

(B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.

(3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

(d) If the administrator of a plan elects under section 1017(d) of this Act to make applicable to a plan year and to all subsequent plan years the provisions of title 26 relating to participation, vesting, funding, and form of benefit, this part shall apply to the first plan year to which such election applies and to all subsequent plan years.

(e)(1) No pension plan to which section 1052 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1052 of this title first becomes effective with respect to such plan) which provides that any employee's participation in the plan would commence at any date later than the later of—

(A) the date on which his participation would commence under the break in service rules of section 1052(b) of this title, or

(B) the date on which his participation would commence under the plan as in effect on January 1, 1974.

(2) No pension plan to which section 1053 of this title applies may make effective any plan amendment with respect to breaks in service (which amendment is made or becomes effective after January 1, 1974, and before the date on which section 1053 of this title first becomes effective with respect to such plan) if such amendment provides that the nonforfeitable benefit derived from employer contributions to which any employee would be entitled is less than the lesser of the nonforfeitable benefit derived from employer contributions to which he would be entitled under—

(A) the break in service rules of section 1052(b)(3) of this title, or

(B) the plan as in effect on January 1, 1974.

Subparagraph (B) shall not apply if the break in service rules under the plan would have been in violation of any law or rule of law in effect on January 1, 1974.

(f) The preceding provisions of this section shall not apply with respect to amendments made to this part in provisions enacted after September 2, 1974.

(Pub. L. 93-406, title I, §211, Sept. 2, 1974, 88 Stat. 867; Pub. L. 99-272, title XI, §11015(a)(1)(B), Apr. 7, 1986, 100 Stat. 265; Pub. L. 101-239, title VII, §§7891(a)(1), 7894(h)(2), Dec. 19, 1989, 103 Stat. 2445, 2451.)

REFERENCES IN TEXT

Section 1086(c) of this title, referred to in subsec. (c)(1), was in the original "section 307(c)", meaning section 307(c) of Pub. L. 93-406, the Employee Retirement Income Security Act of 1974. Section 307(c) was renun-

bered section 308(c) by Pub. L. 100-203, title IX, §9341(b)(1), Dec. 22, 1987, 101 Stat. 1330-370 and subsequently was repealed by Pub. L. 109-280, title I, §101(a), Aug. 17, 2006, 120 Stat. 784.

This chapter, referred to in subsec. (c)(1), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

Section 1017(d) of this Act, referred to in subsec. (d), is section 1017 of Pub. L. 93-406, which is set out as an Effective Date; Transitional Rules note under section 410 of Title 26.

AMENDMENTS

1989—Subsecs. (c)(1), (d). Pub. L. 101-239, §7891(a)(1), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26".

Subsec. (f). Pub. L. 101-239, §7894(h)(2), added subsec. (f).

1986—Subsec. (c)(1). Pub. L. 99-272 made a technical amendment to the reference to section 1086(c) of this title to reflect the renumbering of the corresponding section of the original act.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7891(a)(1) of Pub. L. 101-239 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 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

Amendment by section 7894(h)(2) of Pub. L. 101-239 effective, except as otherwise provided, as if originally included in the provision of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, to which such amendment relates, see section 7894(i) of Pub. L. 101-239, set out as a note under section 1002 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-272 applicable with respect to applications for waivers, extensions, and modifications filed on or after Apr. 7, 1986, see section 11015(a)(3) of Pub. L. 99-272, set out as an Effective Date note under section 412 of Title 26, Internal Revenue Code.

PART 3—FUNDING

§ 1081. Coverage

(a) Plans excepted from applicability of this part

This part shall apply to any employee pension benefit plan described in section 1003(a) of this title, (and not exempted under section 1003(b) of this title), other than—

(1) an employee welfare benefit plan;

(2) an insurance contract plan described in subsection (b);

(3) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees;

(4)(A) a plan which is established and maintained by a society, order, or association described in section 501(c)(8) or (9) of title 26, if no part of the contributions to or under such plan are made by employers of participants in such plan; or

(B) a trust described in section 501(c)(18) of title 26;

(5) a plan which has not at any time after September 2, 1974, provided for employer contributions;

(6) an agreement providing payments to a retired partner or deceased partner or a deceased partner's successor in interest as described in section 736 of title 26;

(7) an individual retirement account or annuity as described in section 408(a) of title 26, or a retirement bond described in section 409 of title 26 (as effective for obligations issued before January 1, 1984);

(8) an individual account plan (other than a money purchase plan) and a defined benefit plan to the extent it is treated as an individual account plan (other than a money purchase plan) under section 1002(35)(B) of this title;

(9) an excess benefit plan; or

(10) any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this chapter.

(b) "Insurance contract plan" defined

For the purposes of paragraph (2) of subsection (a) a plan is an "insurance contract plan" if—

(1) the plan is funded exclusively by the purchase of individual insurance contracts,

(2) such contracts provide for level annual premium payments to be paid extending not later than the retirement age for each individual participating in the plan, and commencing with the date the individual became a participant in the plan (or, in the case of an increase in benefits, commencing at the time such increase became effective),

(3) benefits provided by the plan are equal to the benefits provided under each contract at normal retirement age under the plan and are guaranteed by an insurance carrier (licensed under the laws of a State to do business with the plan) to the extent premiums have been paid,

(4) premiums payable for the plan year, and all prior plan years under such contracts have been paid before lapse or there is reinstatement of the policy,

(5) no rights under such contracts have been subject to a security interest at any time during the plan year, and

(6) no policy loans are outstanding at any time during the plan year.

A plan funded exclusively by the purchase of group insurance contracts which is determined under regulations prescribed by the Secretary of the Treasury to have the same characteristics as contracts described in the preceding sentence shall be treated as a plan described in this subsection.

(c) Applicability of this part to terminated multiemployer plans

This part applies, with respect to a terminated multiemployer plan to which section 1321 of this title applies, until the last day of the plan year in which the plan terminates, within the meaning of section 1341a(a)(2) of this title.

(Pub. L. 93-406, title I, §301, Sept. 2, 1974, 88 Stat. 868; Pub. L. 96-364, title III, §304(a), title IV, §411(b), Sept. 26, 1980, 94 Stat. 1293, 1308; Pub. L. 101-239, title VII, §§7891(a)(1), 7894(d)(1)(A), (4)(A), Dec. 19, 1989, 103 Stat. 2445, 2449; Pub. L. 109-280, title II, §201(c)(1), Aug. 17, 2006, 120 Stat. 868.)

REFERENCES IN TEXT

Section 409 of title 26, referred to in subsec. (a)(7), means section 409 of Title 26, Internal Revenue Code, prior to its repeal by Pub. L. 98-369, div. A, title IV, §491(b), July 18, 1984, 98 Stat. 848, applicable to obligations issued after Dec. 31, 1983.

This chapter, referred to in subsec. (a)(10), was in the original "this Act", meaning Pub. L. 93-406, known as the Employee Retirement Income Security Act of 1974. Titles I, III, and IV of such Act are classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

AMENDMENTS

2006—Subsec. (d). Pub. L. 109-280 struck out heading and text of subsec. (d). Text read as follows: "Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section in such manner as determined by the Secretary of the Treasury."

1989—Subsec. (a)(4)(A), (6). Pub. L. 101-239, §7891(a)(1), substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

Subsec. (a)(7). Pub. L. 101-239, §7894(d)(4)(A), substituted "section 409 of title 26 (as effective for obligations issued before January 1, 1984)" for "section 409 of title 26".

Subsec. (a)(8). Pub. L. 101-239, §7894(d)(1)(A)(i), struck out "or" after semicolon at end.

Subsec. (a)(9). Pub. L. 101-239, §7894(d)(1)(A)(ii), substituted ";" or" for period at end.

Subsec. (a)(10). Pub. L. 101-239, §7894(d)(1)(A)(iii), substituted "any" for "Any".

1980—Subsec. (a)(10). Pub. L. 96-364, §411(b), added par. (10).

Subsecs. (c), (d). Pub. L. 96-364, §304(a), added subsecs. (c) and (d).

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-280, title II, §201(d), Aug. 17, 2006, 120 Stat. 868, provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 1084 of this title and amending this section] shall apply to plan years beginning after 2007.

"(2) SPECIAL RULE FOR CERTAIN AMORTIZATION EXTENSIONS.—If the Secretary of the Treasury grants an extension under section 304 of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1084] and section 412(e) of the Internal Revenue Code of 1986 [former 26 U.S.C. 412(e)] with respect to any application filed with the Secretary of the Treasury on or before June 30, 2005, the extension (and any modification thereof) shall be applied and administered under the rules of such sections as in effect before the enactment of this Act [Aug. 17, 2006], including the use of the rate of interest determined under section 6621(b) of such Code [26 U.S.C. 6621(b)]."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by section 7891(a)(1) of Pub. L. 101-239 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 7891(f) of Pub. L. 101-239, set out as a note under section 1002 of this title.

Section 7894(d)(1)(B) of Pub. L. 101-239 provided that: “The amendments made by subparagraph (A) [amending this section] shall take effect as if included in section 411 of the Multiemployer Pension Plan Amendments Act of 1980 [Pub. L. 96-364].”

Section 7894(d)(4)(B) of Pub. L. 101-239 provided that: “The amendment made by subparagraph (A) [amending this section] shall take effect as if originally included in section 491(b) of Public Law 98-369.”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-364 effective Sept. 26, 1980, except as specifically provided, see section 1461(e) of this title.

REGULATIONS

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

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

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

§ 1082. Minimum funding standards

(a) Requirement to meet minimum funding standard

(1) In general

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

(2) Minimum funding standard

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

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

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

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

(D) in the case of a CSEC plan, the employers make contributions to or under the plan for any plan year which, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 1085a of this title as of the end of the plan year.

(b) Liability for contributions

(1) In general

Except as provided in paragraph (2), the amount of any contribution required by this section (including any required installments under paragraphs (3) and (4) of section 1083(j) of this title or under section 1085a(f) of this title) shall be paid by the employer responsible for making contributions to or under the plan.

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

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

(3) Multiemployer plans in critical status

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

(c) Variance from minimum funding standards

(1) Waiver in case of business hardship

(A) In general

If—

(i) an employer is (or in the case of a multiemployer plan or a CSEC plan, 10 percent or more of the number of employers contributing to or under the plan are) unable to satisfy the minimum funding standard for a plan year without temporary substantial business hardship (substantial business hardship in the case of a multiemployer plan), and

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

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

(B) Effects of waiver

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

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

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

amortized as required under section 1084(b)(2)(C) of this title, and

(iii) in the case of a CSEC plan, the funding standard account shall be credited under section 1085a(b)(3)(C) of this title with the amount of the waived funding deficiency and such amount shall be amortized as required under section 1085a(b)(2)(C) of this title.

(C) Waiver of amortized portion not allowed

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

(2) Determination of business hardship

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

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

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

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

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

(3) Waived funding deficiency

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

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

(A) Security may be required

(i) In general

Except as provided in subparagraph (C), the Secretary of the Treasury may require an employer maintaining a defined benefit plan which is a single-employer plan (within the meaning of section 1301(a)(15) of this title) to provide security to such plan as a condition for granting or modifying a waiver under paragraph (1) or for granting an extension under section 1085a(d) of this title.

(ii) Special rules

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

(B) Consultation with the Pension Benefit Guaranty Corporation

Except as provided in subparagraph (C), the Secretary of the Treasury shall, before

granting or modifying a waiver under this subsection or an extension under 1085a(d)¹ of this title with respect to a plan described in subparagraph (A)(i)—

(i) provide the Pension Benefit Guaranty Corporation with—

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

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

(ii) consider—

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

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

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

(C) Exception for certain waivers or extensions

(i) In general

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

(I) the aggregate unpaid minimum required contributions for the plan year and all preceding plan years, or the accumulated funding deficiency under section 1085a of this title, whichever is applicable,

(II) the present value of all waiver amortization installments determined for the plan year and succeeding plan years under section 1083(e)(2) or 1085a(b)(2)(C) of this title, whichever is applicable, and

(III) the total amounts not paid by reason of an extension in effect under section 1085a(d) of this title,

is less than \$1,000,000.

(ii) Treatment of waivers or extensions for which applications are pending

The amount described in clause (i)(I) shall include any increase in such amount which would result if all applications for waivers or extensions with respect to the minimum funding standard under this subsection which are pending with respect to such plan were denied.

(iii) Unpaid minimum required contribution

For purposes of this subparagraph—

(I) In general

The term “unpaid minimum required contribution” means, with respect to any plan year, any minimum required contribution under section 1083 of this title for the plan year which is not paid

¹ So in original. Probably should be preceded by “section”.

on or before the due date (as determined under section 1083(j)(1) of this title) for the plan year.

(II) Ordering rule

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

(5) Special rules for single-employer plans

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

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

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

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

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

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

(6) Advance notice

(A) In general

The Secretary of the Treasury shall, before granting a waiver under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such waiver to each affected party (as defined in section 1301(a)(21) of this title). Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under subchapter III and for benefit liabilities.

(B) Consideration of relevant information

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

(7) Restriction on plan amendments

(A) In general

No amendment of a plan which increases the liabilities of the plan by reason of any

increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 1084(d) of this title or section 1085a(d) of this title is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) which reduces the accrued benefit of any participant has been made at any time in the preceding 12 months (24 months in the case of a multiemployer plan). If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

(B) Exception

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

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

(8) Cross reference

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

(d) Miscellaneous rules

(1) Change in method or year

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

(2) Certain retroactive plan amendments

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

- (A) is adopted after the close of such plan year but no later than 2½ months after the close of the plan year (or, in the case of a multiemployer plan, no later than 2 years after the close of such plan year),
- (B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and
- (C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No amendment described in this paragraph which reduces the accrued benefits of any participant shall take effect unless the plan administrator files a notice with the Secretary of the Treasury notifying him of such amendment and such Secretary has approved such amendment, or within 90 days after the date on which such notice was filed, failed to disapprove such amendment. No amendment described in this subsection shall be approved by the Secretary of

the Treasury unless such Secretary determines that such amendment is necessary because of a temporary substantial business hardship (as determined under subsection (c)(2)) or a substantial business hardship (as so determined) in the case of a multiemployer plan and that a waiver under subsection (c) (or, in the case of a multiemployer plan or a CSEC plan, any extension of the amortization period under section 1084(d) of this title or section 1085a(d) of this title) is unavailable or inadequate.

