

Further, for purposes of determining” is corrected to read “Accordingly, pursuant to paragraph (b)(2)(ii)(c)(3)(e), Branch A is treated as the location of manufacturing for purposes of applying paragraph (b)(1)(ii)(b) of this section. Therefore, the effective rate of tax imposed on the income from the sales of Product X is compared against the effective rate of tax that would apply to that income if it were earned in Country A, which would impose the highest effective rate of tax on the sales income (30%). Because the effective rate of tax in Country B with respect to the sales income (0%) is less than 90% of, and at least 5 percentage points less than, the effective rate of tax that would apply to such income in Country A (30%), Branch B, treated as the remainder of FS pursuant to paragraph (b)(1)(ii)(c) of this section, is treated as selling on behalf of Branch A. Further, for purposes of determining”.

24. On page 10728, column 2, § 1.954-3(b)(1)(ii)(c)(3)(f) *Example 5*(ii), lines 1 through 12 from the bottom of the paragraph, the language “company sales income. Since the location of manufacturing of Product X is considered to be the location of Branch A rather than Branch B, Branch B, treated as the remainder of FS, does not qualify for the manufacturing exception from foreign base company sales income contained in paragraph (a)(4) of this section. Since the sale of Product X is for use, consumption, or disposition outside of Country B, the income from the sale of Product X is foreign base company sales income.” is corrected to read “company sales income. Branch B, treated as the remainder of FS, must therefore independently qualify for the manufacturing exception from foreign base company sales income contained in paragraph (a)(4) of this section or the income from the sale of Product X will be foreign base company sales income.”.

25. On page 10729, column 1, § 1.954-3(b)(2)(ii)(a), lines 1 through 7 from the bottom of the paragraph, the language “tested against the effective rate of tax that would apply to such income if it were earned in the jurisdiction of such other branch or similar establishment or the remainder of the controlled foreign corporation under § 1.954-3(b)(1)(i)(b) or (ii)(b) of this section.” is corrected to read “tested under the principles of § 1.954-3(b)(1)(i)(b) or (ii)(b) of this section against the effective rate of tax that would apply to such income if it were earned in the jurisdiction of such other branch or similar establishment or the remainder of the controlled foreign corporation.”.

26. On page 10729, column 2, § 1.954-3(b)(2)(ii)(c)(2) *Example 1*(ii), line 6, the language “Branch A (30%), the seller, the remainder of” is corrected to read “Branch A (30%), the remainder of”.

27. On page 10729, column 3, § 1.954-3(b)(2)(ii)(c)(2) *Example 3*(i), line 7 from the bottom of the column, the language “persons. 100 percent of the articles sold” is corrected to read “persons. One hundred percent of the articles sold”.

28. On page 10730, column 1, § 1.954-3(b)(2)(ii)(c)(2) *Example 3*(i), first paragraph of the column, line 10, the language “Country, but the income of Branch B for 1964” is corrected to read “country, but the income of Branch B for 1964”.

29. On page 10730, column 1, § 1.954-3(b)(2)(ii)(d), line 10, the language “the last sentence of paragraph (a)(6), the” is corrected to read “paragraph (a)(6)(i), the”.

**LaNita Van Dyke,**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 54

[REG-108508-08]

RIN 1545-BH71

#### Determination of Minimum Required Pension Contributions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations providing guidance on the determination of minimum required contributions for purposes of the funding rules that apply to single employer defined benefit plans. These regulations would affect sponsors, administrators, participants, and beneficiaries of single employer defined benefit plans. This document also provides a notice of a public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by July 14, 2008. Outlines of topics to be discussed at the public hearing scheduled for August 4, 2008, at 10 a.m. must be received by July 15, 2008.

**ADDRESSES:** Send submissions to: CC:PA:LPD:PR (REG-108508-08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-108508-08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (IRS-REG-108508-08). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Lauson C. Green or Linda S. F. Marshall at (202) 622-6090; concerning submissions of comments, the hearing, and/or being placed on the building access list to attend the hearing, Richard A. Hurst, at [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

This document contains proposed Income Tax Regulations (26 CFR part 1) under sections 430(a), 430(c), 430(e), and 430(j), as added to the Internal Revenue Code (Code) by the Pension Protection Act of 2006 (PPA '06), Public Law 109-280 (120 Stat. 780). In addition, this document contains proposed Excise Tax Regulations (26 CFR part 54) under section 4971.

Section 412 provides minimum funding requirements that generally apply for pension plans (including both defined benefit pension plans and money purchase pension plans). PPA '06 makes extensive changes to those minimum funding requirements that generally apply for plan years beginning on or after January 1, 2008. Section 430, which was added by PPA '06, specifies the minimum funding requirements that apply to single employer defined benefit pension plans (including multiple employer plans) pursuant to section 412.<sup>1</sup>

<sup>1</sup> Section 302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), sets forth funding rules that are parallel to those in Code section 412, and section 303 of ERISA sets forth additional funding rules for single employer plans that are parallel to those in section 430 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these proposed Treasury regulations issued under section 430 of the Code would apply as well for purposes of section 303 of ERISA.

Section 430(a) provides that a plan's minimum required contribution for a plan year is determined under one of two rules, depending on whether the value of plan assets is less than, or is equal to or greater than, the plan's funding target. If the value of plan assets is less than the funding target, the minimum required contribution is the sum of: (1) Target normal cost; (2) any shortfall amortization charge; and (3) any waiver amortization charge. If the value of plan assets equals or exceeds the funding target, the minimum required contribution is the plan's target normal cost, reduced (but not below zero) by the excess of the value of plan assets over the plan's funding target. For purposes of section 430(a), the value of plan assets is determined after reduction for certain funding balances as provided under section 430(f)(4)(B).

Section 430(c) provides that a shortfall amortization charge is the total (not less than zero) of the shortfall amortization installments for the plan year with respect to any shortfall amortization base established for that plan year and the 6 preceding plan years. Section 430(c)(2)(A) provides that the shortfall amortization installments with respect to a shortfall amortization base established for a plan year are the amounts necessary to amortize the shortfall amortization base in level annual installments over the 7-plan-year period beginning with that plan year.

Section 430(c)(3) provides that a shortfall amortization base is determined for a plan year based on the plan's funding shortfall for the plan year. Under section 430(c)(4), the funding shortfall is the amount (if any) by which the plan's funding target for the year exceeds the value of the plan's assets (as reduced by the funding standard carryover balance and prefunding balance under section 430(f)(4)(B)). The shortfall amortization base for a plan year is the plan's funding shortfall, minus the present value (determined using the interest rates under section 430(h)(2)) of the total of the shortfall amortization installments and waiver amortization installments that have been determined for the plan year and any succeeding plan year with respect to any shortfall amortization bases and waiver amortization bases for preceding plan years.

Under section 430(c)(5), a shortfall amortization base is not established for a plan year if the value of a plan's assets is at least equal to the plan's funding target for the plan year. For this purpose, the prefunding balance is subtracted from the value of plan assets, but only if an election to use that prefunding balance to offset the

minimum required contribution is in effect for the plan year. A transition rule applies for plan years beginning after 2007 and before 2011 under which only a specified percentage of the plan's funding target is taken into account for purposes of section 430(c)(5). The transition rule does not apply to a plan that is not in effect for 2007 or to a plan that is subject to the pre-PPA '06 deficit reduction contribution rules for 2007 (that is, a plan covering more than 100 participants and with a funded current liability below the applicable threshold).

Under section 430(e), the waiver amortization charge for a plan year is the total of the waiver amortization installments for the plan year with respect to any waiver amortization bases for the 5 preceding plan years. Under section 430(e)(2), the waiver amortization installments with respect to a waiver amortization base established for a plan year are the amounts necessary to amortize the waiver amortization base in level annual installments over the 5-plan-year period beginning with the succeeding plan year. Under section 430(e)(4), the waiver amortization base for a plan year is the amount of the waived funding deficiency (if any) for that plan year.

If a plan's funding shortfall for a plan year is zero (that is, the value of the plan's assets, reduced by the funding standard carryover balance and prefunding balance to the extent provided under section 430(f)(4)(B), is at least equal to the plan's funding target for the year), any shortfall amortization bases and waiver amortization bases for preceding plan years (and any associated shortfall amortization installments and waiver amortization installments) are eliminated.

Under section 430(j), as under pre-PPA '06 law, the due date for the payment of a minimum required contribution for a plan year is generally 8½ months after the end of the plan year. Any payment made on a date other than the valuation date for the plan year must be adjusted for interest accruing at the plan's effective interest rate under section 430(h)(2)(A) for the plan year for the period between the valuation date and the payment date. Pursuant to section 430(g)(2), the valuation date for a plan year must be the first day of the plan year except in the case of a small plan described in section 430(g)(2)(B).

Under section 430(j)(3)(A), quarterly contributions must be made during a plan year if the plan had a funding shortfall for the preceding plan year. Each quarterly installment is 25% of the required annual payment. The required annual payment is equal to the lesser of

90% of the minimum required contribution under section 430 for the plan year or 100% of the minimum required contribution under section 430 (determined without regard to any waiver under section 412) for the preceding plan year. If a quarterly installment is not made, the interest charge that applies for the period of underpayment is determined using the plan's effective interest rate plus 5 percentage points. The requirements regarding quarterly contributions are similar to the requirements that formerly applied under section 412(m) as in effect before amendments made by PPA '06.

Under section 430(j)(4), a plan sponsor of a plan that is subject to the quarterly contribution requirements for a plan year (other than a small plan described in section 430(g)(2)(B)) must make additional quarterly contributions in order to ensure that a minimum level of liquid assets is available to pay benefits as of the end of each quarter. Generally, this required minimum level of liquid assets is the amount of liquid assets needed to pay for three years of benefits, and an additional quarterly contribution (made in liquid assets) is due if the plan has insufficient liquid assets to meet this minimum level. A plan sponsor that fails to satisfy this liquidity requirement is treated as failing to make the required quarterly contribution and, pursuant to section 206(e) of ERISA, is required to cease making certain types of accelerated payments that are described in section 401(a)(32)(B) of the Code. Pursuant to section 430(j)(4)(C), the portion of an installment that is treated as not made because of the liquidity requirement continues to be treated as unpaid until the close of the quarter that contains the due date for the contribution. These liquidity requirements are substantially similar to the requirements that formerly applied under section 412(m)(5), as in effect before amendments made by PPA '06.

Section 402 of PPA '06 provides a series of special funding rules for a plan maintained by a commercial passenger airline (or by an employer whose principal business is providing catering services to a commercial passenger airline) if such an employer has made an election provided under that section. If an eligible employer has made the election described in section 402(a)(1) of PPA '06 (which is only available for a frozen plan), the calculation of the minimum required contribution for the plan is determined using a special 17-plan-year amortization period and an interest rate of 8.85%. If an eligible employer has made the election

described in section 402(a)(2) of PPA '06 (which can be made without regard to whether the plan is frozen), calculation of the minimum required contribution for the plan is determined using a special 10-plan-year amortization period for the initial shortfall amortization base (that is, the shortfall amortization base for the first plan year for which section 430 applies to the plan) and, pursuant to the amendment to section 402 of PPA '06 made by section 6615 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110-28 (121 Stat. 112), an interest rate of 8.25% is used to determine the funding target for each of those 10 plan years.

