay the full amount of any required installment 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 CSEC plan other than a plan described in section 412(l)(6)(A) (as in effect on the day before the enactment of the Pension Protection Act of 2006) which—

- (i) is required to pay installments under this subsection 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 (1), 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 funded current liability percentage (taking into account the expected increase in current liability due to benefits accruing 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 the base amount with respect to such quarter over 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 satisfaction 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 funded current liability 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.

#### **(6) Fiscal years and short years**

##### **(A) Fiscal years**

In applying this subsection to a plan year beginning on any date other than January 1, there shall be substituted for the months

specified in this subsection, the months which correspond thereto.

**(B) Short plan year**

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

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

**(1) In general**

In the case of a plan to which this section applies, if—

(A) any person fails to make a required installment under subsection (f) or any other payment required under this section before the due date for such installment or other payment, and

(B) the unpaid balance of such installment or other payment (including interest), when added to the aggregate unpaid balance of all preceding such installments or other 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 CSEC plan for any plan year for which the funded current liability percentage of such plan is less than 100 percent. This subsection shall not apply to any plan to which section 4021 of the Employee Retirement Income Security Act of 1974 does not apply (as such section is in effect on the date of the enactment of the Retirement Protection Act of 1994).

**(3) Amount of lien**

For purposes of paragraph (1), the amount of the lien shall be equal to the aggregate unpaid balance of required installments and other payments required under this section (including interest)—

(A) for plan years beginning after 1987, and

(B) 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 installment or other payment.

**(B) Period of lien**

The lien imposed by paragraph (1) shall arise on the due date for the required installment or other 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 any contributing employer (or any member of the controlled group of the contributing employer).

**(6) Definitions**

For purposes of this subsection—

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

The terms “due date” and “required installment” have the meanings given such terms by subsection (f), except that in the case of a payment other than a required installment, the due date shall be the date such payment is required to be made under this section.

**(B) Controlled group**

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

**(h) Current liability**

For purposes of this section—

**(1) In general**

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

**(2) Treatment of unpredictable contingent event benefits**

**(A) In general**

For purposes of paragraph (1), any unpredictable contingent event benefit shall not be taken into account until the event on which the benefit is contingent occurs.

**(B) Unpredictable contingent event benefit**

The term “unpredictable contingent event benefit” means any benefit contingent on an event other than—

(i) age, service, compensation, death, or disability, or

(ii) an event which is reasonably and reliably predictable (as determined by the Secretary).

**(3) Interest rate and mortality assumptions used**

**(A) Interest rate**

The rate of interest used to determine current liability under this section shall be the third segment rate determined under section 430(h)(2)(C).

**(B) Mortality tables****(i) Secretarial authority**

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

**(ii) Periodic review**

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

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

Notwithstanding subparagraph (B)—

**(i) In general**

In the case of plan years beginning after December 31, 1995, the Secretary shall establish mortality tables which may be used (in lieu of the tables under subparagraph (B)) to determine current liability 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.

**(4) Certain service disregarded****(A) In general**

In the case of a participant to whom this paragraph applies, only the applicable percentage of the years of service before such individual became a participant shall be taken into account in computing the current liability of the plan.

**(B) Applicable percentage**

For purposes of this subparagraph, the applicable percentage shall be determined as follows:

| If the years of participation are: | The applicable percentage is: |
|------------------------------------|-------------------------------|
| 1 .....                            | 20                            |
| 2 .....                            | 40                            |
| 3 .....                            | 60                            |
| 4 .....                            | 80                            |
| 5 or more .....                    | 100.                          |

**(C) Participants to whom paragraph applies**

This subparagraph shall apply to any participant who, at the time of becoming a participant—

- (i) has not accrued any other benefit under any defined benefit plan (whether or not terminated) maintained by the employer or a member of the same controlled group of which the employer is a member,
- (ii) who first becomes a participant under the plan in a plan year beginning after December 31, 1987, and
- (iii) has years of service greater than the minimum years of service necessary for eligibility to participate in the plan.

**(D) Election**

An employer may elect not to have this subparagraph apply. Such an election, once made, may be revoked only with the consent of the Secretary.

**(i) Funded current liability percentage**

For purposes of this section, the term “funded current liability percentage” means, with respect to any plan year, the percentage which—

- (1) the value of the plan's assets determined under subsection (c)(2), is of
- (2) the current liability under the plan.

**(j) Funding restoration status**

Notwithstanding any other provisions of this section—

**(1) Normal cost payment****(A) In general**

In the case of a CSEC plan that is in funding restoration status for a plan year, for purposes of section 412, the term “accumulated funding deficiency” means, for such plan year, the greater of—

- (i) the amount described in subsection (a), or
- (ii) the excess of the normal cost of the plan for the plan year over the amount actually contributed to or under the plan for the plan year.

**(B) Normal cost**

In the case of a CSEC plan that uses a spread gain funding method, for purposes of this subsection, the term “normal cost” means normal cost as determined under the entry age normal funding method.