(3) Controlled group

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

(Pub. L. 93-406, title I, § 302, as added and amended Pub. L. 109-280, title I, § 101(b), title II, § 202(d), Aug. 17, 2006, 120 Stat. 784, 885; Pub. L. 110-458, title I, §§ 101(a)(1), 102(b)(1)(A), Dec. 23, 2008, 122 Stat. 5093, 5100; Pub. L. 113-97, title I, § 102(b)(1), (2), Apr. 7, 2014, 128 Stat. 1115.)

PRIOR PROVISIONS

A prior section 1082, Pub. L. 93-406, title I, § 302, Sept. 2, 1974, 88 Stat. 869; Pub. L. 96-364, title III, § 304(b), Sept. 26, 1980, 94 Stat. 1293; Pub. L. 100-203, title IX, §§ 9301(b), 9303(b), (d)(2), 9304(a)(2), (b)(2), (e)(2), 9305(b)(2), 9307(a)(2), (b)(2), (e)(2), Dec. 22, 1987, 101 Stat. 1330-332, 1330-337, 1330-342, 1330-344, 1330-346, 1330-349, 1330-352, 1330-356 to 1330-358; Pub. L. 100-647, title II, § 2005(a)(2)(B), (d)(2), Nov. 10, 1988, 102 Stat. 3610, 3612; Pub. L. 101-239, title VII, §§ 7881(a)(1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), (b)(1)(B), (2)(B), (3)(B), (4)(B), (6)(B)(i), (d)(1)(B), (2), (4), 7891(a)(1), 7892(b), 7894(d)(2), (5), Dec. 19, 1989, 103 Stat. 2435-2439, 2445, 2447, 2449, 2450; Pub. L. 101-508, title XII, § 12012(c), Nov. 5, 1990, 104 Stat. 1388-572; Pub. L. 103-465, title VII, §§ 761(a)(1)-(9)(A), (10), 762(a), 763(a), 764(a), 768(b), Dec. 8, 1994, 108 Stat. 5024-5031, 5033-5036, 5041; Pub. L. 105-34, title XV, § 1521(b), (c)(2), (3)(B), title XVI, § 1604(b)(2)(B), Aug. 5, 1997, 111 Stat. 1069, 1070, 1097; Pub. L. 107-16, title VI, §§ 651(b), 661(b), June 7, 2001, 115 Stat. 129, 142; Pub. L. 107-147, title IV, §§ 405(b), 411(v)(2), Mar. 9, 2002, 116 Stat. 42, 52; Pub. L. 108-218, title I, §§ 101(a)(1)-(3), 102(a), 104(a)(1), Apr. 10, 2004, 118 Stat. 596, 597, 599, 604; Pub. L. 109-135, title IV, § 412(x)(2), Dec. 21, 2005, 119 Stat. 2638; Pub. L. 109-280, title III, § 301(a)(1), (2), Aug. 17, 2006, 120 Stat. 919, related to minimum funding standards, prior to repeal by Pub. L. 109-280, title I, § 101(a), (d), Aug. 17, 2006, 120 Stat. 784, 789, applicable to plan years beginning after 2007.

AMENDMENTS

2014—Subsec. (a)(2)(A). Pub. L. 113-97, § 102(b)(2)(M), substituted “single-employer plan (other than a CSEC plan)” for “single-employer plan”.

Subsec. (a)(2)(D). Pub. L. 113-97, § 102(b)(1), added subpar. (D).

Subsec. (b)(1). Pub. L. 113-97, § 102(b)(2)(B), substituted “section 1083(j) of this title or under section 1085a(f) of this title” for “section 1083(j) of this title”.

Subsec. (c)(1)(A)(i). Pub. L. 113-97, § 102(b)(2)(A), substituted “multiemployer plan or a CSEC plan, 10 percent” for “multiemployer plan, 10 percent”.

Subsec. (c)(1)(B)(i). Pub. L. 113-97, § 102(b)(2)(M), substituted “single-employer plan (other than a CSEC plan)” for “single-employer plan”.

Subsec. (c)(1)(B)(iii). Pub. L. 113-97, § 102(b)(2)(C), added cl. (iii).

Subsec. (c)(4)(A)(i). Pub. L. 113-97, § 102(b)(2)(D), substituted “under paragraph (1) or for granting an extension under section 1085a(d) of this title” for “under paragraph (1)”.

Subsec. (c)(4)(B). Pub. L. 113-97, § 102(b)(2)(E), substituted “waiver under this subsection or an extension under 1085a(d) of this title” for “waiver under this subsection” in introductory provisions.

Subsec. (c)(4)(B)(i)(I). Pub. L. 113-97, § 102(b)(2)(F), substituted “waiver, modification, or extension” for “waiver or modification”.

Subsec. (c)(4)(C). Pub. L. 113-97, § 102(b)(2)(G), substituted “waivers or extensions” for “waivers” in heading.

Subsec. (c)(4)(C)(i)(I). Pub. L. 113-97, § 102(b)(2)(I), substituted “or the accumulated funding deficiency under section 1085a of this title, whichever is applicable,” for “and” at end.

Subsec. (c)(4)(C)(i)(II). Pub. L. 113-97, § 102(b)(2)(J), substituted “section 1083(e)(2) or 1085a(b)(2)(C) of this title, whichever is applicable, and” for “section 1083(e)(2) of this title.”.

Subsec. (c)(4)(C)(i)(III). Pub. L. 113-97, § 102(b)(2)(K), added subcl. (III).

Subsec. (c)(4)(C)(ii). Pub. L. 113-97, § 102(b)(2)(L), substituted “for waivers or extensions with respect to” for “for waivers of”.

Pub. L. 113-97, § 102(b)(2)(G), substituted “waivers or extensions” for “waivers” in heading.

Subsec. (c)(7)(A). Pub. L. 113-97, § 102(b)(2)(H), substituted “section 1084(d) of this title or section 1085a(d) of this title” for “section 1084(d) of this title”.

Subsec. (d)(2). Pub. L. 113-97, § 102(b)(2)(H), substituted “section 1084(d) of this title or section 1085a(d) of this title” for “section 1084(d) of this title” in concluding provisions.

Pub. L. 113-97, § 102(b)(2)(A), substituted “multiemployer plan or a CSEC plan” for “multiemployer plan” in concluding provisions.

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

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

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

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

2006—Subsec. (b)(3). Pub. L. 109-280, § 202(d), added par. (3).

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-97 applicable to years beginning after Dec. 31, 2013, see section 3 of Pub. L. 113-97, set out as a note under section 401 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2008 AMENDMENT

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

EFFECTIVE DATE OF 2006 AMENDMENT

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

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

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

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

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

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

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

EFFECTIVE DATE

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

REGULATIONS

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

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

For special rules on applicability of amendments by subtitles A (§§ 101-108) and B (§§ 111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

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

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

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

(a) Minimum required contribution

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

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

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

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

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

(2) in any case in which the value of plan assets of the plan (as reduced under subsection (f)(4)(B)) equals or exceeds the funding target of the plan for the plan year, the target nor-

mal cost of the plan for the plan year reduced (but not below zero) by such excess.

(b) Target normal cost

For purposes of this section:

(1) In general

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

(A) the sum of—

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

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

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

(2) Special rule for increase in compensation

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

(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 paragraph (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 of the Treasury, and may be revoked only with the consent of the Secretary of the Treasury. The Secretary of the Treasury 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 June 25, 2010.

(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 of the Treasury, 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 deter-

mined 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 respect¹ 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.

¹ So in original. Probably should be followed by “to”.

(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 chapter 1 of title 26 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 of the Treasury), 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 such title) 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 of title 26) that, upon such grant, is subject to a substantial risk of forfeiture (as defined under section 83(c)(1) of such title) for at least 5 years from the date of such grant.

(II) Secretarial authority

The Secretary of the Treasury 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 in-

come 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) of such title 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) of such title 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 1343 of this title) 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 de-

clared, 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 1082(d)(3) of this title) 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 this subchapter).

(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 1082(d)(3) of this title).

(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 of the Treasury 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).

(iv) Mergers and acquisitions

The Secretary of the Treasury 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 1082(c) of this title.

(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 single-employer plan may elect to maintain a prefunding balance.

(B) Funding standard carryover balance

(i) In general

In the case of a single-employer 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 1082(b) of this title 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 min-

imum required contribution shall be determined after taking into account any waiver under section 1082(c) of this title.

(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 of the Treasury 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 shall be the greater of—

(I) such ratio, as determined without regard to this subparagraph, 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 of the Treasury.

(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, 2008, and before January 1, 2011, 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 of the Treasury.

(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) of title 26.

(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 minimum 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 paragraph (1), (2), or (4) of section 1056(g) of this title 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) Decrease

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 of the Treasury, 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 of the Treasury.

(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 which are single-employer plans and are 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 of the Treasury,

(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 of the Treasury.

(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 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 of the Treasury 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 of the Treasury 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 of the Treasury 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 (ii).

(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 of the Treasury 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 of the Treasury 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 of the Treasury.

(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 of the Treasury.

(F) Publication requirements

The Secretary of the Treasury shall publish for each month the corporate bond yield curve (and the corporate bond yield curve reflecting the modification described in section 1055(g)(3)(B)(iii)(I)² of this title 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 of the Treasury 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 of the Treasury 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 of the Treasury shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(B) Periodic revision

The Secretary of the Treasury 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 of the Treasury, a mortality table 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 of the Treasury, 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 of the Treasury for approval under this subparagraph at least 7 months before the

² See References in Text note below.

1st day of the period described in clause (i).

(II) Disposition

Any mortality table submitted to the Secretary of the Treasury 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 of the Treasury, 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 of the Treasury and the plan sponsor.

(D) Separate mortality tables for the disabled

Notwithstanding subparagraph (A)—

(i) In general

The Secretary of the Treasury 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 of the Treasury 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 [42 U.S.C. 401 et seq.] and the regulations thereunder.

(iii) Periodic revision

The Secretary of the Treasury 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 of the Treasury.

(B) Plans to which paragraph applies

This paragraph shall apply to a plan only if—

(i) the plan is a single-employer plan to which subchapter III applies,

(ii) the aggregate unfunded vested benefits as of the close of the preceding plan year (as determined under section 1306(a)(3)(E)(iii) of this title) of such plan and all other plans maintained by the contributing sponsors (as defined in section 1301(a)(13) of this title) and members of such sponsors' controlled groups (as defined in section 1301(a)(14) of this title) which are covered by subchapter III (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 of the Treasury 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 of the Treasury 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 required 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:

In the case of the following required installment:	The due date is:
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 1082(c) of this title) 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 ac-

cordance with regulations prescribed by the Secretary of the Treasury.

(iii) Plan with alternate valuation date

The Secretary of the Treasury 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 satisfaction of the Secretary of the Treasury that such excess is the result of non-recurring 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 of the Treasury shall provide in regulations.

(v) Liquid assets

The term “liquid assets” means cash, marketable securities, and such other assets as specified by the Secretary of the Treasury 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 of the Treasury 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 1082 of this title 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 single-employer plan covered under section 1321 of this title 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 1082 of this title 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 1368 of this title 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 of title 26.

(I) Qualified transfers to health benefit accounts

In the case of a qualified transfer (as defined in section 420 of title 26), any assets so transferred shall not, for purposes of this section, be treated as assets in the plan.

(Pub. L. 93-406, title I, §303, as added Pub. L. 109-280, title I, §102(a), Aug. 17, 2006, 120 Stat. 789; amended Pub. L. 110-458, title I, §§101(b)(1), 121(a), title II, §202(a), Dec. 23, 2008, 122 Stat. 5093, 5113, 5117; Pub. L. 111-192, title II, §§201(a), 204(a), June 25, 2010, 124 Stat. 1283, 1300; Pub. L. 112-141, div. D, title II, §4021(b)(1), (3)(A), July 6, 2012, 126 Stat. 847, 849; Pub. L. 113-159, title II, §2003(b)(1), (d)(2), Aug. 8, 2014, 128 Stat. 1849, 1851; Pub. L. 113-295, div. A, title II, §221(a)(57)(C)(ii), (D)(ii), Dec. 19, 2014, 128 Stat. 4046; Pub. L. 114-74, title V, §504(b)(1), Nov. 2, 2015, 129 Stat. 593.)

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 Title 26, Internal Revenue Code.

Section 1055(g)(3)(B)(iii)(I) of this title, referred to in subsec. (h)(2)(F), was redesignated section 1055(g)(3)(B)(iii) of this title by Pub. L. 113-295, div. A, title II, §221(a)(57)(B)(ii), 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. 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.

PRIOR PROVISIONS

A prior section 1083, Pub. L. 93-406, title I, §303, Sept. 2, 1974, 88 Stat. 872; Pub. L. 99-272, title XI, §§11015(b)(1)(A), 11016(c)(2), Apr. 7, 1986, 100 Stat. 267, 273; Pub. L. 100-203, title IX, §9306(a)(2), (b)(2), (c)(2)(A), (d)(2), Dec. 22, 1987, 101 Stat. 1330-353 to 1330-355; Pub. L. 101-239, title VII, §§7881(b)(6)(B)(i), (7), (8), (c)(2), 7891(a)(1), Dec. 19, 1989, 103 Stat. 2438, 2439, 2445, related to variance from minimum funding standard, prior to repeal by Pub. L. 109-280, title I, §101(a), (d), Aug. 17, 2006, 120 Stat. 784, 789, applicable to plan years beginning after 2007.