Section 4971(a) provides an excise tax on a failure to meet applicable minimum funding requirements. In the case of a single employer plan, the tax is 10% of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending with or within a taxable year. In the case of a multiemployer plan, the tax is 5% of the accumulated funding deficiency as of the end of any plan year ending with or within the taxable year. Section 4971(b) provides an additional excise tax that applies where the applicable minimum funding requirements remain unsatisfied for a specified period. Section 4971(c) provides definitions that apply for purposes of section 4971, including a definition of unpaid minimum required contribution (which is based on the new section 430 rules for determining the minimum required contribution for a year). Section 4971(f) imposes a tax of 10% of the amount of the liquidity shortfall for a quarter that is not paid by the due date for the installment for that quarter.

Regulations under section 4971 were issued on May 1, 1986 (TD 8084). In addition, proposed regulations regarding section 4971 were issued on the same date. Guidance regarding quarterly contribution requirements under former section 412(m) was issued in Notice 89-52 (1989-1 C.B. 692), and guidance regarding the liquidity requirements under former section 412(m)(5) was issued in Rev. Rul. 95-31 (1995-1 C.B. 76). See § 601.601(d)(2).

## Explanation of Provisions

### I. Overview

These proposed regulations are the fourth in a series of proposed regulations under new section 430.<sup>2</sup>

<sup>2</sup>Proposed §§ 1.430(h)(3)-1 and 1.430(h)(3)-2, relating to the mortality tables used to determine liabilities under section 430(h)(3), were issued May

These proposed regulations would provide guidance regarding the minimum contribution rules that apply to sponsors of single employer defined benefit plans under section 430. In addition, this document includes proposed regulations under section 4971, reflecting changes to the excise tax rules under PPA '06.

### II. Section 1.430(a)-1 Determination of Minimum Required Contribution

Section 1.430(a)-1 would provide rules for determining the minimum required contribution for a single employer defined benefit plan (including a multiple employer plan under section 413(c)) for a plan year under section 430(a). The determination of the amount of the minimum required contribution for a plan year depends on whether the value of plan assets, as reduced to reflect certain funding balances pursuant to section 430(f)(4)(B) (but not below zero), equals or exceeds the plan's funding target for the plan year. If this value of plan assets is less than the funding target for the plan year, the minimum required contribution for that plan year is equal to the sum of the plan's target normal cost for the plan year plus any applicable shortfall amortization installments and waiver amortization installments. If this value of plan assets equals or exceeds the funding target for the plan year, the minimum required contribution for that plan year is equal to the target normal cost of the plan for the plan year reduced (but not below zero) by any such excess.

The proposed regulations provide that the shortfall amortization installments with respect to a shortfall amortization base established for a plan year are the annual amounts necessary to amortize that shortfall amortization base in level annual installments over the 7-year period beginning with that plan year. As provided in proposed § 1.430(h)(2)-1(f)(2), these installments are determined assuming that the installments are paid on the valuation date for each plan year and using the interest rates applicable under section 430(h)(2)(C) or (D). The shortfall amortization installments are determined using the interest rates that apply for the plan year for which the shortfall amortization base is

29, 2007 (REG-143601-06, 72 FR 29456), proposed § 1.430(f)-1, relating to prefunding and funding standard carryover balances under section 430(f), was issued August 31, 2007 (REG-113891-07, 72 FR 50544), and proposed §§ 1.430(d)-1, 1.430(g)-1, 1.430(h)(2)-1, and 1.430(i)-1, relating to measurement of plan assets and liabilities for pension funding purposes, were issued December 31, 2007 (REG-139236-07, 72 FR 74215).

established and are not redetermined in subsequent plan years to reflect changes in interest rates under section 430(h)(2) for those subsequent plan years.<sup>3</sup>

Under the proposed regulations, if the value of plan assets (reduced by the prefunding balance if the prefunding balance is used to offset the minimum required contribution for the plan year as provided under § 1.430(f)-1(c), but not below zero) is equal to or greater than the funding target for the plan year, then no shortfall amortization base is established for that plan year. If this value of plan assets is less than the funding target for the plan year, a shortfall amortization base is established for the plan year. In such a case, the shortfall amortization base (which can be either positive or negative) is equal to the funding shortfall of the plan for the plan year, minus the sum of the present values of any remaining shortfall amortization installments and waiver amortization installments (determined in accordance with § 1.430(h)(2)-1(f)(2) using the interest rates that apply for the current plan year). For this purpose, the funding shortfall of a plan for any plan year is the excess (if any) of the funding target of the plan for the plan year, over the value of plan assets for the plan year (as reduced to reflect the subtraction of the funding standard carryover balance and prefunding balance to the extent provided under § 1.430(f)-1(c)).

The proposed regulations reflect the transition rule under section 430(c)(5)(B) under which only a specified portion of the funding target is taken into account in determining whether a shortfall amortization base is established for plan years beginning before January 1, 2011. This transition rule does not apply with respect to any plan year beginning after 2008 if a shortfall amortization base was required to be established for any preceding year, nor does it apply to a plan that was not in effect for a plan year beginning in 2007 or to a plan that was subject to section 412(l) for the last plan year before section 430 applies to the plan (the pre-effective plan year), determined after the application of section 412(l)(6) and (9). The proposed regulations would not provide for any adjustment to the applicable percentages under this transition rule for a plan for which the effective date of section 430 is delayed under sections 104 through 106 of PPA '06.

<sup>3</sup>The proposed regulations reflect the alternative amortization periods and interest rates that apply to a commercial passenger airline (or other eligible employer) that has made an election under section 402 of PPA '06.

Under the proposed regulations, the waiver amortization installments with respect to a waiver amortization base established for a plan year are the annual amounts necessary to amortize that waiver amortization base in level annual installments over the 5-year period beginning with the following plan year. As provided in proposed § 1.430(h)(2)–1(f)(2), these installments are determined assuming that the installments are paid on the valuation date for each plan year and using the interest rates applicable under section 430(h)(2). Thus, if the plan is using segment rates, the installments are determined by applying the first segment rate to the first four installments and the second segment rate to the fifth (and final) installment. The waiver amortization installments established with respect to a waiver amortization base are determined using the interest rates that apply for the plan year for which the waiver is granted (even though the first installment with respect to the waiver amortization base is not due until the subsequent plan year) and are not redetermined in subsequent plan years to reflect changes in interest rates under section 430(h)(2) for those subsequent plan years. A waiver amortization base is established for each plan year for which a waiver of the minimum funding standard has been granted, and the amount of that waiver amortization base is equal to the amount of the minimum required contribution waived (or the waived funding deficiency) for the plan year.

In the case of a plan that received a funding waiver under section 412 for a plan year for which section 430 was not yet effective with respect to the plan, the proposed regulations provide that the waiver is treated as giving rise to a waiver amortization base, and the amortization charges with respect to that funding waiver are treated as waiver amortization installments. With respect to such a preexisting funding waiver, the amount of the annual waiver amortization installment is equal to the amortization charge with respect to that waiver determined using the interest rate or rates that applied for the pre-effective plan year. Thus, for a plan that received a waiver in the past, the plan sponsor would have to contribute the amounts needed to amortize that waiver over the original schedule as previously established.

In accordance with section 430(c)(6), the proposed regulations provide that, in any case in which the funding shortfall of a plan for a plan year is zero, the shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined

with respect to those shortfall amortization bases) are reduced to zero, and the waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to such bases) are reduced to zero.

The proposed regulations would provide rules for determining the amount of a minimum required contribution for a short plan year. Under the proposed regulations, the amortization installments are prorated for a short plan year. The proposed regulations would not provide for any proration of the target normal cost. Instead, the determination of target normal cost would reflect actual accruals that accrue or are expected to accrue during the plan year.<sup>4</sup> The proposed regulations also provide rules for the treatment of installments in subsequent plan years to take into account the proration of these installments for short plan years and any change in valuation date.

### III. Section 1.430(j)–1 *Payment of Minimum Required Contributions*

The proposed regulations under section 430(j) would provide rules related to the payment of minimum required contributions, including the payment of quarterly contributions and liquidity requirements. The proposed regulations provide that any payment of the minimum required contribution under section 430 for a plan year that is made on a date other than the valuation date for that plan year is adjusted for interest accruing for the period between the valuation date and the payment date, at the effective interest rate for the plan for that plan year determined pursuant to § 1.430(h)(2)–1(f)(1). The direction of the adjustment depends on whether the contribution is paid before or after the valuation date for the plan year. If the contribution is paid after the valuation date for the plan year, the contribution is discounted to the valuation date using the plan's effective interest rate. By contrast, if the contribution is paid before the valuation date for the plan year (which could only occur in the case of a small plan described in section 430(g)(2)(B)), the contribution is increased for interest at that same interest rate.

Under the proposed regulations, a payment of the minimum required contribution under section 430 for a plan year can be made no earlier than the first day of the plan year. The deadline for any payment of any

minimum required contribution for a plan year is 8½ months after the close of the plan year. If a minimum required contribution is not paid by this deadline, an excise tax applies under section 4971.

The proposed regulations would provide rules for accelerated quarterly contributions for underfunded plans. These rules are similar to the rules provided under Notice 89–52; however, these rules have been updated to reflect statutory changes. These statutory changes include changes regarding which plans are subject to the quarterly contribution requirements as well as the interest rates applicable to missed quarterly contributions.

Under the proposed regulations, in any case in which the plan has a funding shortfall for the preceding plan year, the employer maintaining the plan must make the required quarterly installments.<sup>5</sup> The amount of each required quarterly installment is equal to 25% of the required annual payment. For this purpose, the required annual payment is equal to the lesser of 90% of the minimum required contribution under section 430(a) for the plan year, or 100% of the minimum required contribution under section 430(a) (determined without regard to any funding waiver under section 412) for the preceding plan year. These minimum required contributions are determined under section 430 as of the valuation date for each year and have no adjustment for interest.<sup>6</sup> The proposed regulations provide that, for purposes of determining the required annual payment, the minimum required contribution for a plan year is determined without regard to use of the prefunding balance or funding standard carryover balance in the current year or any prior year.

Pursuant to section 430(j)(3)(C), the proposed regulations would provide that the due dates for the four required quarterly installments with respect to a

<sup>5</sup> These proposed regulations do not provide rules for determining whether a plan has a funding shortfall for the 2007 plan year for purposes of determining whether the plan must make required quarterly installments for the 2008 plan year. Nonetheless, plans must make this determination on a reasonable basis. See the discussion in this preamble under the heading "Proposed Legislation" for a rule that the IRS and the Treasury Department are considering for this purpose.