**(2) Plan amendments**

In the case of a CSEC plan that is in funding restoration status for a plan year, no amendment to such plan may take effect during such plan year if such amendment has the effect of increasing liabilities of the plan by means of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate at which benefits become nonforfeitable. This paragraph shall not apply to any plan amendment that is required to comply with any applicable law. This paragraph shall cease to apply with respect to any plan year, effective as of the first day of the plan year (or if later, the effective date of the amendment) upon payment by the plan sponsor of a contribution to the plan (in addition

to any contribution required under this section without regard to this paragraph) in an amount equal to the increase in the funding liability of the plan attributable to the plan amendment.

### (3) Funding restoration plan

The sponsor of a CSEC plan shall establish a written funding restoration plan within 180 days of the receipt by the plan sponsor of a certification from the plan actuary that the plan is in funding restoration status for a plan year. Such funding restoration plan shall consist of actions that are calculated, based on reasonably anticipated experience and reasonable actuarial assumptions, to increase the plan's funded percentage to 100 percent over a period that is not longer than the greater of 7 years or the shortest amount of time practicable. Such funding restoration plan shall take into account contributions required under this section (without regard to this paragraph). If a plan remains in funding restoration status for 2 or more years, such funding restoration plan shall be updated each year after the 1st such year within 180 days of receipt by the plan sponsor of a certification from the plan actuary that the plan remains in funding restoration status for the plan year.

### (4) Annual certification by plan actuary

Not later than the 90th day of each plan year of a CSEC plan, the plan actuary shall certify to the plan sponsor whether or not the plan is in funding restoration status for the plan year, based on the plan's funded percentage as of the beginning of the plan year. For this purpose, the actuary may conclusively rely on an estimate of—

(A) the plan's funding liability, based on the funding liability of the plan for the preceding plan year and on reasonable actuarial estimates, assumptions, and methods, and

(B) the amount of any contributions reasonably anticipated to be made for the preceding plan year.

Contributions described in subparagraph (B) shall be taken into account in determining the plan's funded percentage as of the beginning of the plan year.

### (5) Definitions

For purposes of this subsection—

#### (A) Funding restoration status

A CSEC plan shall be treated as in funding restoration status for a plan year if the plan's funded percentage as of the beginning of such plan year is less than 80 percent.

#### (B) Funded percentage

The term “funded percentage” means the ratio (expressed as a percentage) which—

- (i) the value of plan assets (as determined under subsection (c)(2)), bears to
- (ii) the plan's funding liability.

#### (C) Funding liability

The term “funding liability” for a plan year means the present value of all benefits accrued or earned under the plan as of the beginning of the plan year, based on the assumptions used by the plan pursuant to this

section, including the interest rate described in subsection (b)(5)(A) (without regard to subsection (b)(5)(B)).

### (D) Spread gain funding method

The term “spread gain funding method” has the meaning given such term under rules and forms issued by the Secretary.

### (E) Plan sponsor

The term “plan sponsor” means, with respect to a CSEC plan, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

(Added Pub. L. 113-97, title II, §202(a), Apr. 7, 2014, 128 Stat. 1122.)

#### REFERENCES IN TEXT

Section 412 (as in effect on the day before the enactment of the Pension Protection Act of 2006), referred to in subsecs. (b)(2)(E), (c)(2)(B), (5)(A), and (f)(5)(B), means section 412 of this title as in effect on the day before the enactment of Pub. L. 109-280, which was approved Aug. 17, 2006. Section 111(a) of Pub. L. 109-280 generally amended section 412.

Section 104 of the Pension Protection Act of 2006, referred to in subsec. (b)(6), is section 104 of Pub. L. 109-280, which is set out as a note under section 401 of this title.

The Social Security Act, referred to in subsecs. (c)(4)(A) and (h)(3)(C)(ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, which is classified generally to chapter 7 (§301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(5)(C)(ii)(II), (d), and (g)(2), (4)(C), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, which is classified principally to chapter 18 (§1001 et seq.) 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, and 4068 of the Act are classified to sections 1301, 1306, 1321, and 1368 of Title 29, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

The date of the enactment of the Retirement Protection Act of 1994, referred to in subsec. (g)(2), is the date of enactment of subtitle F of title VII of Pub. L. 103-465, which was approved Dec. 8, 1994.

#### EFFECTIVE DATE

Section applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113-97, set out as an Effective Date of 2014 Amendment note under section 401 of this title.

#### SUBPART B—BENEFIT LIMITATIONS UNDER SINGLE-EMPLOYER PLANS

Sec.

436. Funding-based limitation on shutdown benefits and other unpredictable contingent event benefits under single-employer plans.<sup>1</sup>

### § 436. Funding-based limits on benefits and benefit accruals under single-employer plans

#### (a) General rule

For purposes of section 401(a)(29), a defined benefit plan which is a single-employer plan (other than a CSEC plan) shall be treated as

<sup>1</sup> So in original. Does not conform to section catchline.