AMENDMENTS

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 each calendar year from 2012 to 2020 and for calendar years after 2020.

2014—Subsec. (c)(5). Pub. L. 113-295, §221(a)(57)(C)(ii), struck out subpar. (A) designation and heading and struck out subpar. (B) which related to transition rule and availability of transition relief.

Subsec. (h)(2)(B)(i). Pub. L. 113-159, §2003(d)(2), 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(b)(1), amended table generally. Prior to amendment, table related to applicable minimum and maximum percentages for each calendar year from 2012 to 2015 and for calendar years after 2015.

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

2012—Subsec. (h)(2)(C)(iv). Pub. L. 112-141, §4021(b)(1), added cl. (iv).

Subsec. (h)(2)(F). Pub. L. 112-141, § 40211(b)(3)(A), inserted “and the averages determined under subparagraph (C)(iv)” after “subparagraph (C)”.

2010—Subsec. (c)(1). Pub. L. 111-192, § 201(a)(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(a)(1), added subpar. (D).

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

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

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

2008—Subsec. (b). Pub. L. 110-458, § 101(b)(1)(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(a)(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(a)(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)(1)(B), inserted “beginning” before “after 2008”.

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

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

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

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

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

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

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

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

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

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

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

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114-74 applicable with respect to plan years beginning after Dec. 31, 2015, see section 504(c) of Pub. L. 114-74, set out as a note under section 430 of Title 26, Internal Revenue Code.

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 Title 26, Internal Revenue Code.

Amendment by Pub. L. 113-159 applicable with respect to plan years beginning after Dec. 31, 2012, except as otherwise provided, see section 2003(e) of Pub. L. 113-159, set out as a note under section 430 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2012 AMENDMENT

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

EFFECTIVE DATE OF 2010 AMENDMENT

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

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

EFFECTIVE DATE OF 2008 AMENDMENT

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

Amendment by section 101(b)(1)(B)-(E), (F)(ii)-(H) of Pub. L. 110-458 effective as if included in the provisions of Pub. L. 109-280 to which the amendment relates, except as otherwise provided, see section 112 of Pub. L. 110-458, set out as a note under section 72 of Title 26, Internal Revenue Code.

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

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

EFFECTIVE DATE

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

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

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

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

MODIFICATION OF TRANSITION RULE TO PENSION
FUNDING REQUIREMENTS

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

§ 1084. Minimum funding standards for multiemployer plans

(a) In general

For purposes of section 1082 of this title, the accumulated funding deficiency of a multiemployer plan for any plan year is 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 1082(c)(3) of this title) for each

prior plan year in equal annual installments (until fully amortized) over a period of 15 plan years,

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

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

(3) Credits to account

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

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

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

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

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

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

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

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard under section 1085 of this title (as in effect on the day before August 17, 2006), the excess (if any) of any debit balance in the funding standard account (determined without regard to this subparagraph) over any debit balance in the alternative minimum funding standard account.

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

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

(5) Combining and offsetting amounts to be amortized

Under regulations prescribed by the Secretary of the Treasury, amounts required to be

amortized under paragraph (2) or paragraph (3), as the case may be—

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

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

(6) Interest

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

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

For purposes of this part—

(A) Withdrawal liability

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

(B) Adjustments when a multiemployer plan leaves reorganization

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

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

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

The preceding sentence shall not apply to the extent of any accumulated funding deficiency under section 1423(a)¹ of this title as of the end of the last plan year that the plan was in reorganization.

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

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

of this title shall reduce the amount of contributions considered received by the plan for the plan year.

(D) Interim withdrawal liability payments

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

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

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

(F) Financial assistance

Any amount of any financial assistance from the Pension Benefit Guaranty Corporation to any plan, and any repayment of such amount, shall be taken into account under this section and section 1082 of this title in such manner as is determined by the Secretary of the Treasury.

(G) Short-term benefits

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

(8) Special relief rules

Notwithstanding any other provision of this subsection—

(A) Amortization of net investment losses

(i) In general

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

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

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

¹ See References in Text note below.

(ii) Coordination with extensions

If this subparagraph applies for any plan year—

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

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

(iii) Net investment losses

For purposes of this subparagraph—

(I) In general

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

(II) Criminally fraudulent investment arrangements

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

(B) Expanded smoothing period**(i) In general**

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

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

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

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

(ii) Asset valuation methods

If this subparagraph applies for any plan year—

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

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

(iii) Amortization of reduction in unfunded accrued liability

If this subparagraph and subparagraph (A) both apply for any plan year, the plan

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

(C) Solvency test

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

(D) Restriction on benefit increases

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

(i) the plan actuary certifies that—

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

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

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

(E) Reporting

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

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

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

(c) Additional rules**(1) Determinations to be made under funding method**

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

(2) Valuation of assets**(A) In general**

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

(B) Election with respect to bonds

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

(3) Actuarial assumptions must be reasonable

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

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

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

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

For purposes of this section, if—

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

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

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

(5) Full funding

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

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

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

(6) Full-funding limitation**(A) In general**

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

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

(ii) the lesser of—

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

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

(B) Minimum amount**(i) In general**

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

(I) 90 percent of the current liability of the plan (including the expected increase in current liability due to benefits accruing during the plan year), over

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

(ii) Assets

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

(C) Full funding limitation

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

(D) Current liability

For purposes of this paragraph—

(i) In general

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

(ii) Treatment of unpredictable contingent event benefits

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

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

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

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

(iii) Interest rate used

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

(iv) Mortality tables**(I) Commissioners' standard table**

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

(II) Secretarial authority

The Secretary of the Treasury may by regulation prescribe for plan years be-

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

(v) Separate mortality tables for the disabled

Notwithstanding clause (iv)—

(I) In general

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

(II) Special rule for disabilities occurring after 1994

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

(vi) Periodic review

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

(E) Required change of interest rate

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

(i) In general

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

(ii) Permissible range

For purposes of this subparagraph—

(I) In general

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

on the last day before the beginning of the plan year.

(II) Secretarial authority

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

(iii) Assumptions

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

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

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

(7) Annual valuation

(A) In general

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

(B) Valuation date

(i) Current year

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

(ii) Use of prior year valuation

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

(iii) Adjustments

Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) Limitation

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

(8) Time when certain contributions deemed made

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

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

(d) Extension of amortization periods for multi-employer plans

(1) Automatic extension upon application by certain plans

(A) In general

If the plan sponsor of a multiemployer plan—

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

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

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

(B) Criteria

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

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

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

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

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

(2) Alternative extension

(A) In general

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

(B) Determination

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

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

(ii) the failure to permit such extension would—

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

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

(C) Action by Secretary of the Treasury

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

(3) Advance notice

(A) In general

The Secretary of the Treasury shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the applicant has provided notice of the filing of the application for such extension to each affected party (as defined in section 1301(a)(21) of this title) with respect to the affected plan. Such notice shall include a description of the extent to which the plan is funded for benefits which are guaranteed under subchapter III and for benefit liabilities.

(B) Consideration of relevant information

The Secretary of the Treasury shall consider any relevant information provided by a person to whom notice was given under paragraph (1).

(Pub. L. 93-406, title I, §304, as added Pub. L. 109-280, title II, §201(a), Aug. 17, 2006, 120 Stat. 858; amended Pub. L. 111-192, title II, §211(a)(1), June 25, 2010, 124 Stat. 1302; Pub. L. 113-235, div. O, title I, §§101(b)(1), 108(a)(3)(B), Dec. 16, 2014, 128 Stat. 2774, 2787; Pub. L. 113-295, div. A, title I, §171(b), Dec. 19, 2014, 128 Stat. 4023.)

REFERENCES IN TEXT

Section 1423(a) of this title, referred to in subsec. (b)(7)(B), was repealed by Pub. L. 113-235, div. O, title I, §108(a)(1), Dec. 16, 2014, 128 Stat. 2786.

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

Section 807(d)(5) of title 26, referred to in subsec. (c)(6)(D)(iv)(I), was repealed by Pub. L. 115-97, title I, §13517(a)(2)(A), Dec. 22, 2017, 131 Stat. 2144.

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

PRIOR PROVISIONS

A prior section 1084, Pub. L. 93-406, title I, §304, Sept. 2, 1974, 88 Stat. 873; Pub. L. 99-272, title XI, §§11015(b)(1)(B), 11016(c)(3), Apr. 7, 1986, 100 Stat. 267, 273; Pub. L. 100-203, title IX, §9306(c)(2)(B), Dec. 22, 1987, 101 Stat. 1330-355; Pub. L. 101-239, title VII, §§7891(a)(1), 7894(d)(3), Dec. 19, 1989, 103 Stat. 2445, 2449, related to extension of amortization periods, prior to repeal by Pub. L. 109-280, title I, §101(a), (d), Aug. 17, 2006, 120 Stat. 784, 789, applicable to plan years beginning after 2007.

AMENDMENTS

2014—Subsec. (a). Pub. L. 113-235, §108(a)(3)(B), amended subsec. (a) generally. Prior to amendment, subsec. (a) related to accumulated funding deficiencies of multiemployer plans.

Subsec. (d)(1)(C). Pub. L. 113-295, which directed substitution of “December 31, 2015” for “December 31, 2014”, was not executed in view of the amendment by Pub. L. 113-235, §101(b)(1), which struck out subpar. (C). See note below.

Pub. L. 113-235, §101(b)(1), struck out subpar. (C). Text read as follows: “The preceding provisions of this paragraph shall not apply with respect to any application submitted after December 31, 2014.”

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

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by Pub. L. 113-295 applicable to applications submitted under subsec. (d)(1)(C) of this section after Dec. 31, 2014, see section 171(c) of Pub. L. 113-295, set out as a note under section 431 of Title 26, Internal Revenue Code.

Amendment by section 108(a)(3)(B) of Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 108(c) of Pub. L. 113-235, set out as an Effective Date of Repeal note under section 418 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2010 AMENDMENT

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

EFFECTIVE DATE

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

SHORTFALL FUNDING METHOD

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

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

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

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

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

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

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

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

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

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

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

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

(a) General rule

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

(1) if the plan is in endangered status—

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

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

(2) if the plan is in critical status—

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

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

(3) if the plan is in critical and declining status—

(A) the requirements of paragraph (2) shall apply to the plan; and

(B) the plan sponsor may, by plan amendment, suspend benefits in accordance with the requirements of subsection (e)(9).

(b) Determination of endangered and critical status

For purposes of this section—

(1) Endangered status

A multiemployer plan is in endangered status for a plan year if, as determined by the plan actuary under paragraph (3), the plan is not in critical status for the plan year and is not described in paragraph (5), and, as of the beginning of the plan year, either—

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

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

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

(2) Critical status

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

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

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

(ii) the sum of—

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

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

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

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

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

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

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

(i) (I) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year

on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds

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

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

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

(D) A plan is described in this subparagraph if the sum of—

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

(ii) the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years, assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years,

is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

(3) Annual certification by plan actuary**(A) In general**

Not later than the 90th day of each plan year of a multiemployer plan, the plan actuary shall certify to the Secretary of the Treasury and to the plan sponsor—

(i) whether or not the plan is in endangered status for such plan year, or would be in endangered status for such plan year but for paragraph (5),¹ whether or not the plan is or will be in critical status for such plan year or for any of the succeeding 5 plan years, and whether or not the plan is or will be in critical and declining status for such plan year, and

(ii) in the case of a plan which is in a funding improvement or rehabilitation period, whether or not the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

(B) Actuarial projections of assets and liabilities**(i) In general**

Except as provided in clause (iv), in making the determinations and projections under this subsection, the plan actuary shall make projections required for the current and succeeding plan years of the current value of the assets of the plan and the present value of all liabilities to par-

¹ So in original.

ticipants and beneficiaries under the plan for the current plan year as of the beginning of such year. The actuary's projections shall be based on reasonable actuarial estimates, assumptions, and methods that, except as provided in clause (iii), offer the actuary's best estimate of anticipated experience under the plan. The projected present value of liabilities as of the beginning of such year shall be determined based on the most recent of either—

(I) the actuarial statement required under section 1023(d) of this title with respect to the most recently filed annual report, or

(II) the actuarial valuation for the preceding plan year.

(ii) Determinations of future contributions

Any actuarial projection of plan assets shall assume—

(I) reasonably anticipated employer contributions for the current and succeeding plan years, assuming that the terms of the one or more collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years, or

(II) that employer contributions for the most recent plan year will continue indefinitely, but only if the plan actuary determines there have been no significant demographic changes that would make such assumption unreasonable.

(iii) Projected industry activity

Any projection of activity in the industry or industries covered by the plan, including future covered employment and contribution levels, shall be based on information provided by the plan sponsor, which shall act reasonably and in good faith.

(iv)² Projections relating to critical status in succeeding plan years

Clauses (i) and (ii) (other than the 2nd sentence of clause (i)) may be disregarded by a plan actuary in the case of any certification of whether a plan will be in critical status in a succeeding plan year, except that a plan sponsor may not elect to be in critical status for a plan year under paragraph (4) in any case in which the certification upon which such election would be based is made without regard to such clauses.