<sup>6</sup> In determining required installments for the plan year that begins in 2008, the minimum required contribution for the 2007 plan year under section 412 is used as the minimum required contribution for the preceding plan year. This amount, which does not reflect either use of the credit balance or the granting of any funding waiver, is adjusted with interest to the end of the 2007 plan year at the plan's valuation interest rate for the 2007 plan year.

<sup>4</sup> See 29 CFR 2530.204–2(e) for rules relating to changes in accrual computation periods.

full plan year are as follows: The first installment is due on the 15th day of the 4th plan month, the second installment is due on the 15th day of the 7th plan month, the third installment is due on the 15th day of the 10th plan month, and the fourth installment is due on the 15th day following the close of the plan year. In the case of a short plan year, the proposed regulations would provide rules for determining the amount of the required annual payment, the number and due dates of installments, and the amount of those installments. The proposed regulations also provide rules for determining the plan month in the case of a plan year that does not begin on the first day of a calendar month.

The proposed regulations would provide that, if the employer fails to pay the full amount of a required installment, then the rate of interest used to adjust the amount of the contribution with respect to the underpayment of the required installment for the period of time that begins on the due date for the required installment and that ends on the date of payment is equal to the effective interest rate for the plan for that plan year determined pursuant to § 1.430(h)(2)–1(f)(1) plus 5 percentage points. This increased interest rate applies only to installments that are due after the valuation date for the plan year because section 430(j)(3) refers to interest being charged on late quarterly contributions. The amount of the underpayment is equal to the excess of the required installment over the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment. For this purpose, the proposed regulations contain an ordering rule under which contributions are to be credited against unpaid required installments in the order in which those installments were required to be paid.

As was the case in Notice 89–52, the proposed regulations would provide that a plan sponsor generally can use a plan's funding balances to satisfy quarterly contribution requirements. However, this rule is subject to the new limitation on the use of funding balances by underfunded plans pursuant to section 430(f)(3)(C). An eligible plan sponsor's election to use the plan's prefunding balance and funding standard carryover balance under section 430(f) satisfies the obligation to make an installment on the date of the election, to the extent of the amount elected, as adjusted with interest at the plan's effective interest rate under section 430(h)(2)(A) for the plan year from the valuation date through the due date of the installment.

Comments are requested regarding whether rules should be provided under which a plan sponsor is deemed to make an election to use a funding balance to the extent it is available to avoid a failure to make any required quarterly installment or under which a plan sponsor can make a single election that will apply to all future quarterly installments until revoked.

A plan sponsor that uses the plan's prefunding balance or funding standard carryover balance toward satisfaction of the plan's quarterly contribution requirement before the plan's effective interest rate for the plan year has been determined should assume, in order to ensure that the quarterly contribution requirements are satisfied, that the effective interest rate is equal to the lowest of the three segment rates (generally the first segment rate) to adjust the elected amount. Plan sponsors should also note that, pursuant to proposed § 1.430(f)–1(b)(1)(ii)(B), the amount of the funding balance that is used to satisfy the quarterly contribution requirements cannot later be added back to the prefunding balance (because only contributions in excess of the minimum funding requirement, determined without regard to the offset under section 430(f)(3), are eligible to be added to the prefunding balance).

The proposed regulations would provide rules for the liquidity requirements that generally apply to plans for which quarterly contributions are required. Under the proposed regulations, a plan subject to the requirement to make quarterly contributions (other than a small plan described in section 430(g)(2)(B)) is treated as failing to pay the full amount of the required installment for a quarter to the extent that the value of the liquid assets paid after the close of that quarter and on or before the due date for the installment is less than the liquidity shortfall for that quarter. Thus, in order to satisfy the quarterly contribution requirement for a quarter, liquid assets in the amount of the liquidity shortfall must be contributed after the close of that quarter and on or before the due date for the installment.<sup>7</sup> The use of funding balances or the contribution of illiquid assets cannot remedy a liquidity shortfall.

The rules under the proposed regulations relating to the liquidity

requirements are similar to the rules provided under Rev. Rul. 95–31; however, these rules have been updated to reflect statutory changes. For example, the definition of liquid assets under the proposed regulations is the same as the definition of liquid assets under Rev. Rul. 95–31. Unlike Rev. Rul. 95–31, the proposed regulations measure satisfaction of a liquidity shortfall by reference to contributions made after the close of the quarter and by the due date for the installment while including contributions made during the plan quarter in plan assets. Although this appears to be a change from the rules of Rev. Rul. 95–31, the two formulations are mathematically identical.

The proposed regulations provide that, for purposes of applying the additional 5 percentage point interest adjustment in the case of a quarterly contribution that is not fully paid, the liquidity increment for the quarter (the portion of the quarterly installment that is due solely by reason of the liquidity requirements) continues to be treated as unpaid until the close of the quarter in which the due date for that installment occurs, regardless of when it is contributed. However, for purposes of adjusting the contribution to the valuation date at the effective interest rate, the adjustment is made from the actual contribution date (rather than from the close of the quarter). In addition, the proposed regulations provide an ordering rule under which, if a contribution for a quarter is less than the total amount needed to satisfy the quarterly contribution requirement taking into account the liquidity requirement, then the contribution is first attributed toward satisfying the quarterly contribution requirement determined without regard to the liquidity requirement.

Under the proposed regulations, if the amount of any required installment is increased because of the liquidity shortfall rules, that increase cannot exceed the amount that, when added to prior required installments determined under section 430(j) for the plan year, would 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%.

The proposed regulations would provide that the rules under section 430(j) generally apply to a plan maintained by a commercial passenger airline (or other eligible employer) that has made an election under section 402(a)(1) or 402(a)(2) of PPA '06 in the same manner as they apply to any other

<sup>7</sup> In this context, see Department of Labor Interpretive Bulletin 94–3 (29 CFR 2509.94–3), which sets forth the Department's view that, in the absence of an applicable exemption, a contribution by an employer to a defined benefit plan in a form other than cash constitutes a prohibited transaction under section 406 of ERISA and section 4975 of the Code.

plan subject to section 430. However, in the case of a plan with respect to which the election under section 402(a)(1) of PPA '06 has been made, the determination of the funding shortfall for a plan year is made by reference to the unfunded liability under section 402(e)(3)(A) of PPA '06. In addition, the effective interest rate for a plan with respect to which the election under section 402(a)(1) of PPA '06 has been made is deemed to be 8.85%. Pursuant to proposed § 1.430(h)(2)–1(f)(1), the effective interest rate for a plan with respect to which the election under section 402(a)(2) of PPA '06 has been made will be 8.25% for the 10-year period during which the election applies to the plan.

#### IV. Section 54.4971(c)–1 Taxes on Failure To Meet Minimum Funding Standards

These proposed regulations set forth the definitions that apply for purposes of applying the rules of section 4971 that were modified by PPA '06.

The proposed regulations define the term *accumulated funding deficiency* (which is only relevant for a multiemployer plan) as having the meaning given to that term by section 431. A multiemployer plan's accumulated funding deficiency for a plan year takes into account all charges and credits to the funding standard account under section 412 for plan years before the first plan year for which section 431 applies to the plan.

The proposed regulations define the term *unpaid minimum required contribution*, with respect to any plan year, as any minimum required contribution under section 430 for the plan year that is not paid on or before the due date for the plan year under section 430(j)(1). The proposed regulations provide that a plan's accumulated funding deficiency under section 412 for the pre-effective plan year is treated as an unpaid minimum required contribution for that plan year until correction is made. Unlike the determination of accumulated funding deficiency which applied under section 412 prior to PPA '06, the total unpaid minimum required contributions is not adjusted with interest. However, as described in the following paragraph, correction of an unpaid minimum required contribution does require a contribution that includes an adjustment for interest.

The proposed regulations define the term *correct* as it applies to the accumulated funding deficiency and the unpaid minimum required contribution of a plan. With respect to an accumulated funding deficiency under a

multiemployer plan, the proposed regulations set forth rules that are the same as the rules set forth in proposed § 54.4971–2(a). Under the proposed regulations, the correction of an unpaid minimum required contribution under a single employer plan for a plan year requires the contribution, to or under the plan, of the amount that, when discounted to the valuation date for the plan year for which the unpaid minimum required contribution is due at the appropriate rate of interest, equals or exceeds the unpaid minimum required contribution. For this purpose, the appropriate rate of interest is the plan's effective interest rate for the plan year for which the unpaid minimum required contribution is due except to the extent that the payments are subject to additional interest as provided under section 430(j)(3) or (4). With respect to an unpaid minimum required contribution, the proposed regulations provide an ordering rule under which a contribution is attributable first to the earliest plan year of any unpaid minimum required contribution for which correction has not yet been made. With respect to an accumulated funding deficiency under section 412 for the pre-effective plan year that is treated as an unpaid minimum required contribution, the proposed regulations provide that correction requires the contribution, to or under the plan, of the amount of that accumulated funding deficiency adjusted with interest from the end of the pre-effective plan year to the date of the contribution at the plan's valuation interest rate for the pre-effective plan year.

The IRS and the Treasury Department intend to issue further guidance in the future on the application of section 4971, including special rules applicable to multiemployer plans that are in critical or endangered status under section 432.

#### Proposed Legislation

As of the date of the issuance of these proposed regulations, bills have been passed in the House of Representatives and the Senate that would provide for technical corrections to PPA '06.<sup>8</sup> These bills would amend section 430(j)(3)(A) to authorize the Treasury Department to provide rules for determining the funding shortfall for purposes of the pre-effective plan year and would add section 430(j)(3)(E)(iii) to authorize the Treasury Department to provide special rules for the treatment of quarterly contributions in the case of a plan with

a valuation date other than the first day of the plan year. These bills would also specify an effective date for the PPA '06 amendments to section 4971.

These proposed regulations have reserved § 1.430(j)–1(c)(6) and § 1.430(j)–1(g)(5)(ii) in order to accommodate any enacted changes to section 430(j). If legislation similar to that in the proposed technical corrections is enacted, the IRS and the Treasury Department are considering including the following provisions in final regulations. First, the funding shortfall for the pre-effective plan year would be determined as the excess (if any) of the plan's current liability determined pursuant to section 412(l)(7) on the valuation date for the plan's pre-effective plan year, over the net plan assets for the pre-effective plan year as determined under § 1.430(i)–1(f)(5)(ii). Second, if a quarterly installment is due before the valuation date for the plan year, the minimum required contribution for the plan year would be increased by an additional amount if that quarterly installment is not paid by the due date. This additional amount would be determined by applying interest at an annual rate of 5% to the underpayment of the required installment for the period of time between the due date for the required installment and the earlier of the date of payment or the valuation date.