(iv)² Projections of critical and declining status

In determining whether a plan is in critical and declining status as described in subsection (e)(9), clauses (i), (ii), and (iii) shall apply, except that—

(I) if reasonable, the plan actuary shall assume that each contributing employer in compliance continues to comply through the end of the rehabilitation period or such later time as provided in

subsection (e)(3)(A)(ii) with the terms of the rehabilitation plan that correspond to the schedule adopted or imposed under subsection (e), and

(II) the plan actuary shall take into account any suspensions of benefits described in subsection (e)(9) adopted in a prior plan year that are still in effect.

(C) Penalty for failure to secure timely actuarial certification

Any failure of the plan's actuary to certify the plan's status under this subsection by the date specified in subparagraph (A) shall be treated for purposes of section 1132(c)(2) of this title as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary under section 1021(b)(1) of this title.

(D) Notice

(i) In general

In any case in which it is certified under subparagraph (A) that a multiemployer plan is or will be in endangered or critical status for a plan year or in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the endangered or critical status to the participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary. In any case in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall notify the Secretary of the Treasury of such election not later than 30 days after the date of such certification or such other time as the Secretary of the Treasury may prescribe by regulations or other guidance.

(ii) Plans in critical status

If it is certified under subparagraph (A) that a multiemployer plan is or will be in critical status, the plan sponsor shall include in the notice under clause (i) an explanation of the possibility that—

(I) adjustable benefits (as defined in subsection (e)(8)) may be reduced, and

(II) such reductions may apply to participants and beneficiaries whose benefit commencement date is on or after the date such notice is provided for the first plan year in which the plan is in critical status.

(iii) In the case of a multiemployer plan that would be in endangered status but for paragraph (5), the plan sponsor shall provide notice to the bargaining parties and the Pension Benefit Guaranty Corporation that the plan would be in endangered status but for such paragraph.

(iv) Model notice

The Secretary of the Treasury, in consultation with the Secretary³ shall prescribe a model notice that a multiem-

²So in original. Two cls. (iv) have been enacted.

³So in original. Probably should be followed by a comma.

ployer plan may use to satisfy the requirements under clauses (ii) and (iii).

(v) Notice of projection to be in critical status in a future plan year

In any case in which it is certified under subparagraph (A)(i) that a multiemployer plan will be in critical status for any of 5 succeeding plan years (but not for the current plan year) and the plan sponsor of such plan has not made an election to be in critical status for the plan year under paragraph (4), the plan sponsor shall, not later than 30 days after the date of the certification, provide notification of the projected critical status to the Pension Benefit Guaranty Corporation.

(4) Election to be in critical status

Notwithstanding paragraph (2) and subject to paragraph (3)(B)(iv)—

(A) the plan sponsor of a multiemployer plan that is not in critical status for a plan year but that is projected by the plan actuary, pursuant to the determination under paragraph (3), to be in critical status in any of the succeeding 5 plan years may, not later than 30 days after the date of the certification under paragraph (3)(A), elect to be in critical status effective for the current plan year,

(B) the plan year in which the plan sponsor elects to be in critical status under subparagraph (A) shall be treated for purposes of this section as the first year in which the plan is in critical status, regardless of the date on which the plan first satisfies the criteria for critical status under paragraph (2), and

(C) a plan that is in critical status under this paragraph shall not emerge from critical status except in accordance with subsection (e)(4)(B).

(5) Special rule

A plan is described in this paragraph if—

(A) as part of the actuarial certification of endangered status under paragraph (3)(A) for the plan year, the plan actuary certifies that the plan is projected to no longer be described in either paragraph (1)(A) or paragraph (1)(B) as of the end of the tenth plan year ending after the plan year to which the certification relates, and

(B) the plan was not in critical or endangered status for the immediately preceding plan year.

(6) Critical and declining status

For purposes of this section, a plan in critical status shall be treated as in critical and declining status if the plan is described in one or more of subparagraphs (A), (B), (C), and (D) of paragraph (2) and the plan is projected to become insolvent within the meaning of section 1426 of this title during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80 percent).

(c) Funding improvement plan must be adopted for multiemployer plans in endangered status

(1) In general

In any case in which a multiemployer plan is in endangered status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a funding improvement plan not later than 240 days following the required date for the actuarial certification of endangered status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the funding improvement plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to meet the applicable benchmarks in accordance with the funding improvement plan, including—

(I) one proposal for reductions in the amount of future benefit accruals necessary to achieve the applicable benchmarks, assuming no amendments increasing contributions under the plan (other than amendments increasing contributions necessary to achieve the applicable benchmarks after amendments have reduced future benefit accruals to the maximum extent permitted by law), and

(II) one proposal for increases in contributions under the plan necessary to achieve the applicable benchmarks, assuming no amendments reducing future benefit accruals under the plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to achieving the applicable benchmarks in accordance with the funding improvement plan.

For purposes of this section, the term “applicable benchmarks” means the requirements applicable to the multiemployer plan under paragraph (3) (as modified by paragraph (5)).

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a funding plan adoption period or funding improvement period by reason of the plan being in endangered status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial determination year with respect to the funding improvement plan to which it relates.

(3) Funding improvement plan

For purposes of this section—

(A) In general

A funding improvement plan is a plan which consists of the actions, including options or a range of options to be proposed to the bargaining parties, formulated to pro-

vide, based on reasonably anticipated experience and reasonable actuarial assumptions, for the attainment by the plan during the funding improvement period of the following requirements:

(i) Increase in plan's funding percentage

The plan's funded percentage as of the close of the funding improvement period equals or exceeds a percentage equal to the sum of—

(I) such percentage as of the beginning of the first plan year for which the plan is certified to be in endangered status pursuant to paragraph (b)(3), plus

(II) 33 percent of the difference between 100 percent and the percentage under subclause (I).

(ii) Avoidance of accumulated funding deficiencies

No accumulated funding deficiency for the last plan year during the funding improvement period (taking into account any extension of amortization periods under section 1084(d) of this title).

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A)(i)(II) shall be applied by substituting "20 percent" for "33 percent".

(4) Funding improvement period

For purposes of this section—

(A) In general

The funding improvement period for any funding improvement plan adopted pursuant to this subsection is the 10-year period beginning on the first day of the first plan year of the multiemployer plan beginning after the earlier of—

(i) the second anniversary of the date of the adoption of the funding improvement plan, or

(ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of endangered status for the initial determination year under subsection (b)(3)(A) and covering, as of such due date, at least 75 percent of the active participants in such multiemployer plan.

(B) Seriously endangered plans

In the case of a plan in seriously endangered status, except as provided in paragraph (5), subparagraph (A) shall be applied by substituting "15-year period" for "10-year period".

(C) Coordination with changes in status

(i) Plans no longer in endangered status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is no longer in endangered status and is not in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the preceding plan year.

(ii) Plans in critical status

If the plan's actuary certifies under subsection (b)(3)(A) for a plan year in any funding plan adoption period or funding improvement period that the plan is in critical status, the funding plan adoption period or funding improvement period, whichever is applicable, shall end as of the close of the plan year preceding the first plan year in the rehabilitation period with respect to such status.

(D) Plans in endangered status at end of period

If the plan's actuary certifies under subsection (b)(3)(A) for the first plan year following the close of the period described in subparagraph (A) that the plan is in endangered status, the provisions of this subsection and subsection (d) shall be applied as if such first plan year were an initial determination year, except that the plan may not be amended in a manner inconsistent with the funding improvement plan in effect for the preceding plan year until a new funding improvement plan is adopted.

(5) Special rules for seriously endangered plans more than 70 percent funded

(A) In general

If the funded percentage of a plan in seriously endangered status was more than 70 percent as of the beginning of the initial determination year—

(i) paragraphs (3)(B) and (4)(B) shall apply only if the plan's actuary certifies, within 30 days after the certification under subsection (b)(3)(A) for the initial determination year, that, based on the terms of the plan and the collective bargaining agreements in effect at the time of such certification, the plan is not projected to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), and

(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of paragraph (3)(B) and (4)(B) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

(B) Special rule after expiration of agreements

Notwithstanding subparagraph (A)(ii), if, for any plan year ending after the date described in subparagraph (A)(ii), the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(A) (without regard to paragraphs (3)(B) and (4)(B)), paragraphs (3)(B) and (4)(B) shall continue to apply for such year.

(6) Updates to funding improvement plan and schedules**(A) Funding improvement plan**

The plan sponsor shall annually update the funding improvement plan and shall file the update with the plan's annual report under section 1024 of this title.

(B) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(C) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(7) Imposition of schedule where failure to adopt funding improvement plan**(A) Initial contribution schedule**

If—

(i) a collective bargaining agreement providing for contributions under a multi-employer plan that was in effect at the time the plan entered endangered status expires, and

(ii) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,

the plan sponsor shall implement the schedule described in paragraph (1)(B)(i)(I) beginning on the date specified in subparagraph (C).

(B) Subsequent contribution schedule

If—

(i) a collective bargaining agreement providing for contributions under a multi-employer plan in accordance with a schedule provided by the plan sponsor pursuant to a funding improvement plan (or imposed under subparagraph (A)) expires while the plan is still in endangered status, and

(ii) after receiving one or more updated schedules from the plan sponsor under paragraph (6)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the updated funding improvement plan and a schedule from the plan sponsor,

then the contribution schedule applicable under the expired collective bargaining agreement, as updated and in effect on the date the collective bargaining agreement expires, shall be implemented by the plan sponsor beginning on the date specified in subparagraph (C).

(C) Date of implementation

The date specified in this subparagraph is the date which is 180 days after the date on

which the collective bargaining agreement described in subparagraph (A) or (B) expires.

(D) Failure to make scheduled contributions

Any failure to make a contribution under a schedule of contribution rates provided under this paragraph shall be treated as a delinquent contribution under section 1145 of this title and shall be enforceable as such.

(8) Funding plan adoption period

For purposes of this section, the term “funding plan adoption period” means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

(d) Rules for operation of plan during adoption and improvement periods**(1) Compliance with funding improvement plan****(A) In general**

A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to be inconsistent with the funding improvement plan.

(B) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a funding improvement plan under subsection (c) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the funding improvement plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to meet the applicable benchmark on the schedule contemplated in the funding improvement plan.

(2) Special rules for plan adoption period

During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the date of the adoption of a funding improvement plan—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

- (i) a reduction in the level of contributions for any participants,
- (ii) a suspension of contributions with respect to any period of service, or
- (iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of title 26 or to comply with other applicable law.

(e) Rehabilitation plan must be adopted for multiemployer plans in critical status

(1) In general

In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

(A) shall adopt a rehabilitation plan not later than 240 days following the required date for the actuarial certification of critical status under subsection (b)(3)(A), and

(B) within 30 days after the adoption of the rehabilitation plan—

(i) shall provide to the bargaining parties 1 or more schedules showing revised benefit structures, revised contribution structures, or both, which, if adopted, may reasonably be expected to enable the multiemployer plan to emerge from critical status in accordance with the rehabilitation plan, and

(ii) may, if the plan sponsor deems appropriate, prepare and provide the bargaining parties with additional information relating to contribution rates or benefit reductions, alternative schedules, or other information relevant to emerging from critical status in accordance with the rehabilitation plan.

The schedule or schedules described in subparagraph (B)(i) shall reflect reductions in future benefit accruals and adjustable benefits, and increases in contributions, that the plan sponsor determines are reasonably necessary to emerge from critical status. One schedule shall be designated as the default schedule and such schedule shall assume that there are no increases in contributions under the plan other than the increases necessary to emerge from critical status after future benefit accruals and other benefits (other than benefits the reduction or elimination of which are not permitted under section 1054(g) of this title) have been reduced to the maximum extent permitted by law.

(2) Exception for years after process begins

Paragraph (1) shall not apply to a plan year if such year is in a rehabilitation plan adoption period or rehabilitation period by reason of the plan being in critical status for a preceding plan year. For purposes of this section, such preceding plan year shall be the initial critical year with respect to the rehabilitation plan to which it relates.

(3) Rehabilitation plan

For purposes of this section—

(A) In general

A rehabilitation plan is a plan which consists of—

(i) actions, including options or a range of options to be proposed to the bargaining parties, formulated, based on reasonably anticipated experience and reasonable actuarial assumptions, to enable the plan to cease to be in critical status by the end of the rehabilitation period and may include reductions in plan expenditures (including plan mergers and consolidations), reductions in future benefit accruals or in-

creases in contributions, if agreed to by the bargaining parties, or any combination of such actions, or

(ii) if the plan sponsor determines that, based on reasonable actuarial assumptions and upon exhaustion of all reasonable measures, the plan can not reasonably be expected to emerge from critical status by the end of the rehabilitation period, reasonable measures to emerge from critical status at a later time or to forestall possible insolvency (within the meaning of section 1426 of this title).

A rehabilitation plan must provide annual standards for meeting the requirements of such rehabilitation plan. Such plan shall also include the schedules required to be provided under paragraph (1)(B)(i) and if clause (ii) applies, shall set forth the alternatives considered, explain why the plan is not reasonably expected to emerge from critical status by the end of the rehabilitation period, and specify when, if ever, the plan is expected to emerge from critical status in accordance with the rehabilitation plan.

(B) Updates to rehabilitation plan and schedules

(i) Rehabilitation plan

The plan sponsor shall annually update the rehabilitation plan and shall file the update with the plan's annual report under section 1024 of this title.

(ii) Schedules

The plan sponsor shall annually update any schedule of contribution rates provided under this subsection to reflect the experience of the plan.

(iii) Duration of schedule

A schedule of contribution rates provided by the plan sponsor and relied upon by bargaining parties in negotiating a collective bargaining agreement shall remain in effect for the duration of that collective bargaining agreement.

(C) Imposition of schedule where failure to adopt rehabilitation plan

(i) Initial contribution schedule

If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan that was in effect at the time the plan entered critical status expires, and

(II) after receiving one or more schedules from the plan sponsor under paragraph (1)(B), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),

the plan sponsor shall implement the schedule described in the last sentence of paragraph (1) beginning on the date specified in clause (iii).

(ii) Subsequent contribution schedule

If—

(I) a collective bargaining agreement providing for contributions under a multiemployer plan in accordance with a schedule provided by the plan sponsor pursuant to a rehabilitation plan (or imposed under subparagraph (C)(i)) expires while the plan is still in critical status, and

(II) after receiving one or more updated schedules from the plan sponsor under subparagraph (B)(ii), the bargaining parties with respect to such agreement fail to adopt a contribution schedule with terms consistent with the updated rehabilitation plan and a schedule from the plan sponsor,

then the contribution schedule applicable under the expired collective bargaining agreement, as updated and in effect on the date the collective bargaining agreement expires, shall be implemented by the plan sponsor beginning on the date specified in clause (iii).

(iii) Date of implementation

The date specified in this subparagraph is the date which is 180 days after the date on which the collective bargaining agreement described in clause (i) or (ii) expires.

(iv) Failure to make scheduled contributions

Any failure to make a contribution under a schedule of contribution rates provided under this subsection shall be treated as a delinquent contribution under section 1145 of this title and shall be enforceable as such.

(4) Rehabilitation period

For purposes of this section—

(A) In general

The rehabilitation period for a plan in critical status is the 10-year period beginning on the first day of the first plan year of the multiemployer plan following the earlier of—

- (i) the second anniversary of the date of the adoption of the rehabilitation plan, or
- (ii) the expiration of the collective bargaining agreements in effect on the due date for the actuarial certification of critical status for the initial critical year under subsection (a)(1) and covering, as of such date at least 75 percent of the active participants in such multiemployer plan.

If a plan emerges from critical status as provided under subparagraph (B) before the end of such 10-year period, the rehabilitation period shall end with the plan year preceding the plan year for which the determination under subparagraph (B) is made.

(B) Emergence

(i) In general

A plan in critical status shall remain in such status until a plan year for which the plan actuary certifies, in accordance with subsection (b)(3)(A), that—

(I) the plan is not described in one or more of the subparagraphs in subsection

(b)(2) as of the beginning of the plan year;

(II) the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 1084(d)(2) of this title or section 1084 of this title (as in effect prior to the enactment of the Pension Protection Act of 2006); and

(III) the plan is not projected to become insolvent within the meaning of section 1426 of this title for any of the 30 succeeding plan years.

(ii) Plans with certain amortization extensions

(I) Special emergence rule

Notwithstanding clause (i), a plan in critical status that has an automatic extension of amortization periods under section 1084(d)(1) of this title shall no longer be in critical status if the plan actuary certifies for a plan year, in accordance with subsection (b)(3)(A), that—

(aa) the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 1084(d)(1) of this title; and

(bb) the plan is not projected to become insolvent within the meaning of section 1426 of this title for any of the 30 succeeding plan years,

regardless of whether the plan is described in one or more of the subparagraphs in subsection (b)(2) as of the beginning of the plan year.

(II) Reentry into critical status

A plan that emerges from critical status under subclause (I) shall not reenter critical status for any subsequent plan year unless—

(aa) the plan is projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years, without regard to the use of the shortfall method but taking into account any extension of amortization periods under section 1084(d) of this title; or

(bb) the plan is projected to become insolvent within the meaning of section 1426 of this title for any of the 30 succeeding plan years.

(5) Rehabilitation plan adoption period

For purposes of this section, the term “rehabilitation plan adoption period” means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the day before the first day of the rehabilitation period.

(6) Limitation on reduction in rates of future accruals

Any reduction in the rate of future accruals under the default schedule described in the last sentence of paragraph (1) shall not reduce the rate of future accruals below—

(A) a monthly benefit (payable as a single life annuity commencing at the participant's normal retirement age) equal to 1 percent of the contributions required to be made with respect to a participant, or the equivalent standard accrual rate for a participant or group of participants under the collective bargaining agreements in effect as of the first day of the initial critical year, or

(B) if lower, the accrual rate under the plan on such first day.

The equivalent standard accrual rate shall be determined by the plan sponsor based on the standard or average contribution base units which the plan sponsor determines to be representative for active participants and such other factors as the plan sponsor determines to be relevant. Nothing in this paragraph shall be construed as limiting the ability of the plan sponsor to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates otherwise described in this paragraph.

(7) Automatic employer surcharge**(A) Imposition of surcharge**

Each employer otherwise obligated to make contributions for the initial critical year shall be obligated to pay to the plan for such year a surcharge equal to 5 percent of the contributions otherwise required under the applicable collective bargaining agreement (or other agreement pursuant to which the employer contributes). For each succeeding plan year in which the plan is in critical status for a consecutive period of years beginning with the initial critical year, the surcharge shall be 10 percent of the contributions otherwise so required.

(B) Enforcement of surcharge

The surcharges under subparagraph (A) shall be due and payable on the same schedule as the contributions on which the surcharges are based. Any failure to make a surcharge payment shall be treated as a delinquent contribution under section 1145 of this title and shall be enforceable as such.

(C) Surcharge to terminate upon collective bargaining agreement renegotiation

The surcharge under this paragraph shall cease to be effective with respect to employees covered by a collective bargaining agreement (or other agreement pursuant to which the employer contributes), beginning on the effective date of a collective bargaining agreement (or other such agreement) that includes terms consistent with a schedule presented by the plan sponsor under paragraph (1)(B)(i), as modified under subparagraph (B) of paragraph (3).

(D) Surcharge not to apply until employer receives notice

The surcharge under this paragraph shall not apply to an employer until 30 days after the employer has been notified by the plan sponsor that the plan is in critical status and that the surcharge is in effect.

(E) Surcharge not to generate increased benefit accruals

Notwithstanding any provision of a plan to the contrary, the amount of any surcharge under this paragraph shall not be the basis for any benefit accrual under the plan.

(8) Benefit adjustments**(A) Adjustable benefits****(i) In general**

Notwithstanding section 1054(g) of this title, the plan sponsor shall, subject to the notice requirements in subparagraph (C), make any reductions to adjustable benefits which the plan sponsor deems appropriate, based upon the outcome of collective bargaining over the schedule or schedules provided under paragraph (1)(B)(i).

(ii) Exception for retirees

Except in the case of adjustable benefits described in clause (iv)(III), the plan sponsor of a plan in critical status shall not reduce adjustable benefits of any participant or beneficiary whose benefit commencement date is before the date on which the plan provides notice to the participant or beneficiary under subsection (b)(3)(D) for the initial critical year.

(iii) Plan sponsor flexibility

The plan sponsor shall include in the schedules provided to the bargaining parties an allowance for funding the benefits of participants with respect to whom contributions are not currently required to be made, and shall reduce their benefits to the extent permitted under this subchapter and considered appropriate by the plan sponsor based on the plan's then current overall funding status.

(iv) Adjustable benefit defined

For purposes of this paragraph, the term "adjustable benefit" means—

(I) benefits, rights, and features under the plan, including post-retirement death benefits, 60-month guarantees, disability benefits not yet in pay status, and similar benefits,

(II) any early retirement benefit or retirement-type subsidy (within the meaning of section 1054(g)(2)(A) of this title) and any benefit payment option (other than the qualified joint and survivor annuity), and

(III) benefit increases that would not be eligible for a guarantee under section 1322a of this title on the first day of initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such first day.

(B) Normal retirement benefits protected

Except as provided in subparagraph (A)(iv)(III), nothing in this paragraph shall

be construed to permit a plan to reduce the level of a participant's accrued benefit payable at normal retirement age.

(C) Notice requirements

(i) In general

No reduction may be made to adjustable benefits under subparagraph (A) unless notice of such reduction has been given at least 30 days before the general effective date of such reduction for all participants and beneficiaries to—

(I) plan participants and beneficiaries,

(II) each employer who has an obligation to contribute (within the meaning of section 1392(a) of this title) under the plan, and

(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(ii) Content of notice

The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any reduction on their benefits, including an estimate (on an annual or monthly basis) of any affected adjustable benefit that a participant or beneficiary would otherwise have been eligible for as of the general effective date described in clause (i), and

(II) information as to the rights and remedies of plan participants and beneficiaries as well as how to contact the Department of Labor for further information and assistance where appropriate.

(iii) Form and manner

Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in regulations of the Secretary of the Treasury, in consultation with the Secretary,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.

The Secretary of the Treasury shall in the regulations prescribed under subclause (I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(9) Benefit suspensions for multiemployer plans in critical and declining status

(A) In general

Notwithstanding section 1054(g) of this title and subject to subparagraphs (B) through (I), the plan sponsor of a plan in critical and declining status may, by plan amendment, suspend benefits which the sponsor deems appropriate.

(B) Suspension of benefits

(i) Suspension of benefits defined

For purposes of this subsection, the term "suspension of benefits" means the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits.

(ii) Length of suspensions

Any suspension of benefits made under subparagraph (A) shall remain in effect until the earlier of when the plan sponsor provides benefit improvements in accordance with subparagraph (E) or the suspension of benefits expires by its own terms.

(iii) No liability

The plan shall not be liable for any benefit payments not made as a result of a suspension of benefits under this paragraph.

(iv) Applicability

For purposes of this paragraph, all references to suspensions of benefits, increases in benefits, or resummptions of suspended benefits with respect to participants shall also apply with respect to benefits of beneficiaries or alternative payees of participants.

(v) Retiree representative

(I) In general

In the case of a plan with 10,000 or more participants, not later than 60 days prior to the plan sponsor submitting an application to suspend benefits, the plan sponsor shall select a participant of the plan in pay status to act as a retiree representative. The retiree representative shall advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process.

(II) Reasonable expenses from plan

The plan shall provide for reasonable expenses by the retiree representative, including reasonable legal and actuarial support, commensurate with the plan's size and funded status.

(III) Special rule relating to fiduciary status

Duties performed pursuant to subclause (I) shall not be subject to section 1104(a) of this title. The preceding sentence shall not apply to those duties associated with an application to suspend benefits pursuant to subparagraph (G) that are performed by the retiree representative who is also a plan trustee.

(C) Conditions for suspensions

The plan sponsor of a plan in critical and declining status for a plan year may suspend benefits only if the following conditions are met:

(i) Taking into account the proposed suspensions of benefits (and, if applicable, a

proposed partition of the plan under section 1413 of this title), the plan actuary certifies that the plan is projected to avoid insolvency within the meaning of section 1426 of this title, assuming the suspensions of benefits continue until the suspensions of benefits expire by their own terms or if no such expiration date is set, indefinitely.

(ii) The plan sponsor determines, in a written record to be maintained throughout the period of the benefit suspension, that the plan is still projected to become insolvent unless benefits are suspended under this paragraph, although all reasonable measures to avoid insolvency have been taken (and continue to be taken during the period of the benefit suspension). In its determination, the plan sponsor may take into account factors including the following:

(I) Current and past contribution levels.

(II) Levels of benefit accruals (including any prior reductions in the rate of benefit accruals).

(III) Prior reductions (if any) of adjustable benefits.

(IV) Prior suspensions (if any) of benefits under this subsection.

(V) The impact on plan solvency of the subsidies and ancillary benefits available to active participants.

(VI) Compensation levels of active participants relative to employees in the participants' industry generally.

(VII) Competitive and other economic factors facing contributing employers.

(VIII) The impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan.

(IX) The impact of past and anticipated contribution increases under the plan on employer attrition and retention levels.

(X) Measures undertaken by the plan sponsor to retain or attract contributing employers.

(D) Limitations on suspensions

Any suspensions of benefits made by a plan sponsor pursuant to this paragraph shall be subject to the following limitations:

(i) The monthly benefit of any participant or beneficiary may not be reduced below 110 percent of the monthly benefit which is guaranteed by the Pension Benefit Guaranty Corporation under section 1322a of this title on the date of the suspension.

(ii)(I) In the case of a participant or beneficiary who has attained 75 years of age as of the effective date of the suspension, not more than the applicable percentage of the maximum suspendable benefits of such participant or beneficiary may be suspended under this paragraph.

(II) For purposes of subclause (I), the maximum suspendable benefits of a participant or beneficiary is the portion of the benefits of such participant or bene-

ficiary that would be suspended pursuant to this paragraph without regard to this clause;

(III) For purposes of subclause (I), the applicable percentage is a percentage equal to the quotient obtained by dividing—

(aa) the number of months during the period beginning with the month after the month in which occurs the effective date of the suspension and ending with the month during which the participant or beneficiary attains the age of 80, by

(bb) 60 months.

(iii) No benefits based on disability (as defined under the plan) may be suspended under this paragraph.

(iv) Any suspensions of benefits, in the aggregate (and, if applicable, considered in combination with a partition of the plan under section 1413 of this title), shall be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.

(v) In any case in which a suspension of benefits with respect to a plan is made in combination with a partition of the plan under section 1413 of this title, the suspension of benefits may not take effect prior to the effective date of such partition.

(vi) Any suspensions of benefits shall be equitably distributed across the participant and beneficiary population, taking into account factors, with respect to participants and beneficiaries and their benefits, that may include one or more of the following:

(I) Age and life expectancy.

(II) Length of time in pay status.

(III) Amount of benefit.

(IV) Type of benefit: survivor, normal retirement, early retirement.

(V) Extent to which participant or beneficiary is receiving a subsidized benefit.

(VI) Extent to which participant or beneficiary has received post-retirement benefit increases.

(VII) History of benefit increases and reductions.

(VIII) Years to retirement for active employees.

(IX) Any discrepancies between active and retiree benefits.

(X) Extent to which active participants are reasonably likely to withdraw support for the plan, accelerating employer withdrawals from the plan and increasing the risk of additional benefit reductions for participants in and out of pay status.