#### Effective/Applicability Dates of Regulations

Section 430 generally applies to plan years beginning on or after January 1, 2008. The proposed regulations under section 430 are proposed to apply generally to plan years beginning on or after January 1, 2009. When the regulations are finalized, plans will be permitted to apply them for plan years beginning in 2008. In addition, for plan years beginning in 2008, plans are permitted to rely on the proposed regulations for purposes of satisfying the requirements of section 430. In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of PPA '06, the regulations are proposed to apply to plan years beginning on or after the date section 430 first applies with respect to the plan.

The amendments made to section 4971 by section 114 of PPA '06 do not have a specific effective date. The regulations provide that the amendments to section 4971 generally apply at the same time as the amendments to section 430 (or section 431, as applicable) apply to the plan. Thus, the regulations provide that the amendments to section 4971 generally

<sup>8</sup> See H.R. 3361 as passed by the House of Representatives on March 13, 2008 and S. 1974 as passed by the Senate on December 19, 2007.

apply to taxable years beginning on or after January 1, 2008, but only with respect to plan years for which section 430 (or section 431) applies to the plan that end with or within any such taxable year. In the case of a plan to which a delayed effective date applies pursuant to sections 104 through 106 of PPA '06, the regulations provide that the amendments made to section 4971 apply to the same taxable years, but only with respect to plan years for which section 430 applies to the plan. The regulations under section 4971 generally are proposed to apply at the same time the statutory changes to section 4971 under PPA '06 become effective but would not apply to taxable years ending before April 15, 2008. Thus, for example, the regulations under section 4971 would not apply to a short taxable year beginning January 1, 2008, and ending February 29, 2008.

### Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the proposed regulations do not impose a collection of information on small entities, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 4, 2008, beginning at 10 a.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the

immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by July 15, 2008, and an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by July 15, 2008. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

### Drafting Information

The principal authors of these regulations are Lauson C. Green and Linda S. F. Marshall, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

### List of Subjects

#### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### 26 CFR Part 54

Excise taxes, Insurance, Reporting and recordkeeping requirements.

### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 2.** Section 1.430(a)–1 is added to read as follows:

#### **§ 1.430(a)–1 Determination of minimum required contribution.**

(a) *In general*—(1) *Overview.* This section sets forth rules for determining a plan's minimum required contribution for a plan year under section 430(a). Section 430 and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) that are subject to section 412 but do not apply

to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section defines a plan's minimum required contribution for a plan year. Paragraph (c) of this section provides rules for determining shortfall amortization installments. Paragraph (d) of this section provides rules for determining waiver amortization installments. Paragraph (e) of this section provides for early deemed amortization of shortfall and waiver amortization bases for fully funded plans. Paragraph (f) of this section provides definitions that apply for purposes of this section. Paragraph (g) of this section provides examples that illustrate the application of this section. Paragraph (h) of this section provides effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, the minimum required contribution is computed separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(b) *Definition of minimum required contribution*—(1) *In general.* In the case of a defined benefit plan that is not a multiemployer plan (within the meaning of section 414(f)), except as offset under section 430(f) and § 1.430(f)–1, the minimum required contribution for a plan year is determined as the applicable amount determined under paragraph (b)(2) of this section or paragraph (b)(3) of this section, reduced by the amount of any funding waiver under section 412(c) that is granted for the plan year. See paragraph (b)(4) of this section for special rules for a plan maintained by a commercial passenger airline (or other eligible employer) for which an election under section 402 of the Pension Protection Act of 2006, Public Law 109–280 (120 Stat. 780) (PPA '06), has been made, and see section 430(j) and § 1.430(j)–1 for rules regarding the required interest adjustment for a contribution that is paid on a date other than the valuation date for the plan year.

(2) *Plan assets less than funding target*—(i) *General rule.* For any plan year in which the value of plan assets of the plan (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)–1(c), but not below zero) is less than the funding target of the plan for the plan year, the minimum required contribution for that plan year is equal to the sum of—

(A) The target normal cost of the plan for the plan year;

(B) The total (not less than zero) of the shortfall amortization installments determined with respect to the shortfall amortization bases for the plan year and each of the 6 preceding plan years as described in paragraph (c) of this section; and

(C) The total of the waiver amortization installments determined with respect to the waiver amortization bases for each of the 5 preceding plan years as described in paragraph (d) of this section.

(ii) *Special rule for short plan years*—

(A) *Proration of amortization installments.* In determining the minimum required contribution in the case of a plan year that is shorter than 12 months (and is not a 52-week plan year of a plan that uses a 52–53 week plan year), the shortfall amortization installments and waiver amortization installments that are taken into account under paragraphs (b)(2)(i)(B) and (C) of this section are determined by multiplying the amount of those installments that would be taken into account for a 12-month plan year by a fraction, the numerator of which is the duration of the short plan year and the denominator of which is 1 year.

(B) *Effect on subsequent years.* In plan years after the short plan year, installments with respect to a shortfall amortization base (or waiver amortization base) continue to be taken into account under paragraphs (b)(2)(i)(B) and (C) of this section until the total amount of those installments, as originally determined to be paid over 7 years (or 5 years in the case of waiver amortization installments), has been taken into account. Thus, for example, in the case of a plan that has a short plan year, an additional partial installment will be taken into account under paragraphs (b)(2)(i)(B) and (C) of this section during the plan year after the end of the original amortization period in an amount determined so that the total of the amortization installments (including the prorated installment payable for the short plan year and the additional partial installment) is equal to the total amount of the amortization installments as originally determined. Similarly, in the

case of a plan that has a short plan year, the total number of plan years required to take into account the full amount of installments will exceed 7 plan years (or 5 plan years in the case of waiver amortization installments), and, accordingly, the number of preceding plan years taken into account in paragraphs (b)(2)(i)(B) and (C) of this section is correspondingly increased so that the total amount of the amortization installments as originally determined is taken into account. In addition, for plan years beginning after the close of the short plan year, the shortfall amortization installments and waiver amortization installments that are taken into account under paragraphs (b)(2)(i)(B) and (C) of this section are assumed to be paid on the valuation date for the new plan year (rather than on the valuation date for the short plan year and preceding plan years).

(3) *Plan assets equal or exceed funding target.* For any plan year in which the value of plan assets (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)–1(c), but not below zero) equals or exceeds the funding target of the plan for the plan year, the minimum required contribution for that plan year is equal to the target normal cost of the plan for the plan year reduced (but not below zero) by that excess.

(4) *Special rules for commercial passenger airlines*—(i) *In general.* This paragraph (b)(4) provides special rules for a plan maintained by a commercial passenger airline (or an employer whose principal business is providing catering services to a commercial passenger airline) for which an election under section 402 of PPA '06 has been made.

(ii) *Frozen plans*—(A) *Determinations during 17-year amortization period.* If an election described in section 402(a)(1) of PPA '06 applies for the plan year with respect to an eligible plan described in section 402(c)(1) of PPA '06, then the plan's minimum required contribution for purposes of section 430 of the Code for the plan year is equal to the amount necessary to amortize (at an interest rate of 8.85 percent) the unfunded liability of the plan in equal installments over the remaining amortization period. For this purpose, the unfunded liability means the excess of the accrued liability under the plan determined using the unit credit funding method and an interest rate of 8.85 percent over the fair market value of assets, and the remaining amortization period is the 17-plan-year period beginning with the first plan year for which the election was made, reduced by 1 year for each plan year

after the first plan year for which the election was made. In addition, the section 430(f)(3) election to apply funding balances against the minimum required contribution does not apply to a plan to which the election described in section 402(a)(1) of PPA '06 applies for the plan year.

(B) *Determinations following 17-year amortization period.* If an election described in section 402(a)(1) of PPA '06 applied to the plan for any preceding plan year but does not apply for the current plan year, then the plan's minimum required contribution for purposes of section 430 of the Code for the plan year is determined without regard to that election. For the first plan year for which that election no longer applies to the plan, any prefunding balance or funding standard carryover balance is reduced to zero.

(iii) *Other plans of commercial passenger airlines.* If an election described in section 402(a)(2) of PPA '06 has been made for an eligible plan described in section 402(c)(1) of PPA '06, then the minimum required contribution for purposes of section 430 is determined under generally applicable rules, except that the shortfall amortization base for the first plan year for which section 430 applies to the plan is amortized over 10 years (rather than over 7 years as provided in paragraph (c)(1) of this section) in accordance with § 1.430(h)(2)–1(e) and (f) using the interest rates that apply for the first plan year for which section 430 applies to the plan. In such a case, the shortfall amortization installments with respect to the shortfall amortization base for that plan year will continue to be included in determining the minimum required contribution for 10 years rather than 7 years. See also § 1.430(h)(2)–1(b)(6) for a special rule for determining the funding target in the case of a plan for which an election under section 402(a)(2) of PPA '06 has been made.

(c) *Shortfall amortization installments*—(1) *In general.* For purposes of this section, the shortfall amortization installments with respect to a shortfall amortization base established for a plan year are the annual amounts necessary to amortize that shortfall amortization base in level annual installments over the 7-year period beginning with that plan year. See § 1.430(h)(2)–1(e) and (f) for rules regarding interest rates used for determining shortfall amortization installments and the date within each plan year on which the installments are assumed to be paid. The shortfall amortization installments are determined using the interest rates that apply for the plan year for which the

shortfall amortization base is established and are not redetermined in subsequent plan years to reflect changes in interest rates under section 430(h)(2) for those subsequent plan years.

(2) *Shortfall amortization base*—(i) *In general.* For purposes of this section, unless the value of plan assets (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)–1(c)(2), but not below zero) is equal to or greater than the funding target of the plan for the plan year, a shortfall amortization base is established for the plan year equal to—

(A) The funding shortfall of the plan for the plan year; minus

(B) The amount attributable to future installments determined under paragraph (c)(2)(ii) of this section.

(i) *Amount attributable to future installments.* The amount attributable to future installments is equal to the sum of the present values (determined in accordance with § 1.430(h)(2)–1(e) and (f) using the interest rates that apply for the current plan year) of—

(A) The shortfall amortization installments that have been determined for the plan year and any succeeding plan year with respect to the shortfall amortization bases of the plan for any plan year preceding the plan year; and

(B) The waiver amortization installments that have been determined for the plan year and any succeeding plan year with respect to the waiver amortization bases of the plan for any plan year preceding the plan year.

(iii) *Transition rule.* See paragraph (h)(4) of this section for a transition rule under which only a portion of the funding target is taken into account in determining whether a shortfall amortization base is established under this paragraph (c)(2).

(d) *Waiver amortization installments*—(1) *In general.* For purposes of this section, the waiver amortization installments with respect to a waiver amortization base established for a plan year are the annual amounts necessary to amortize that waiver amortization base in level annual installments over the 5-year period beginning with the following plan year. See § 1.430(h)(2)–1(e) and (f) for rules regarding interest rates used for determining waiver amortization installments and the date within each plan year on which the installments are assumed to be paid. The waiver amortization installments established with respect to a waiver amortization base are determined using the interest rates that apply for the plan year for which the waiver is granted (even though the first installment with respect to the waiver amortization base is not

due until the subsequent plan year) and are not redetermined in subsequent plan years to reflect changes in interest rates under section 430(h)(2) for those subsequent plan years.