(XI) Extent to which benefits are attributed to service with an employer that failed to pay its full withdrawal liability.

(vii) In the case of a plan that includes the benefits described in clause (III), benefits suspended under this paragraph shall—

(I) first, be applied to the maximum extent permissible to benefits attributable to a participant's service for an

employer which withdrew from the plan and failed to pay (or is delinquent with respect to paying) the full amount of its withdrawal liability under section 1381(b)(1) of this title or an agreement with the plan,

(II) second, except as provided by subclause (III), be applied to all other benefits that may be suspended under this paragraph, and

(III) third, be applied to benefits under a plan that are directly attributable to a participant's service with any employer which has, prior to December 16, 2014—

(aa) withdrawn from the plan in a complete withdrawal under section 1383 of this title and has paid the full amount of the employer's withdrawal liability under section 1381(b)(1) of this title or an agreement with the plan, and

(bb) pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

(E) Benefit improvements

(i) In general

The plan sponsor may, in its sole discretion, provide benefit improvements while any suspension of benefits under the plan remains in effect, except that the plan sponsor may not increase the liabilities of the plan by reason of any benefit improvement for any participant or beneficiary not in pay status by the first day of the plan year for which the benefit improvement takes effect, unless—

(I) such action is accompanied by equitable benefit improvements in accordance with clause (ii) for all participants and beneficiaries whose benefit commencement dates were before the first day of the plan year for which the benefit improvement for such participant or beneficiary not in pay status took effect; and

(II) the plan actuary certifies that after taking into account such benefits improvements the plan is projected to avoid insolvency indefinitely under section 1426 of this title.

(ii) Equitable distribution of benefit improvements

(I) Limitation

The projected value of the total liabilities for benefit improvements for participants and beneficiaries not in pay status by the date of the first day of the plan year in which the benefit improvements are proposed to take effect, as determined as of such date, may not exceed the projected value of the liabilities arising from benefit improvements for par-

ticipants and beneficiaries with benefit commencement dates prior to the first day of such plan year, as so determined.

(II) Equitable distribution of benefits

The plan sponsor shall equitably distribute any increase in total liabilities for benefit improvements in clause (i) to some or all of the participants and beneficiaries whose benefit commencement date is before the date of the first day of the plan year in which the benefit improvements are proposed to take effect, taking into account the relevant factors described in subparagraph (D)(vi) and the extent to which the benefits of the participants and beneficiaries were suspended.

(iii) Special rule for resumptions of benefits only for participants in pay status

The plan sponsor may increase liabilities of the plan through a resumption of benefits for participants and beneficiaries in pay status only if the plan sponsor equitably distributes the value of resumed benefits to some or all of the participants and beneficiaries in pay status, taking into account the relevant factors described in subparagraph (D)(vi).

(iv) Special rule for certain benefit increases

This subparagraph shall not apply to a resumption of suspended benefits or plan amendment which increases liabilities with respect to participants and beneficiaries not in pay status by the first day of the plan year in which the benefit improvements took effect which—

(I) the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan, or

(II) is required as a condition of qualification under part I of subchapter D of chapter 1 of subtitle A of title 26 or to comply with other applicable law, as determined by the Secretary of the Treasury.

(v) Additional limitations

Except for resumptions of suspended benefits described in clause (iii), the limitations on benefit improvements while a suspension of benefits is in effect under this paragraph shall be in addition to any other applicable limitations on increases in benefits imposed on a plan.

(vi) Definition of benefit improvement

For purposes of this subparagraph, the term "benefit improvement" means, with respect to a plan, a resumption of suspended benefits, an increase in benefits, an increase in the rate at which benefits accrue, or an increase in the rate at which benefits become nonforfeitable under the plan.

(F) Notice requirements**(i) In general**

No suspension of benefits may be made pursuant to this paragraph unless notice of such proposed suspension has been given by the plan sponsor concurrently with an application for approval of such suspension submitted under subparagraph (G) to the Secretary of the Treasury to—

(I) such plan participants and beneficiaries who may be contacted by reasonable efforts,

(II) each employer who has an obligation to contribute (within the meaning of section 1392(a) of this title) under the plan, and

(III) each employee organization which, for purposes of collective bargaining, represents plan participants employed by such an employer.

(ii) Content of notice

The notice under clause (i) shall contain—

(I) sufficient information to enable participants and beneficiaries to understand the effect of any suspensions of benefits, including an individualized estimate (on an annual or monthly basis) of such effect on each participant or beneficiary,

(II) a description of the factors considered by the plan sponsor in designing the benefit suspensions,

(III) a statement that the application for approval of any suspension of benefits shall be available on the website of the Department of the Treasury and that comments on such application will be accepted,

(IV) information as to the rights and remedies of plan participants and beneficiaries,

(V) if applicable, a statement describing the appointment of a retiree representative, the date of appointment of such representative, identifying information about the retiree representative (including whether the representative is a plan trustee), and how to contact such representative, and

(VI) information on how to contact the Department of the Treasury for further information and assistance where appropriate.

(iii) Form and manner

Any notice under clause (i)—

(I) shall be provided in a form and manner prescribed in guidance by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, notwithstanding any other provision of law,

(II) shall be written in a manner so as to be understood by the average plan participant, and

(III) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably acces-

sible to persons to whom the notice is required to be provided.

(iv) Other notice requirement

Any notice provided under clause (i) shall fulfill the requirement for notice of a significant reduction in benefits described in section 1054(h) of this title.

(v) Model notice

The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall in the guidance prescribed under clause (iii)(I) establish a model notice that a plan sponsor may use to meet the requirements of this subparagraph.

(G) Approval process by the Secretary of the Treasury in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor**(i) In general**

The plan sponsor of a plan in critical and declining status for a plan year that seeks to suspend benefits must submit an application to the Secretary of the Treasury for approval of the suspensions of benefits. If the plan sponsor submits an application for approval of the suspensions, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve the application upon finding that the plan is eligible for the suspensions and has satisfied the criteria of subparagraphs (C), (D), (E), and (F).

(ii) Solicitation of comments

Not later than 30 days after receipt of the application under clause (i), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish a notice in the Federal Register soliciting comments from contributing employers, employee organizations, and participants and beneficiaries of the plan for which an application was made and other interested parties. The application for approval of the suspension of benefits shall be published on the website of the Secretary of the Treasury.

(iii) Required action; deemed approval

The Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall approve or deny any application for suspensions of benefits under this paragraph within 225 days after the submission of such application. An application for suspension of benefits shall be deemed approved unless, within such 225 days, the Secretary of the Treasury notifies the plan sponsor that it has failed to satisfy one or more of the criteria described in this paragraph. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, rejects a plan sponsor's application, the Secretary of the

Treasury shall provide notice to the plan sponsor detailing the specific reasons for the rejection, including reference to the specific requirement not satisfied. Approval or denial by the Secretary of the Treasury of an application shall be treated as a final agency action for purposes of section 704 of title 5.

(iv) Agency review

In evaluating whether the plan sponsor has met the criteria specified in clause (ii) of subparagraph (C), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall review the plan sponsor's consideration of factors under such clause.

(v) Standard for accepting plan sponsor determinations

In evaluating the plan sponsor's application, the Secretary of the Treasury shall accept the plan sponsor's determinations unless it concludes, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan sponsor's determinations were clearly erroneous.

(H) Participant ratification process

(i) In general

No suspension of benefits may take effect pursuant to this paragraph prior to a vote of the participants of the plan with respect to the suspension.

(ii) Administration of vote

Not later than 30 days after approval of the suspension by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (G), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall administer a vote of participants and beneficiaries of the plan. Except as provided in clause (v), the suspension shall go into effect following the vote unless a majority of all participants and beneficiaries of the plan vote to reject the suspension. The plan sponsor may submit a new suspension application to the Secretary of the Treasury for approval in any case in which a suspension is prohibited from taking effect pursuant to a vote under this subparagraph.

(iii) Ballots

The plan sponsor shall provide a ballot for the vote (subject to approval by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor) that includes the following:

(I) A statement from the plan sponsor in support of the suspension.

(II) A statement in opposition to the suspension compiled from comments received pursuant to subparagraph (G)(ii).

(III) A statement that the suspension has been approved by the Secretary of

the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor.

(IV) A statement that the plan sponsor has determined that the plan will become insolvent unless the suspension takes effect.

(V) A statement that insolvency of the plan could result in benefits lower than benefits paid under the suspension.

(VI) A statement that insolvency of the Pension Benefit Guaranty Corporation would result in benefits lower than benefits paid in the case of plan insolvency.

(iv) Communication by plan sponsor

It is the sense of Congress that, depending on the size and resources of the plan and geographic distribution of the plan's participants, the plan sponsor should take such steps as may be necessary to inform participants about proposed benefit suspensions through in-person meetings, telephone or internet-based communications, mailed information, or by other means.

(v) Systemically important plans

(I) In general

Not later than 14 days after a vote under this subparagraph rejecting a suspension, the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall determine whether the plan is a systemically important plan. If the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, determines that the plan is a systemically important plan, not later than the end of the 90-day period beginning on the date the results of the vote are certified, the Secretary of the Treasury shall, notwithstanding such adverse vote—

(aa) permit the implementation of the suspension proposed by the plan sponsor; or

(bb) permit the implementation of a modification by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, of such suspension (so long as the plan is projected to avoid insolvency within the meaning of section 1426 of this title under such modification).

(II) Recommendations

Not later than 30 days after a determination by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, that the plan is systemically important, the Participant and Plan Sponsor Advocate selected under section 1304 of this title may submit recommendations to the Secretary of the Treasury with respect to the suspension or any revisions to the suspension.

(III) Systemically important plan defined**(aa) In general**

For purposes of this subparagraph, a systemically important plan is a plan with respect to which the Pension Benefit Guaranty Corporation projects the present value of projected financial assistance payments exceeds \$1,000,000,000 if suspensions are not implemented.

(bb) Indexing

For calendar years beginning after 2015, there shall be substituted for the dollar amount specified in item (aa) an amount equal to the product of such dollar amount and a fraction, the numerator of which is the contribution and benefit base (determined under section 430 of title 42) for the preceding calendar year and the denominator of which is such contribution and benefit base for calendar year 2014. If the amount otherwise determined under this item is not a multiple of \$1,000,000, such amount shall be rounded to the next lowest multiple of \$1,000,000.

(vi) Final authorization to suspend

In any case in which a suspension goes into effect following a vote pursuant to clause (ii) (or following a determination under clause (v) that the plan is a systemically important plan), the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall issue a final authorization to suspend with respect to the suspension not later than 7 days after such vote (or, in the case of a suspension that goes into effect under clause (v), at a time sufficient to allow the implementation of the suspension prior to the end of the 90-day period described in clause (v)(I)).

(I) Judicial review**(i) Denial of application**

An action by the plan sponsor challenging the denial of an application for suspension of benefits by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, may only be brought following such denial.

(ii) Approval of suspension of benefits**(I) Timing of action**

An action challenging a suspension of benefits under this paragraph may only be brought following a final authorization to suspend by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, under subparagraph (H)(vi).

(II) Standards of review**(aa) In general**

A court shall review an action challenging a suspension of benefits under

this paragraph in accordance with section 706 of title 5.

(bb) Temporary injunction

A court reviewing an action challenging a suspension of benefits under this paragraph may not grant a temporary injunction with respect to such suspension unless the court finds a clear and convincing likelihood that the plaintiff will prevail on the merits of the case.

(iii) Restricted cause of action

A participant or beneficiary affected by a benefit suspension under this paragraph shall not have a cause of action under this subchapter.

(iv) Limitation on action to suspend benefits

No action challenging a suspension of benefits following the final authorization to suspend or the denial of an application for suspension of benefits pursuant to this paragraph may be brought after one year after the earliest date on which the plaintiff acquired or should have acquired actual knowledge of the existence of such cause of action.

(J) Special rule for emergence from critical status

A plan certified to be in critical and declining status pursuant to projections made under subsection (b)(3) for which a suspension of benefits has been made by the plan sponsor pursuant to this paragraph shall not emerge from critical status under paragraph (4)(B), until such time as—

- (i) the plan is no longer certified to be in critical or endangered status under paragraphs (1) and (2) of subsection (b), and
- (ii) the plan is projected to avoid insolvency under section 1426 of this title.

(f) Rules for operation of plan during adoption and rehabilitation period**(1) Compliance with rehabilitation plan****(A) In general**

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to be inconsistent with the rehabilitation plan.

(B) Special rules for benefit increases

A plan may not be amended after the date of the adoption of a rehabilitation plan under subsection (e) so as to increase benefits, including future benefit accruals, unless the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the rehabilitation plan, and, after taking into account the benefit increase, the multiemployer plan still is reasonably expected to emerge from critical status by the end of the rehabilitation period on the schedule contemplated in the rehabilitation plan.

(2) Restriction on lump sums and similar benefits**(A) In general**

Effective on the date the notice of certification of the plan's critical status for the

initial critical year under subsection (b)(3)(D) is sent, and notwithstanding section 1054(g) of this title, the plan shall not pay—

(i) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 1054(b)(1)(G) of this title), to a participant or beneficiary whose annuity starting date (as defined in section 1055(h)(2) of this title) occurs after the date such notice is sent,

(ii) any payment for the purchase of an irrevocable commitment from an insurer to pay benefits, and

(iii) any other payment specified by the Secretary of the Treasury by regulations.

(B) Exception

Subparagraph (A) shall not apply to a benefit which under section 1053(e) of this title may be immediately distributed without the consent of the participant or to any makeup payment in the case of a retroactive annuity starting date or any similar payment of benefits owed with respect to a prior period.

(3) Special rules for plan adoption period

During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the date of the adoption of a rehabilitation plan—

(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

(i) a reduction in the level of contributions for any participants,

(ii) a suspension of contributions with respect to any period of service, or

(iii) any new direct or indirect exclusion of younger or newly hired employees from plan participation, and

(B) no amendment of the plan which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of title 26 or to comply with other applicable law.

(g) Adjustments disregarded in withdrawal liability determination

(1) Benefit reduction

Any benefit reductions under subsection (e)(8) or (f) or benefit reductions or suspensions while in critical and declining status under subsection (e)(9),⁴ unless the withdrawal occurs more than ten years after the effective date of a benefit suspension by a plan in critical and declining status, shall be disregarded in determining a plan's unfunded vested benefits for purposes of determining an

employer's withdrawal liability under section 1381 of this title.

(2) Surcharges

Any surcharges under subsection (e)(7) shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 1391 of this title and in determining the highest contribution rate under section 1399(c) of this title, except for purposes of determining the unfunded vested benefits attributable to an employer under section 1391(c)(4) of this title or a comparable method approved under section 1391(c)(5) of this title.

(3) Contribution increases required by funding improvement or rehabilitation plan

(A) In general

Any increase in the contribution rate (or other increase in contribution requirements unless due to increased levels of work, employment, or periods for which compensation is provided) that is required or made in order to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan shall be disregarded in determining the allocation of unfunded vested benefits to an employer under section 1391 of this title and in determining the highest contribution rate under section 1399(c) of this title, except for purposes of determining the unfunded vested benefits attributable to an employer under section 1391(c)(4) of this title or a comparable method approved under section 1391(c)(5) of this title.

(B) Special rules

For purposes of this paragraph, any increase in the contribution rate (or other increase in contribution requirements) shall be deemed to be required or made in order to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan except for increases in contribution requirements due to increased levels of work, employment, or periods for which compensation is provided or additional contributions are used to provide an increase in benefits, including an increase in future benefit accruals, permitted by subsection (d)(1)(B) or (f)(1)(B).

(4) Emergence from endangered or critical status

In the case of increases in the contribution rate (or other increases in contribution requirements unless due to increased levels of work, employment, or periods for which compensation is provided) disregarded pursuant to paragraph (3), this subsection shall cease to apply as of the expiration date of the collective bargaining agreement in effect when the plan emerges from endangered or critical status. Notwithstanding the preceding sentence, once the plan emerges from critical or endangered status, increases in the contribution rate disregarded pursuant to paragraph (3) shall continue to be disregarded in determining the highest contribution rate under section 1399(c) of this title for plan years during which the plan was in endangered or critical status.

⁴So in original. There is no opening parenthesis corresponding to the second closing parenthesis.

(5) Simplified calculations

The Pension Benefit Guaranty Corporation shall prescribe simplified methods for the application of this subsection in determining withdrawal liability and payment amounts under section 1399(c) of this title.

(h) Expedited resolution of plan sponsor decisions

If, within 60 days of the due date for adoption of a funding improvement plan under subsection (c) or a rehabilitation plan under subsection (e), the plan sponsor of a plan in endangered status or a plan in critical status has not agreed on a funding improvement plan or rehabilitation plan, then any member of the board or group that constitutes the plan sponsor may require that the plan sponsor enter into an expedited dispute resolution procedure for the development and adoption of a funding improvement plan or rehabilitation plan.

(i) Nonbargained participation**(1) Both bargained and nonbargained employee-participants**

In the case of an employer that contributes to a multiemployer plan with respect to both employees who are covered by one or more collective bargaining agreements and employees who are not so covered, if the plan is in endangered status or in critical status, benefits of and contributions for the nonbargained employees, including surcharges on those contributions, shall be determined as if those nonbargained employees were covered under the first to expire of the employer's collective bargaining agreements in effect when the plan entered endangered or critical status.

(2) Nonbargained employees only

In the case of an employer that contributes to a multiemployer plan only with respect to employees who are not covered by a collective bargaining agreement, this section shall be applied as if the employer were the bargaining party, and its participation agreement with the plan were a collective bargaining agreement with a term ending on the first day of the plan year beginning after the employer is provided the schedule or schedules described in subsections (c) and (e).

(j) Definitions; actuarial method

For purposes of this section—

(1) Bargaining party

The term “bargaining party” means—

(A)(i) except as provided in clause (ii), an employer who has an obligation to contribute under the plan; or

(ii) in the case of a plan described under section 404(c) of title 26, or a continuation of such a plan, the association of employers that is the employer settlor of the plan; and

(B) an employee organization which, for purposes of collective bargaining, represents plan participants employed by an employer who has an obligation to contribute under the plan.

(2) Funded percentage

The term “funded percentage” means the percentage equal to a fraction—

(A) the numerator of which is the value of the plan's assets, as determined under section 1084(c)(2) of this title, and

(B) the denominator of which is the accrued liability of the plan, determined using actuarial assumptions described in section 1084(c)(3) of this title.

(3) Accumulated funding deficiency

The term “accumulated funding deficiency” has the meaning given such term in section 1084(a) of this title.

(4) Active participant

The term “active participant” means, in connection with a multiemployer plan, a participant who is in covered service under the plan.

(5) Inactive participant

The term “inactive participant” means, in connection with a multiemployer plan, a participant, or the beneficiary or alternate payee of a participant, who—

(A) is not in covered service under the plan, and

(B) is in pay status under the plan or has a nonforfeitable right to benefits under the plan.

(6) Pay status

A person is in pay status under a multiemployer plan if—

(A) at any time during the current plan year, such person is a participant or beneficiary under the plan and is paid an early, late, normal, or disability retirement benefit under the plan (or a death benefit under the plan related to a retirement benefit), or

(B) to the extent provided in regulations of the Secretary of the Treasury, such person is entitled to such a benefit under the plan.

(7) Obligation to contribute

The term “obligation to contribute” has the meaning given such term under section 1392(a) of this title.

(8) Actuarial method

Notwithstanding any other provision of this section, the actuary's determinations with respect to a plan's normal cost, actuarial accrued liability, and improvements in a plan's funded percentage under this section shall be based upon the unit credit funding method (whether or not that method is used for the plan's actuarial valuation).

(9) Plan sponsor

In the case of a plan described under section 404(c) of title 26, or a continuation of such a plan, the term “plan sponsor” means the bargaining parties described under paragraph (1).

(10) Benefit commencement date

The term “benefit commencement date” means the annuity starting date (or in the case of a retroactive annuity starting date, the date on which benefit payments begin).

(Pub. L. 93-406, title I, §305, as added Pub. L. 109-280, title II, §202(a), Aug. 17, 2006, 120 Stat. 868; amended Pub. L. 110-458, title I, §102(b)(1)(B)-(G), Dec. 23, 2008, 122 Stat. 5100,

5101; Pub. L. 113-235, div. O, title I, §§102(a), 103(a), 104(a), 105(a), 106(a), 107(a), 109(a), title II, §201(a)(1)-(3), (5)-(7)(A), Dec. 16, 2014, 128 Stat. 2774, 2777, 2779, 2781, 2783, 2789, 2798, 2799-2809.)

REFERENCES IN TEXT

The enactment of the Pension Protection Act of 2006, referred to in subsec. (e)(4)(B)(i)(II), means the enactment of Pub. L. 109-280, which was approved Aug. 17, 2006.

PRIOR PROVISIONS

A prior section 1085, Pub. L. 93-406, title I, §305, Sept. 2, 1974, 88 Stat. 873, related to alternative minimum funding standard, prior to repeal by Pub. L. 109-280, title I, §101(a), (d), Aug. 17, 2006, 120 Stat. 784, 789, applicable to plan years beginning after 2007.

AMENDMENTS

2014—Subsec. (a)(3). Pub. L. 113-235, §201(a)(1), added par. (3).

Subsec. (b)(1). Pub. L. 113-235, §104(a)(1)(A), substituted “the plan is not in critical status for the plan year and is not described in paragraph (5),” for “the plan is not in critical status for the plan year”.

Subsec. (b)(3)(A)(i). Pub. L. 113-235, §201(a)(3), substituted “, whether” for “and whether” and inserted “, and whether or not the plan is or will be in critical and declining status for such plan year” before “, and” at end.

Pub. L. 113-235, §104(a)(3), which directed insertion of “, or would be in endangered status for such plan year but for paragraph (5),” after “endangered status for a plan year”, was executed by making the insertion after “endangered status for such plan year” to reflect the probable intent of Congress.

Pub. L. 113-235, §102(a)(2)(A), substituted “or for any of the succeeding 5 plan years, and” for “, and” at end.

Subsec. (b)(3)(B)(i). Pub. L. 113-235, §102(a)(2)(B)(i), substituted “Except as provided in clause (iv), in making the determinations” for “In making the determinations”.

Subsec. (b)(3)(B)(iv). Pub. L. 113-235, §201(a)(5), added cl. (iv) relating to projections of critical and declining status.

Pub. L. 113-235, §102(a)(2)(B)(ii), added cl. (iv) relating to projections relating to critical status in succeeding plan years.

Subsec. (b)(3)(D)(i). Pub. L. 113-235, §102(a)(3)(A)(ii), inserted at end “In any case in which a plan sponsor elects to be in critical status for a plan year under paragraph (4), the plan sponsor shall notify the Secretary of the Treasury of such election not later than 30 days after the date of such certification or such other time as the Secretary of the Treasury may prescribe by regulations or other guidance.”

Pub. L. 113-235, §102(a)(3)(A)(i), inserted “or in which a plan sponsor elects to be in critical status for a plan year under paragraph (4)” after “endangered or critical status for a plan year”.

Subsec. (b)(3)(D)(iii). Pub. L. 113-235, §104(a)(2)(B), added cl. (iii). Former cl. (iii) redesignated (iv).

Subsec. (b)(3)(D)(iv). Pub. L. 113-235, §104(a)(2)(C), substituted “clauses (ii) and (iii)” for “clause (ii)”.

Pub. L. 113-235, §104(a)(2)(A), redesignated cl. (iii) as (iv). Former cl. (iv) redesignated (v).

Pub. L. 113-235, §102(a)(3)(B), added cl. (iv).
Subsec. (b)(3)(D)(v). Pub. L. 113-235, §104(a)(2)(A), redesignated cl. (iv) as (v).

Subsec. (b)(4). Pub. L. 113-235, §102(a)(1), added par. (4).

Subsec. (b)(5). Pub. L. 113-235, §104(a)(1)(B), added par. (5).

Subsec. (b)(6). Pub. L. 113-235, §201(a)(2), added par. (6).

Subsec. (c)(3)(A)(i)(I). Pub. L. 113-235, §105(a)(1), substituted “of the first plan year for which the plan is certified to be in endangered status pursuant to paragraph (b)(3)” for “of such period”.

Subsec. (c)(3)(A)(ii). Pub. L. 113-235, §105(a)(2), substituted “the last plan year” for “any plan year”.

Subsec. (c)(7). Pub. L. 113-235, §107(a)(1), amended par. (7) generally. Prior to amendment, par. (7) related to imposition of default schedule where failure to adopt funding improvement plan.

Subsec. (d). Pub. L. 113-235, §106(a), amended subsec. (d) generally. Prior to amendment, subsec. (d) related to rules for operation of plan during adoption and improvement periods.

Subsec. (e)(3)(C). Pub. L. 113-235, §107(a)(2), amended subpar. (C) generally. Prior to amendment, subpar. (C) related to imposition of default schedule where failure to adopt rehabilitation plan.

Subsec. (e)(4)(B). Pub. L. 113-235, §103(a), amended subpar. (B) generally. Prior to amendment, subpar. (B) related to emergence of plan from critical status.

Subsec. (e)(9). Pub. L. 113-235, §201(a)(6), added par. (9).

Pub. L. 113-235, §109(a)(1), struck out par. (9) which related to adjustments disregarded in withdrawal liability determination.

Subsec. (f)(3), (4). Pub. L. 113-235, §109(a)(2), redesignated par. (4) as (3), substituted “During the period beginning on the date of the certification under subsection (b)(3)(A) for the initial critical year and ending on the date of the adoption of a rehabilitation plan—” for “During the rehabilitation plan adoption period—” in introductory provisions, and struck out former par. (3). Text read as follows “Any benefit reductions under this subsection shall be disregarded in determining a plan’s unfunded vested benefits for purposes of determining an employer’s withdrawal liability under section 1381 of this title.”

Subsec. (g). Pub. L. 113-235, §109(a)(4), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (g)(1). Pub. L. 113-235, §201(a)(7)(A), inserted “or benefit reductions or suspensions while in critical and declining status under subsection (e)(9), unless the withdrawal occurs more than ten years after the effective date of a benefit suspension by a plan in critical and declining status,” after “benefit reductions under subsection (e)(8) or (f)”.

Subsecs. (h) to (j). Pub. L. 113-235, §109(a)(3), redesignated subsecs. (g), (h), and (i) as (h), (i), and (j), respectively.

2008—Subsec. (b)(3)(C). Pub. L. 110-458, §102(b)(1)(B), substituted “section 1021(b)(1)” for “section 1021(b)(4)”.

Subsec. (b)(3)(D)(iii). Pub. L. 110-458, §102(b)(1)(C), substituted “The Secretary of the Treasury, in consultation with the Secretary” for “The Secretary”.

Subsec. (c)(7)(A)(ii). Pub. L. 110-458, §102(b)(1)(D)(i), substituted “to adopt a contribution schedule with terms consistent with the funding improvement plan and a schedule from the plan sponsor,” for “to agree on changes to contribution or benefit schedules necessary to meet the applicable benchmarks in accordance with the funding improvement plan.”