(2) *Waiver amortization base*—(i) *In general.* For purposes of this section, a waiver amortization base is established for each plan year for which a waiver of the minimum funding standard has been granted in accordance with section 412(c). The amount of the waiver amortization base is equal to the amount of the minimum required contribution waived (or the waived funding deficiency) for the plan year.

(ii) *Transition rule.* See paragraph (h)(3) of this section for the treatment of funding waivers granted for plan years beginning before 2008.

(e) *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—

(1) The shortfall amortization bases for all preceding plan years (and all shortfall amortization installments determined with respect to those shortfall amortization bases) are reduced to zero; and

(2) The waiver amortization bases for all preceding plan years (and all waiver amortization installments determined with respect to such bases) are reduced to zero.

(f) *Definitions*—(1) *In general.* The definitions set forth in this paragraph (f) apply for purposes of this section.

(2) *Funding shortfall.* The term *funding shortfall* means the excess (if any) of—

(i) The funding target of the plan for a plan year; over

(ii) The value of plan assets for the plan year (as reduced to reflect the subtraction of the funding standard carryover balance and prefunding balance to the extent provided under § 1.430(f)–1(c), but not below zero).

(3) *Funding target.* The term *funding target* means the plan's funding target for a plan year determined under § 1.430(d)–1(b)(2), § 1.430(i)–1(c), or § 1.430(i)–1(e)(1), whichever applies to the plan for the plan year.

(4) *Target normal cost.* The term *target normal cost* means the plan's target normal cost for a plan year determined under § 1.430(d)–1(b)(1), § 1.430(i)–1(d), or § 1.430(i)–1(e)(2), whichever applies to the plan for the plan year.

(g) *Examples.* The following examples illustrate the rules of this section. Unless otherwise indicated, these examples are based on the following assumptions: the plan is subject to section 430 starting in 2008; the plan year is the calendar year; the valuation

date is January 1; and the plan's funding standard carryover balance is \$0.

*Example 1.* (i) Plan A has a funding target of \$2,500,000 and assets totaling \$1,800,000 as of January 1, 2008. The 2008 actuarial valuation is performed using the 24-month average segment rates applicable for September 2007 (determined without regard to the transitional rule of section 430(h)(2)(G)).

(ii) A \$700,000 shortfall amortization base is established for 2008, which is equal to the \$2,500,000 funding target less \$1,800,000 of assets.

(iii) With respect to this shortfall amortization base of \$700,000, there is a shortfall amortization installment of \$116,852 (which is equal to the \$700,000 shortfall amortization base amortized over 7 years) for each year from 2008 through 2014. The amount of this shortfall amortization installment is determined by discounting the first five installments using the first segment interest rate of 5.26%, and by discounting the sixth and seventh installments using the second segment rate of 5.82%.

*Example 2.* (i) The facts are the same as in Example 1, except that the plan was granted a funding waiver of \$300,000 in 2006, as of December 31, 2006. The valuation interest rate for the January 1, 2007, actuarial valuation is 8.50% (which exceeds 150% of the applicable federal mid-term rate).

(ii) The waiver amortization installment for the plan year beginning January 1, 2007, is \$70,166, which is equal to the \$300,000 funding waiver base amortized over 5 years at the valuation interest rate of 8.50%.

(iii) As of January 1, 2008, the present value of the remaining waiver amortization installments is \$260,318, which is determined by discounting the remaining four waiver amortization installments of \$70,166 to January 1, 2008, using the first segment rate of 5.26%. See paragraph (h)(3) of this section.

(iv) A \$439,682 shortfall amortization base is established for 2008, which is equal to the \$2,500,000 funding target, less \$1,800,000 of assets, less \$260,318 (which is the present value of the remaining waiver amortization installments).

(v) With respect to this shortfall amortization base of \$439,682, there is a shortfall amortization installment of \$73,397 (which is equal to the \$439,682 shortfall amortization base amortized over 7 years) for each year from 2008 through 2014.

*Example 3.* (i) The facts are the same as in Example 2. Plan A has a \$100,000 target normal cost for the 2008 plan year and was granted a funding waiver for 2008 to the largest extent permitted under section 412(c).

(ii) The minimum required contribution is \$243,563 as of January 1, 2008. This is equal to the \$100,000 target normal cost, plus the \$70,166 waiver amortization installment from the 2006 waiver, plus the \$73,397 January 1, 2008, shortfall amortization installment.

(iii) In accordance with section 412(c)(1)(C), the portion of the minimum required contribution attributable to the amortization of the 2006 funding waiver cannot be waived. Therefore, the maximum amount of the January 1, 2008, minimum

required contribution that can be waived is \$173,397.

(iv) In accordance with paragraph (d) of this section, a waiver amortization base of \$173,397 is established as of January 1, 2008, to be amortized over 5 years beginning with the 2009 plan year. Although the waiver amortization installments for the 2008 funding waiver are not included in the minimum required contribution until 2009, the amount of those installments is determined based on the interest rates used for the 2008 plan year.

(v) The waiver amortization installments are calculated using the first segment interest rate of 5.26% for the first four installments (calculated as of January 1, 2009, through January 1, 2012) and the second segment interest rate of 5.82% for the final installment payable as of January 1, 2013. Accordingly, the waiver amortization installments that are payable beginning January 1, 2009, are \$40,530 each.

*Example 4.* (i) The facts are the same as in Example 3. As of January 1, 2009, Plan A has a funding target of \$2,750,000 and assets totaling \$1,900,000. The 2009 actuarial valuation is performed using the 24-month average segment rates applicable for September 2008 (determined without regard to the transitional rule of section 430(h)(2)(G)). For the 2009 plan year, the first segment rate is equal to 5.50%, the second segment rate is equal to 6.00%, and the third segment rate is equal to 6.50%.

(ii) As of January 1, 2009, the present value of the remaining three waiver amortization installments with respect to the 2006 waiver is \$199,715, which is determined using the first segment rate of 5.50%.

(iii) As of January 1, 2009, the present value of the remaining five waiver amortization installments with respect to the 2008 waiver is \$182,594, which is determined using the first segment rate of 5.50%.

(iv) As of January 1, 2009, the present value of the remaining six shortfall amortization installments with respect to the 2008 shortfall amortization base is \$385,511, which is determined using the first segment rate of 5.50% for the first five installments and the second segment rate of 6.00% for the sixth installment.

(v) A shortfall amortization base of \$82,180 is established for 2009, which is equal to the \$2,750,000 funding target, less \$1,900,000 of assets, less \$199,715 (the present value of the remaining waiver amortization installments with respect to the 2006 waiver), less \$182,594 (the present value of the remaining waiver amortization installments with respect to the 2008 waiver), less \$385,511 (the present value of the remaining installments with respect to the 2008 shortfall amortization base).

(vi) With respect to this shortfall amortization base of \$82,180, there is a shortfall amortization installment of \$13,795 (which is equal to the \$82,180 shortfall amortization base amortized over 7 years) for each year from 2009 through 2015.

*Example 5.* (i) The facts are the same as in Example 4, except that Plan A has assets totaling \$2,000,000 as of January 1, 2009. Plan A has a target normal cost of \$110,000 as of January 1, 2009.

(ii) A shortfall amortization base of \$17,820 is established for 2009, which is equal to the \$2,750,000 funding target, less \$2,000,000 of assets, less \$199,715 (the present value of the remaining installments with respect to the 2006 waiver), less \$182,594 (the present value of the remaining installments with respect to the 2008 waiver), less \$385,511 (the present value of the remaining installments with respect to the 2008 shortfall amortization base).

(iii) The shortfall amortization installment for the 2009 shortfall amortization base is \$2,991, which is equal to the \$17,820 shortfall amortization base amortized over 7 years. The first five shortfall amortization installments are discounted using the first segment rate of 5.50% and the sixth and seventh shortfall amortization installments are discounted using the second segment rate of 6.00%.

(iv) The minimum required contribution for the 2009 plan year is \$291,102. This is equal to the target normal cost of \$110,000 plus the shortfall amortization charge of \$70,406 (that is, \$73,397 minus \$2,991) plus the waiver amortization charge of \$110,696 (that is, \$70,166 plus \$40,530).

*Example 6.* (i) The facts are the same as in Example 5, except that Plan A has assets totaling \$2,800,000 as of January 1, 2009.

(ii) Because the assets of \$2,800,000 exceed the funding target of \$2,750,000 as of January 1, 2009, no new shortfall amortization base is established under paragraph (c)(2) of this section.

(iii) Furthermore, under paragraph (e) of this section, all shortfall amortization bases and waiver amortization bases (and all shortfall amortization installments and waiver amortization installments associated with those bases) are reduced to zero as of January 1, 2009.

(iv) The minimum required contribution for the 2009 plan year is \$60,000, which is equal to the \$110,000 target normal cost less the excess of the assets over the funding target (\$2,800,000 minus \$2,750,000).

*Example 7.* (i) The actuarial valuation for Plan B as of January 1, 2008, based on a 12-month plan year, determines a target normal cost of \$110,000 and a shortfall amortization installment for 2008 of \$185,000. The plan year for Plan B is changed to April 1 through March 31, effective April 1, 2008, resulting in a short plan year beginning January 1, 2008, and ending March 31, 2008.

(ii) The target normal cost for the short plan year is redetermined in order to reflect the fact that there is a short plan year. An actuarial valuation shows that the target normal cost is \$25,000 for the short plan year based on the accruals for that short plan year (determined in accordance with 29 CFR § 2530.204-2(e)).

(iii) In accordance with paragraph (b)(2)(ii)(A) of this section, the shortfall amortization base is prorated to reflect the three months covered by the short plan year. Accordingly, the shortfall amortization installment for the short plan year is \$46,250 (that is, \$185,000 multiplied by 3/12).

(iv) The total minimum required contribution for the short plan year (without offset for any carryover balance as of January 1, 2008) is \$71,250 (that is, the sum of the

target normal cost of \$25,000 plus the shortfall amortization installment of \$46,250).

*Example 8.* (i) The facts are the same as in Example 7. The first segment rate for the plan year beginning April 1, 2008, is 5.30%, and the second segment rate is 5.80%.

(ii) The present value of the remaining shortfall amortization installments with respect to the January 1, 2008, shortfall amortization base is equal to \$1,074,937.

This is determined by discounting the remaining installments (6 full-year installments due April 1, 2008 through April 1, 2013, and a final 9-month installment due April 1, 2014) using the first segment rate of 5.30% for the first five installments and the second segment rate of 5.80% for the remaining installments.

(h) *Effective/applicability dates and transition rules*—(1) *In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. However, plans are permitted to apply this section in determining the minimum required contribution for plan years beginning in 2008.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of PPA '06, this section applies to plan years beginning on or after the date section 430 first applies with respect to the plan.

(3) *Treatment of pre-2008 funding waivers.* In the case of a plan that has received a funding waiver under section 412 for a plan year for which section 430 was not yet effective with respect to the plan, the waiver is treated as giving rise to a waiver amortization base and the amortization charges with respect to that funding waiver are treated as waiver amortization installments as described in paragraph (d) of this section. With respect to such a preexisting funding waiver, the amount of the waiver amortization installment is equal to the amortization charge with respect to that waiver determined using the interest rate or rates that applied for the pre-effective plan year.

(4) *Transition rule for determining whether shortfall amortization base is established*—(i) *In general.* Except as provided in paragraphs (h)(4)(iii) and (iv) of this section, in the case of plan years beginning after 2007 and before 2011, only the applicable percentage of the funding target is taken into account in determining whether a shortfall amortization base is established for the plan year under paragraph (c)(2) of this section.

(ii) *Applicable percentage.* For purposes of paragraph (h)(4)(i) of this section, the applicable percentage is

determined in accordance with the following table:

Calendar year in which the plan year begins	Applicable percentage
2008 .....	92
2009 .....	94
2010 .....	96

(iii) *Transition rule not available if funding falls below applicable percentage.* The transition rule of paragraph (h)(4)(i) of this section does not apply with respect to any plan year beginning after 2008 if a shortfall amortization base was required to be established under paragraph (c)(2) of this section for any preceding year.

(iv) *Transition rule not available for new plans or deficit reduction plans.* The transition rule of paragraph (h)(4)(i) of this section does not apply to a plan—

(A) That was not in effect for a plan year beginning in 2007; or

(B) That was subject to section 412(l) for the pre-effective plan year, determined after the application of sections 412(l)(6) and (9) (regardless of whether the deficit reduction contribution for the pre-effective plan year was equal to zero).

(v) *Pre-effective plan year.* For purposes of this section, the pre-effective plan year for a plan is the last plan year beginning before section 430 applies to the plan. Thus, except for plans with a delayed effective date under paragraph (h)(2) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

**Par. 3.** Section 1.430(j)-1 is added to read as follows:

**§ 1.430(j)-1 Payment of minimum required contributions.**

(a) *In general*—(1) *Overview.* This section provides rules related to the payment of minimum required contributions, including the payment of quarterly contributions. Section 430(j) and this section apply to single employer defined benefit plans (including multiple employer plans as defined in section 413(c)) but do not apply to multiemployer plans (as defined in section 414(f)). Paragraph (b) of this section describes the general timing requirement for minimum required contributions. Paragraph (c) of this section describes the accelerated quarterly contribution schedule for plans with a funding shortfall in the preceding plan year. Paragraph (d) of this section provides rules regarding liquidity requirements. Paragraph (e) of this section provides definitions. Paragraph (f) of this section provides

examples that illustrate the rules of this section. Paragraph (g) of this section sets forth effective/applicability dates and transition rules.

(2) *Special rules for multiple employer plans.* In the case of a multiple employer plan to which section 413(c)(4)(A) applies, the rules of section 430 and this section are applied separately for each employer under the plan, as if each employer maintained a separate plan. Thus, for example, required quarterly contributions are determined separately for each employer under such a multiple employer plan. In the case of a multiple employer plan to which section 413(c)(4)(A) does not apply (that is, a plan described in section 413(c)(4)(B) that has not made the election for section 413(c)(4)(A) to apply), the rules of section 430 and this section are applied as if all participants in the plan were employed by a single employer.

(3) *Applicability of section 430(j) to plans of commercial passenger airlines*—(i) *In general.* Except as otherwise provided in this section, the rules of section 430(j) and this section apply to a plan for which an election described in section 402 of the Pension Protection Act of 2006, Public Law 109-280 (120 Stat. 780) (PPA '06), has been made in the same manner as those rules apply to any other plan subject to section 430.

(ii) *Special rules for plans for which election was made pursuant to section 402(a)(1) of PPA '06.* For purposes of applying the rules of section 430(j) and this section to a plan with respect to which the election under section 402(a)(1) of PPA '06 has been made, the effective interest rate for the plan is deemed to be 8.85% during the period for which the election applies. In addition, see paragraph (e)(4)(ii) of this section for a special determination of the funding shortfall for a plan for which the election in section 402(a)(1) of PPA '06 has been made.

(b) *General timing requirement for minimum required contributions*—(1) *Earliest date for contributions.* A payment of the minimum required contribution under section 430 for a plan year can be made no earlier than the first day of the plan year.

(2) *Deadline for contributions.* The deadline for any payment of any minimum required contribution for a plan year is 8½ months after the close of the plan year. See section 4971 and the regulations thereunder regarding an excise tax that applies with respect to minimum required contributions not paid by this deadline. See also section 430(k) of the Code and section 101(d) of the Employee Retirement Income

Security Act of 1974 (ERISA), 29 U.S.C. 1021(d), for additional rules that apply in the case of a failure to pay minimum required contributions by this deadline.

(3) *Adjustment for interest.* Any payment of the minimum required contribution under section 430 for a plan year that is made on a date other than the valuation date for that plan year is adjusted for interest accruing for the period between the valuation date and the payment date, at the effective interest rate for the plan for that plan year determined pursuant to § 1.430(h)(2)-1(f)(1). The direction of the adjustment depends on whether the contribution is paid before or after the valuation date for the plan year. If the contribution is paid after the valuation date for the plan year, the contribution is discounted to the valuation date using the plan's effective interest rate. By contrast, if the contribution is paid before the valuation date for the plan year (which could only occur in the case of a small plan described in section 430(g)(2)(B)), the contribution is increased for interest using the plan's effective interest rate.

(c) *Accelerated quarterly contribution schedule for underfunded plans*—(1) *In general*—(i) *Plan subject to quarterly contribution requirement.* 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 described in paragraph (c)(3) of this section by the due dates described in paragraph (c)(4) of this section.

(ii) *Satisfaction of installments through use of funding balances.* In the case of a plan that is subject to the quarterly contribution requirement under this paragraph (c), if the plan sponsor makes an election to use the plan's prefunding balance or funding standard carryover balance under section 430(f), then the plan sponsor is treated as satisfying the obligation to make a required installment under paragraph (c)(1)(i) of this section on the date of the election to the extent of the amount elected, as adjusted with interest. This interest adjustment is made at the plan's effective interest rate under section 430(h)(2)(A) for the plan year from the valuation date through the due date of the installment.

(iii) *Consequences of failure to make quarterly contribution*—(A) *Interest adjustment.* If the full amount of a required installment is not paid by the due date for that installment, then an increased rate of interest applies in adjusting the payment to the valuation date. This increased rate of interest is equal to the rate otherwise used under paragraph (b) of this section plus 5

percentage points, and applies with respect to the underpayment of the required installment (determined pursuant to paragraph (c)(2) of this section) for the period of time that begins on the due date for the required installment and that ends on the date on which payment is made.

(B) *Application to required installments due before the valuation date.* The modified interest rate described in paragraph (c)(1)(iii)(A) of this section only applies to a required installment that is due on or after the valuation date for the plan year. See paragraph (c)(6) of this section for rules that apply to required installments that are due before the valuation date for the plan year.

(C) *Additional consequences.* See section 430(k) of the Code and section 101(d) of ERISA for examples of additional consequences of failure to make quarterly contributions.

(2) *Determination of underpayment—*  
(i) *Underpayment for a quarter.* For purposes of this section, the amount of the underpayment with respect to a required installment for a quarter is equal to the excess of—

(A) The required installment; over

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

(ii) *Order of crediting contributions.* For purposes of this section, contributions are first credited against the earliest unpaid required installments.

(3) *Amount of required installment—*  
(i) *In general.* For purposes of this section, the amount of any required installment is equal to 25% of the required annual payment described in paragraph (c)(3)(ii) of this section.

(ii) *Required annual payment.* The required annual payment is equal to the lesser of—

(A) 90% of the minimum required contribution under section 430 for the plan year; or

(B) 100% of the minimum required contribution under section 430 (determined without regard to any funding waiver under section 412) for the preceding plan year.

(iii) *Treatment of funding balances.* For purposes of paragraph (c)(3)(ii) of this section, the minimum required contribution for a plan year is determined without regard to the use of the prefunding balance or funding standard carryover balance in the current year or any prior year. However, see paragraph (c)(1)(ii) of this section regarding a plan sponsor's election to use the plan's prefunding balance or funding standard carryover balance in

the current year for the payment of quarterly installments.

(4) *Due dates for installments.* For purposes of this section, there is a required installment for each quarter of the plan year. The due dates for the four required quarterly installments with respect to a full plan year are set forth in the following table:

Installment	Due date
First quarter's installment.	15th day of 4th plan month.
Second quarter's installment.	15th day of 7th plan month.
Third quarter's installment.	15th day of 10th plan month.
Fourth quarter's installment.	15th day after the close of the plan year.

(5) *Special rules for short plan years—*  
(i) *In general.* In the case of a short plan year, the rules of this paragraph (c) are modified as provided in this paragraph (c)(5).

(ii) *Current plan year is short plan year—*(A) *Amount of required annual payment.* In determining the required annual payment pursuant to paragraph (c)(3)(ii) of this section for a short plan year, the amount otherwise determined under paragraph (c)(3)(ii)(B) (based on the prior year's minimum required contribution) is multiplied by a fraction, the numerator of which is the duration of the short plan year and the denominator of which is 1 year.

(B) *Number and due dates of installments.* If the plan has a short plan year, then an installment is due 15 days after the close of that short plan year. In addition, an installment is required for each due date determined under paragraph (c)(4) of this section that falls within the short plan year. Thus, for example, if the short plan year ends before the 15th day of the 4th plan month of the plan year, there will be only one installment for that short plan year, and that installment will be due on the 15th day after the close of the short plan year.

(C) *Amount of installments.* The amount of each installment required to be paid for the short plan year is equal to the required annual payment determined pursuant to paragraph (c)(3)(ii) of this section (as modified by paragraph (c)(5)(ii)(A) of this section) divided by the number of installments determined pursuant to paragraph (c)(5)(ii)(B) of this section.

(iii) *Prior plan year is short plan year.* If the prior plan year is a short plan year, then the rule of paragraph (c)(3)(ii)(B) regarding the use of 100% of the prior year's minimum required contribution in determining the

required annual payment does not apply. Accordingly, in such a case, the required annual payment is equal to 90% of the minimum required contribution under section 430 for the current plan year.

(6) *Special rule for plans with valuation dates after the first day of the plan year.* [Reserved]

(d) *Liquidity requirement in connection with quarterly contributions—*(1) *In general—*(i) *Requirement to make additional quarterly contributions.* Except as provided in paragraphs (d)(1)(ii) and (iii) of this section, if a plan is subject to the requirement to make quarterly contributions under paragraph (c) of this section, then the plan is treated as failing to pay the full amount of a required installment for a quarter to the extent that the value of the liquid assets contributed after the close of that quarter and on or before the due date for the installment is less than the liquidity shortfall for that quarter.