Subsec. (c)(7)(B), (C). Pub. L. 110-458, §102(b)(1)(D)(ii), (iii), added subpars. (B) and (C) and struck out former subpar. (B). Prior to amendment, text read as follows: “The date specified in this subparagraph is the earlier of the date—

“(i) on which the Secretary certifies that the parties are at an impasse, or

“(ii) which is 180 days after the date on which the collective bargaining agreement described in subparagraph (A) expires.”

Subsec. (e)(3)(C)(i)(II). Pub. L. 110-458, §102(b)(1)(E)(i)(D), substituted “to adopt a contribution schedule with terms consistent with the rehabilitation plan and a schedule from the plan sponsor under paragraph (1)(B)(i),” for “contribution or benefit schedules with terms consistent with the rehabilitation plan and the schedule from the plan sponsor under paragraph (1)(B)(i),”.

Subsec. (e)(3)(C)(ii), (iii). Pub. L. 110-458, §102(b)(1)(E)(i)(II), (III), added cls. (ii) and (iii) and struck out former cl. (ii). Prior to amendment, text read as follows: “The date specified in this clause is the earlier of the date—

“(I) on which the Secretary certifies that the parties are at an impasse, or

“(II) which is 180 days after the date on which the collective bargaining agreement described in clause (i) expires.”

Subsec. (e)(4)(A)(ii). Pub. L. 110-458, § 102(b)(1)(E)(ii)(I), struck out “the date of” before “the due date”.

Subsec. (e)(4)(B). Pub. L. 110-458, § 102(b)(1)(E)(ii)(II), substituted “but taking” for “and taking”.

Subsec. (e)(6). Pub. L. 110-458, § 102(b)(1)(E)(iii), substituted “the last sentence of paragraph (1)” for “paragraph (1)(B)(i)” in introductory provisions and “establish” for “established” in concluding provisions.

Subsec. (e)(8)(C)(iii). Pub. L. 110-458, § 102(b)(1)(E)(iv), substituted “the Secretary of the Treasury, in consultation with the Secretary” for “the Secretary” in subcl. (I) and “Secretary of the Treasury” for “Secretary” in concluding provisions.

Subsec. (e)(9)(B). Pub. L. 110-458, § 102(b)(1)(E)(v), substituted “the allocation of unfunded vested benefits to an employer” for “an employer’s withdrawal liability”.

Subsec. (f)(2)(A)(i). Pub. L. 110-458, § 102(b)(1)(F), inserted at end “to a participant or beneficiary whose annuity starting date (as defined in section 1055(h)(2) of this title) occurs after the date such notice is sent.”

Subsec. (g). Pub. L. 110-458, § 102(b)(1)(G), inserted “under subsection (c)” before “or a rehabilitation plan under subsection (e)”.

EFFECTIVE DATE OF 2014 AMENDMENT

Amendment by section 102(a) of Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 102(c) of div. O of Pub. L. 113-235, set out as a note under section 432 of Title 26, Internal Revenue Code.

Amendment by section 103(a) of Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 103(c) of div. O of Pub. L. 113-235, set out as a note under section 432 of Title 26, Internal Revenue Code.

Amendment by section 104(a) of Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 104(c) of div. O of Pub. L. 113-235, set out as a note under section 432 of Title 26, Internal Revenue Code.

Amendment by section 105(a) of Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 105(c) of div. O of Pub. L. 113-235, set out as a note under section 432 of Title 26, Internal Revenue Code.

Amendment by section 106(a) of Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 106(c) of div. O of Pub. L. 113-235, set out as a note under section 432 of Title 26, Internal Revenue Code.

Amendment by section 107(a) of Pub. L. 113-235 applicable with respect to plan years beginning after Dec. 31, 2014, see section 107(c) of div. O of Pub. L. 113-235, set out as a note under section 432 of Title 26, Internal Revenue Code.

Amendment by section 109(a) of Pub. L. 113-235 applicable to benefit reductions and increases in the contribution rate or other required contribution increases that go into effect during plan years beginning after Dec. 31, 2014, and to surcharges the obligation for which accrue on or after Dec. 31, 2014, see section 109(c) of div. O of Pub. L. 113-235, set out as a note under section 432 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 2008 AMENDMENT

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

EFFECTIVE DATE

Section applicable with respect to plan years beginning after 2007, with special rules for certain notices

and certain restored benefits, see section 202(f) of Pub. L. 109-280, set out as an Effective Date of 2006 Amendment note under section 1082 of this title.

GUIDANCE

Pub. L. 113-235, div. O, title II, § 201(a)(8), Dec. 16, 2014, 128 Stat. 2810, provided that: “Not later than 180 days after the date of the enactment of this Act [Dec. 16, 2014], the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor, shall publish appropriate guidance to implement section 305(e)(9) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1085(e)(9)).”

TEMPORARY DELAY OF DESIGNATION OF MULTIEMPLOYER PLANS AS IN ENDANGERED OR CRITICAL STATUS

For provisions allowing election of delay of status designation of endangered or critical multiemployer plans for purposes of this section, see section 204 of Pub. L. 110-458, set out as a note under section 432 of Title 26, Internal Revenue Code.

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

For provisions allowing election of extension of funding improvement period or rehabilitation period of endangered or critical multiemployer plans for purposes of this section, see section 205 of Pub. L. 110-458, set out as a note under section 432 of Title 26, Internal Revenue Code.

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

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

§ 1085a. Minimum funding standards

(a) General rule

For purposes of section 1082 of this title, 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 1082 of this title 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 1082 of this title 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 1082 of this title 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 1082(c)(3) of this title) 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 section 1082(c)(7)(A)(i)(I) of this title (as in effect on the day before August 17, 2006).

(3) Credits to account

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

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

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

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

(ii) separately, with respect to each plan year, the net experience gain (if any) under the plan, over a period of 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 1082(c)(3) of this title) for the plan year, and

(D) in the case of a plan year for which the accumulated funding deficiency is determined under the funding standard account if such plan year follows a plan year for which such deficiency was determined under the alternative minimum funding standard, 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 of the Treasury, amounts required to be amortized under paragraph (2) or paragraph (3), as the case may be—

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

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

(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 of the Treasury) 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 of title 26 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 of the Treasury.

(B) Dedicated bond portfolio

The Secretary of the Treasury 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 1082(b)(5) of this title (as in effect on the day before August 17, 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 [42 U.S.C. 301 et seq.] or in other retirement benefits created under Federal or State law, or

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

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 1082 of this title (as in effect on the day before August 17, 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 of the Treasury. 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 of the Treasury.

(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 of the Treasury.

(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 1306(a)(3)(E)(iii) of this title) of such plan and all other plans maintained by the contributing sponsors (as defined in section 1301(a)(13) of this title) and members of such sponsors' controlled groups (as defined in section 1301(a)(14) of this title) which are covered by subchapter III (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 of the Treasury.

(B) Valuation date

(i) Current year

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

(ii) Use of prior year valuation

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

(iii) Adjustments

Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

(iv) Limitation

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

(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) of title 26 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 of the Treasury for a period of time (not in excess of 10 years) if such Secretary determines that such extension would carry out the purposes of this chapter and provide adequate protection for participants under the plan and their beneficiaries, and if such 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 of title 26 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

In the case of the following required installments:	The due date is:
1st	April 15
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 1082 of this title (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 1082(d)(6)(A) of this title (as in effect on the day before August 17, 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 of the Treasury that such excess is the result of non-recurring 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 of the Treasury shall provide in regulations.

(v) Liquid assets

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

(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 1321 of this title does not apply (as such section is in effect on December 8, 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 1368 of this title 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 of title 26.

(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 of the Treasury).

(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 1083(h)(2)(C) of this title.

(B) Mortality tables

(i) Secretarial authority

The Secretary of the Treasury 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 of the Treasury shall take into account results of available independent studies of mortality of individuals covered by pension plans.

(ii) Periodic review

The Secretary of the Treasury shall periodically (at least every 5 years) review any tables in effect under this subsection and shall, to the extent the Secretary of the Treasury 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 of the Treasury 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 of the Treasury 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 [42 U.S.C. 401 et seq.] 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 of the Treasury.

(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 1082 of this title, 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 of the Treasury.

(Pub. L. 93-406, title I, §306, as added Pub. L. 113-97, title I, §102(a), Apr. 7, 2014, 128 Stat. 1102.)

REFERENCES IN TEXT

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 Title 26, Internal Revenue Code.

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.

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

PRIOR PROVISIONS

A prior section 1085a, Pub. L. 93-406, title I, §306, as added Pub. L. 99-272, title XI, §11015(a)(1)(A)(ii), Apr. 7, 1986, 100 Stat. 264; amended Pub. L. 100-203, title IX, §9306(e)(2), Dec. 22, 1987, 101 Stat. 1330-355; Pub. L. 101-239, title VII, §7891(a)(1), Dec. 19, 1989, 103 Stat. 2445, related to security for waivers of minimum funding standard and extensions of amortization period, prior

to repeal by Pub. L. 109-280, title I, § 101(a), Aug. 17, 2006, 120 Stat. 784.

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 Title 26, Internal Revenue Code.

§§ 1085b, 1086. Repealed. Pub. L. 109-280, title I, § 101(a), Aug. 17, 2006, 120 Stat. 784

Section 1085b, Pub. L. 93-406, title I, § 307, as added Pub. L. 100-203, title IX, § 9341(b)(2), Dec. 22, 1987, 101 Stat. 1330-370; amended Pub. L. 101-239, title VII, § 7881(i)(1)(B)-(3)(A), (4)(B), Dec. 19, 1989, 103 Stat. 2442, related to security required upon adoption of plan amendment resulting in significant underfunding.

Section 1086, Pub. L. 93-406, title I, § 308, formerly § 306, Sept. 2, 1974, 88 Stat. 874, renumbered § 307, Pub. L. 99-272, title XI, § 11015(a)(1)(A)(i), Apr. 7, 1986, 100 Stat. 264; renumbered § 308, Pub. L. 100-203, title IX, § 9341(b)(1), Dec. 22, 1987, 101 Stat. 1330-370; amended Pub. L. 101-239, title VII, § 7894(h)(3), Dec. 19, 1989, 103 Stat. 2451, related to effective dates of part.

EFFECTIVE DATE OF REPEAL

Repeal applicable to plan years beginning after 2007, see section 101(d) of Pub. L. 109-280, set out as an Effective Date note under section 1082 of this title.

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

For special rules on applicability of amendments by subtitles A (§§ 101-108) and B (§§ 111-116) of title I of Pub. L. 109-280 to certain eligible cooperative plans, PBGC settlement plans, and eligible government contractor plans, see sections 104, 105, and 106 of Pub. L. 109-280, set out as notes under section 401 of Title 26, Internal Revenue Code.

PART 4—FIDUCIARY RESPONSIBILITY

§ 1101. Coverage

(a) Scope of coverage

This part shall apply to any employee benefit plan described in section 1003(a) of this title (and not exempted under section 1003(b) of this title), other than—

- (1) a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees; or
- (2) any agreement described in section 736 of title 26, which provides payments to a retired partner or deceased partner or a deceased partner's successor in interest.

(b) Securities or policies deemed to be included in plan assets

For purposes of this part:

(1) In the case of a plan which invests in any security issued by an investment company registered under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.], the assets of such plan shall be deemed to include such security but shall not, solely by reason of such investment, be deemed to include any assets of such investment company.

(2) In the case of a plan to which a guaranteed benefit policy is issued by an insurer, the assets of such plan shall be deemed to include such policy, but shall not, solely by reason of the issuance of such policy, be deemed to in-

clude any assets of such insurer. For purposes of this paragraph:

(A) The term “insurer” means an insurance company, insurance service, or insurance organization, qualified to do business in a State.

(B) The term “guaranteed benefit policy” means an insurance policy or contract to the extent that such policy or contract provides for benefits the amount of which is guaranteed by the insurer. Such term includes any surplus in a separate account, but excludes any other portion of a separate account.

(c) Clarification of application of ERISA to insurance company general accounts

(1)(A) Not later than June 30, 1997, the Secretary shall issue proposed regulations to provide guidance for the purpose of determining, in cases where an insurer issues 1 or more policies to or for the benefit of an employee benefit plan (and such policies are supported by assets of such insurer's general account), which assets held by the insurer (other than plan assets held in its separate accounts) constitute assets of the plan for purposes of this part and section 4975 of title 26 and to provide guidance with respect to the application of this subchapter to the general account assets of insurers.

(B) The proposed regulations under subparagraph (A) shall be subject to public notice and comment until September 30, 1997.

(C) The Secretary shall issue final regulations providing the guidance described in subparagraph (A) not later than December 31, 1997.

(D) Such regulations shall only apply with respect to policies which are issued by an insurer on or before December 31, 1998, to or for the benefit of an employee benefit plan which is supported by assets of such insurer's general account. With respect to policies issued on or before December 31, 1998, such regulations shall take effect at the end of the 18-month period following the date on which such regulations become final.

(2) The Secretary shall ensure that the regulations issued under paragraph (1)—

- (A) are administratively feasible, and
- (B) protect the interests and rights of the plan and of its participants and beneficiaries (including meeting the requirements of paragraph (3)).

(3) The regulations prescribed by the Secretary pursuant to paragraph (1) shall require, in connection with any policy issued by an insurer to or for the benefit of an employee benefit plan to the extent that the policy is not a guaranteed benefit policy (as defined in subsection (b)(2)(B))—

(A) that a plan fiduciary totally independent of the insurer authorize the purchase of such policy (unless such purchase is a transaction exempt under section 1108(b)(5) of this title),

(B) that the insurer describe (in such form and manner as shall be prescribed in such regulations), in annual reports and in policies issued to the policyholder after the date on which such regulations are issued in final form pursuant to paragraph (1)(C)—

- (i) a description of the method by which any income and expenses of the insurer's