(ii) *Limitation on increase.* The amount by which any required installment is increased by reason of paragraph (d)(1)(i) of this section cannot exceed the amount that, when added to prior required installments for the plan year, would increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in the funding target due to benefits accruing or earned during the plan year) to 100%.

(iii) *Small plan exception.* The liquidity requirement of this paragraph (d) does not apply to a small plan that is described in § 1.430(g)-1(b)(2).

(2) *Period of underpayment—*(i) *General rule.* For purposes of applying the additional 5 percentage point interest adjustment pursuant to paragraph (c)(1)(iii) of this section, the liquidity increment with respect to a quarter as described in paragraph (d)(2)(ii) of this section continues to be treated as unpaid until the close of the quarter in which the due date for that installment occurs without regard to when that portion is paid. However, for purposes of adjusting the contribution to the valuation date at the effective interest rate under paragraph (b)(3) of this section, the adjustment is made from the contribution date (rather than the close of the quarter).

(ii) *Liquidity increment.* For purposes of this paragraph (d), the liquidity increment with respect to a quarter is the portion of the required installment for that quarter that is treated as not paid solely by reason of paragraph (d)(1)(i) of this section.

(iii) *Ordering rule.* If the employer makes a contribution for a quarter that,

after application of paragraph (c)(2)(ii) of this section, is less than the total amount needed to satisfy the requirements of paragraph (c) of this section as increased by this paragraph (d) for a quarter, then the contribution is first attributed toward satisfying the requirements of paragraph (c) of this section (without regard to this paragraph (d)) and then to the liquidity increment.

(3) *Consequences of failure to pay liquidity shortfall.* See section 4971(f) for an excise tax on the failure to pay a liquidity shortfall. See also section 206(e) of ERISA.

(e) *Definitions*—(1) *In general.* The definitions set forth in this paragraph (e) apply for purposes of this section.

(2) *Adjusted disbursements.* The term *adjusted disbursements* means disbursements from the plan reduced by the product of—

(i) The plan's funding target attainment percentage determined under section 430(d)(2) for the plan year; and

(ii) The sum of the purchases of annuities and payments of single sums.

(3) *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.

(4) *Funding shortfall*—(i) *In general.* The term *funding shortfall* means the excess (if any) of—

(A) The funding target of the plan for a plan year; over

(B) The value of plan assets for the plan year (as reduced to reflect the subtraction of certain funding balances as provided under § 1.430(f)-1(c), but not below zero).

(ii) *Special rule for plans of commercial passenger airlines.* In the case of a plan year for which an election described in section 402(a)(1) of PPA '06 is in effect, the term *funding shortfall* means the unfunded liability for that plan year determined under § 1.430(a)-1(b)(4)(ii).

(iii) *Special rule for first effective plan year.* See paragraph (g)(5)(ii) of this section for a calculation of the funding shortfall for the plan's pre-effective plan year.

(iv) *Special rule for plan spinoffs and mergers.* [Reserved]

(5) *Liquid assets*—(i) *In general.* The term *liquid assets* means cash, marketable securities, and other assets described in this paragraph (e)(5)(i). For this purpose, marketable securities include financial instruments such as stocks and other equity interests, evidences of indebtedness (including certificates of deposit), options, futures

contracts, and other derivatives, for which there is a liquid financial market, and other interests in entities (such as partnerships, trusts, or regulated investment companies) for which there is a liquid financial market. For purposes of the preceding sentence, a liquid financial market is an established financial market described in § 1.1092(d)-1(b) (other than an interbank market or an interdealer market described in § 1.1092(d)-1(b)(1)(v) and (vi), respectively). Any security that is issued or guaranteed by the government of the United States or an agency or instrumentality thereof for which there is an established financial market described in § 1.1092(d)-1(b) is a marketable security. Finally, any financial instrument or other interest in an entity that, under its terms, contains a right by which the instrument or other interest may immediately be redeemed, exchanged, or converted into cash or a marketable security, is a marketable security, provided there are no restrictions on the exercise of that right.

(ii) *Insurance and annuity contracts.* Other assets that are treated as liquid assets of a plan are insurance, annuity, or other contracts issued by an insurance company that is licensed to do business under the laws of any State, but only if the insurance, annuity, or other contract—

(A) Would be treated as a marketable security under paragraph (e)(5)(i) of this section if it were a financial instrument;

(B) Provides for substantially equal monthly disbursements to the extent provided in paragraph (e)(5)(iii) of this section; or

(C) Is benefit responsive within the meaning of paragraph (e)(5)(iv) of this section.

(iii) *Insurance and annuity contracts providing for substantially equal periodic payments.* If the contract provides for substantially equal monthly disbursements (for example, an annuity contract in pay status), the only portion of the contract that may be treated as liquid assets for a quarter is the amount equal to 36 times the monthly disbursement (in the month containing the last day of the quarter) which is available under the terms of the contract, provided there are no restrictions (within the meaning of paragraph (e)(5)(v) of this section) on the disbursements.

(iv) *Benefit responsive insurance and annuity contracts.* A contract is considered benefit responsive if, under applicable law and contractual provisions, the plan has the right to receive disbursements from the contract in order to pay plan benefits for any participant in the plan, without

restrictions (within the meaning of paragraph (e)(5)(v) of this section).

(v) *Restrictions.* For purposes of paragraphs (e)(5)(iii) and (iv) of this section, a restriction on a redemption, exchange or conversion right, or a restriction on a disbursement, may result not only from applicable law or contractual provisions, but also from rehabilitation, conservatorship, receivership, insolvency, bankruptcy or similar proceedings.

(6) *Liquidity shortfall*—(i) *In general.* 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 that installment is made) of—

(A) The base amount with respect to the quarter, over

(B) The value (as of the last day of the quarter) of the plan's liquid assets.

(ii) *Base amount*—(A) *In general.* For purposes of this paragraph (e)(6)(ii), 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.

(B) *Special rule.* If the generally applicable base amount for a quarter determined under paragraph (e)(6)(ii)(A) of this section 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 the enrolled actuary for the plan certifies to the satisfaction of the Commissioner that such excess is the result of nonrecurring circumstances, the base amount with respect to that quarter is determined without regard to amounts related to those nonrecurring circumstances.

(7) *Plan month*—(i) *Plan year begins on the first day of a calendar month.* For a plan year that begins with the first day of a calendar month, the term *plan month* means any calendar month that begins during the plan year.

(ii) *Plan year begins on a date other than the first day of a calendar month.* For a plan year that begins on a date other than the first day of a calendar month, the first day of each *plan month* is the day of the calendar month that corresponds to the day of the calendar month that is the first day of the plan year. Thus, for example, if the first day of a plan year is January 15, then a plan month starts on the 15th of each calendar month. However, if a calendar month does not contain a day that corresponds to the day of the calendar month which is the first day of the plan year (for example, if a calendar month has only 30 days and the first day of the plan year is the 31st day of a calendar

month), then the first day of the plan month that begins during that calendar month is the last day of that calendar month.

(8) *Quarter*. The term *quarter* means, with respect to any required installment, the 3-plan-month period preceding the plan month in which the due date for that installment occurs.

(9) *Short plan year*. The term *short plan year* means a plan year that is shorter than 12 months (and is not a 52-week plan year of a plan that uses a 52–53 week plan year).

(f) *Examples*. The following examples illustrate the rules of this section.

*Example 1.* (i) Plan A has a calendar year plan year and a January 1 valuation date. Plan A has a funding standard carryover balance of \$15,000 as of January 1, 2008, and the plan's funding ratio for 2007 (determined using the transition rule in § 1.430(f)–1(h)(5)) was over 80%. The minimum required contribution for Plan A (prior to any offset for the carryover balance) is \$100,000 for 2008 and is \$125,000 for 2009.

The effective interest rate for the 2009 plan year is 5.90%. Plan A is subject to the quarterly contribution requirements for 2008.

(ii) The required annual payment for 2009 is equal to the lesser of (a) 100% of the 2008 minimum required contribution (\$100,000) or (b) 90% of the 2009 minimum required contribution (90% of \$125,000, or \$112,500). Therefore, each required quarterly installment for 2009 is 25% of \$100,000, or \$25,000.

(iii) Installments of \$25,000 each are due by April 15, 2009, July 15, 2009, October 15, 2009, and January 15, 2010. The final contribution for the 2009 plan year is due by September 15, 2010. The amount of this contribution is equal to \$125,000, less the contributions made prior to that date, with all contributions adjusted to the valuation date using the effective interest rate for the 2009 plan year. If the plan sponsor makes each required quarterly installment on the date due, the remaining amount due is determined as follows:

(A) The contribution paid April 15, 2009, is adjusted by discounting the contribution amount for 3½ months at the effective interest rate ( $\$25,000 \div 1.0590^{(3.5/12)} = \$24,585$ ).

(B) The contribution paid July 15, 2009, is discounted for 6½ months at the effective interest rate ( $\$25,000 \div 1.0590^{(6.5/12)} = \$24,236$ ).

(C) The contribution paid October 15, 2009, is discounted for 9½ months at the effective interest rate ( $\$25,000 \div 1.0590^{(9.5/12)} = \$23,891$ ).

(D) The contribution paid January 15, 2010, is discounted for 12½ months at the effective interest rate ( $\$25,000 \div 1.0590^{(12.5/12)} = \$23,551$ ).

(E) The sum of the above contributions for the 2009 plan year paid through January 15, 2010, adjusted for interest to the valuation date, is \$96,263. The remaining amount due for the 2009 plan year is \$125,000 minus \$96,263, or \$28,737, as of January 1, 2009.

(iv) If the final contribution is made on September 15, 2010, the remaining amount

due must be increased for interest at the plan's effective interest rate for the 20½ months between January 1, 2009, and September 15, 2010 (so that when it is discounted with interest for those 20½ months the resulting amount will equal \$28,737). Therefore, the remaining contribution made on September 15, 2010, is  $\$28,737 \times 1.0590^{(20.5/12)} = \$31,694$ .

*Example 2.* (i) The facts are the same as in Example 1, except that the plan sponsor elects to use the \$15,000 carryover balance as of January 1, 2008, to offset the minimum required contribution for the 2008 plan year. The plan sponsor makes a contribution on January 1, 2008, of \$85,000, which satisfies the minimum contribution requirement for 2008.

(ii) The required quarterly installment for 2009 is unaffected by the plan sponsor's election to offset the minimum required contribution by the carryover balance for 2008. Therefore, the required annual payment is \$100,000 (determined as the lesser of (a) 100% of \$100,000 or (b) 90% of \$125,000) and the amount of each required quarterly installment for 2009 is 25% of the required annual payment, or \$25,000.

*Example 3.* (i) The facts are the same as in Example 1. Plan A's funding standard carryover balance has increased to \$17,000 as of January 1, 2009, based on the actual rate of return of plan assets for the 2008 plan year. Plan A's funding ratio for 2008 (determined under § 1.430(f)–1(d)(3)) is over 80%. On April 13, 2009, the plan sponsor elects to use the entire amount of the carryover balance to offset the minimum required contribution for 2009.

(ii) The plan sponsor's election to use the carryover balance to offset the minimum required contribution is treated as satisfying the requirement to make a required installment to the extent of the amount elected, adjusted with interest. This adjustment is made at the plan's effective interest rate for the 2009 plan year, and applies for the period between January 1, 2009, and April 15, 2009. Therefore, the \$17,000 carryover balance as of January 1, 2009, offsets  $\$17,000 \times 1.0590^{(3.5/12)}$  or \$17,287 of the \$25,000 quarterly contribution installment due April 15, 2009, and the remaining contribution due on April 15, 2009, is \$25,000 minus \$17,287, or \$7,713.

(iii) The interest adjustments in paragraph (ii) of this Example 3 are based on the effective interest rate even if that rate is not determined by the time that the quarterly contribution is due. If the plan's effective interest rate for the plan year has not been determined at the time that the quarterly contribution is due, the actual amount of the required installment satisfied by the use of the carryover balance is determined after the effective interest rate is determined. If the extent to which the carryover balance satisfies the installment requirement is overestimated and the result is the full amount of the required quarterly installment is not paid by the due date, the plan is subject to the consequences for late or unpaid quarterly contributions as described in paragraph (c)(1)(iii) of this section.

*Example 4.* (i) The facts are the same as in Example 3. The plan sponsor makes a

contribution of \$7,713 (which is equal to the remaining portion of the first required quarterly installment) on April 15, 2009. For the 2009 plan year, the plan sponsor makes another contribution of \$200,000 on June 30, 2009. No further contributions are made for the 2009 plan year.

(ii) The contributions made for the 2009 plan year are adjusted to the valuation date using the plan's effective interest rate for the 2009 plan year. The contribution paid April 15, 2009, is discounted for the 3½ months between January 1, 2009, and the date of payment, using the effective interest rate of 5.90% ( $\$7,713/1.0590^{(3.5/12)} = \$7,585$ ). The contribution paid June 30, 2009, is discounted for 6 months using the effective interest rate ( $\$200,000/1.0590^{(6/12)} = \$194,349$ ), for a total interest-adjusted contribution of \$201,934.

(iii) The minimum required contribution for 2009 (prior to any offset for the carryover balance) is \$125,000 and, under § 1.430(f)–1(b)(1)(ii)(B), this amount is used to determine the interest-adjusted excess contribution. Accordingly, the interest-adjusted excess contribution for 2009 is \$201,934 minus \$125,000, or \$76,934, increased for interest to January 1, 2010, using the effective interest rate for 2009 of 5.90%. Thus, the interest-adjusted excess contribution as of January 1, 2010, is \$76,934 multiplied by 1.059, or \$81,473. All or a portion of this amount may be credited to the prefunding balance at the election of the plan sponsor.

*Example 5.* (i) The facts are the same as in Example 3. The plan sponsor pays the required quarterly installment of \$7,713 on April 15, 2009, and installments of \$25,000 each on July 15, 2009, and October 15, 2009. However, only \$10,000 of the installment due on January 15, 2010, is paid. No additional contributions are made until the final contribution for the plan year of \$55,000 is paid on September 15, 2010.

(ii) The 2009 Schedule SB shows that the contributions for the plan year exceed the minimum required contribution. This is determined by comparing the minimum required contribution of \$108,000 (\$125,000 offset by \$17,000 for the amount of carryover balance used) and the interest-adjusted contributions made for the 2009 plan year, developed as shown below:

(A) The contribution paid April 15, 2009, is adjusted by discounting the contribution amount for 3½ months at the effective interest rate ( $\$7,713 \div 1.0590^{(3.5/12)} = \$7,585$ ).

(B) The contribution paid July 15, 2009, is discounted for 6½ months at the effective interest rate ( $\$25,000 \div 1.0590^{(6.5/12)} = \$24,236$ ).

(C) The contribution paid October 15, 2009, is discounted for 9½ months at the effective interest rate ( $\$25,000 \div 1.0590^{(9.5/12)} = \$23,891$ ).

(D) The contribution paid January 15, 2010, is discounted for 12½ months at the effective interest rate ( $\$10,000 \div 1.0590^{(12.5/12)} = \$9,420$ ).

(E) Pursuant to paragraph (c)(1)(iii)(A) of this section, the adjustment for interest on the \$15,000 underpayment of the quarterly installment due January 15, 2010, is increased by 5 percentage points for the 8–

month period of underpayment (January 15, 2010, through September 15, 2010). Accordingly, \$15,000 of the contribution paid on September 15, 2010, is discounted using a rate of 10.90% for 8 months and at the 5.90% effective interest rate for the remaining 12½ months between the quarterly contribution due date of January 15, 2010, and the valuation date of January 1, 2009. This portion of the September 15, 2010, contribution results in an adjusted amount of \$13,189 as of January 1, 2009 ( $\$15,000 \div 1.1090^{(8/12)} \div 1.0590^{(12.5/12)}$ ).

(F) The remaining \$40,000 of the contribution paid on September 15, 2010, is discounted using the effective interest rate of 5.90% for the 20½-month period between the date of payment and the valuation date. This portion of the payment is therefore adjusted to \$36,268 as of the valuation date (that is,  $\$40,000 \div 1.0590^{(20.5/12)}$ ).

(G) The sum of the above contributions for the 2009 plan year paid through January 15, 2010, adjusted for interest to the valuation date, is \$114,589. This is greater than the minimum required contribution for the 2009 plan year of \$108,000.

*Example 6.* (i) The facts are the same as in Example 5, except that the plan sponsor does not make a contribution on September 15, 2010. Another contribution is not made until December 15, 2010.

(ii) The 2009 Schedule SB shows an unpaid minimum required contribution of \$42,868 as of January 1, 2009. This is equal to the difference between the minimum required contribution of \$108,000 (\$125,000 offset by \$17,000 for the amount of carryover balance used) and \$65,132 (the interest-adjusted contributions made for the 2009 plan year before the 8½ month deadline, as illustrated in paragraphs (ii)(A) through (ii)(D) of Example 5).

*Example 7.* (i) The facts are the same as in Example 1, except that the plan year is changed to an August 1–July 31 plan year effective August 1, 2009. This results in a short plan year beginning January 1, 2009, and ending July 31, 2009. The minimum required contribution for the 7-month period covered by the plan year is calculated as \$72,917 in accordance with § 1.430(a)–1(b)(2)(ii).

(ii) As provided in paragraph (c)(5) of this section, a required installment is due 15 days after the close of the short plan year (August 15, 2009), and required installments are also due on the regularly scheduled due dates for quarterly installments that occur within the short plan year (April 15, 2009, and July 15, 2009).

(iii) The required installments are determined based on the lesser of (a) 90% of the minimum required contribution for the short plan year ending July 31, 2009 (90% of \$72,917, or \$65,625) or (b) 7/12 of 100% of the 2008 minimum required contribution ( $\$100,000 \times 7/12$ , or \$58,333). The required installments are thus based on \$58,333 since that is the smaller amount.

(iv) The amount of each required installment is determined by dividing the amount determined in paragraph (iii) of this Example 7 by the number of required installments for the short plan year. This calculation results in required installments of

\$19,444 each (that is, \$58,333 divided by 3 installments).

(v) The deadline for the remaining payment is 8½ months after the end of the short plan year, or April 15, 2010. If the plan sponsor pays the minimum required amount at each installment date, does not elect to offset any amounts by any carryover or prefunding balance, and makes a final payment on April 15, 2010, then the remaining payment is \$17,429, determined as follows:

(A) The contribution paid April 15, 2009, is adjusted by discounting the contribution amount for 3½ months at the effective interest rate ( $\$19,444 \div 1.0590^{(3.5/12)} = \$19,122$ ).

(B) The contribution paid July 15, 2009, is discounted for 6½ months at the effective interest rate ( $\$19,444 \div 1.0590^{(6.5/12)} = \$18,850$ ).

(C) The contribution paid August 15, 2009, is discounted for 7½ months at the effective interest rate ( $\$19,444 \div 1.0590^{(7.5/12)} = \$18,760$ ).

(D) The sum of the above contributions for the 2009 plan year paid through August 15, 2009, adjusted for interest to the valuation date, is \$56,732. The remaining amount paid April 15, 2010, for the 2009 plan year is  $(\$72,917 - \$56,732) \times 1.059^{(15.5/12)} = \$17,429$ .

*Example 8.* (i) Plan B has an August 10 to August 9 plan year. Quarterly installments are required for the plan year that begins August 10, 2009.

(ii) For the plan year that begins on August 10, 2009, a plan month begins on the 10th day of each calendar month. Accordingly, the due dates for the required installments for that plan year are November 24, 2009, February 24, 2010, May 24, 2010, and August 24, 2010. The deadline for the final contribution for the plan year is April 24, 2011.

*Example 9.* (i) Plan C has a calendar-year plan year and is not a small plan described in section 430(g)(2)(B). Plan C is subject to the requirement to pay quarterly contributions under paragraph (c) of this section for the 2009 plan year. The valuation date for Plan C is January 1, and Plan C's funding target attainment percentage ("FTAP") is 85% as of January 1, 2009. Before taking the liquidity requirement of paragraph (d) of this section into account, quarterly contributions are required for the 2009 plan year in the amount of \$50,000 each. During the 12-month period ending March 31, 2009, periodic annuity payments of \$350,000 and lump sum payments of \$200,000 were made by Plan C. None of these payments were due to nonrecurring circumstances. In addition, administrative expenses of \$100,000 were paid from the plan trust. The market value of Plan C's assets is \$1,500,000 as of March 31, 2008, of which \$1,300,000 is in liquid assets. The amount needed to increase the plan's FTAP (including the expected increase in the funding target due to benefits accruing or earned during the plan year) to 100% is \$500,000.

(ii) The amount of the adjusted disbursements from Plan C for the 12-month period ending March 31, 2009, is calculated

as the sum of the annuity benefits, lump sum payments, and administrative expenses paid during the 12-month period, reduced by the product of the lump sum payments and the plan's FTAP. This results in adjusted disbursements for the period of \$480,000 (that is, \$350,000 plus \$200,000 plus \$100,000, reduced by 85% of \$200,000 in lump sum payments).

(iii) The base amount is calculated in accordance with paragraph (e)(6)(ii) of this section as three times the adjusted disbursements determined in paragraph (ii) of this Example 9, or \$1,440,000.

(iv) The liquidity shortfall is the difference between the base amount of \$1,440,000 determined in paragraph (iii) of this Example 9 and the \$1,300,000 in liquid assets as of March 31, 2008, or \$140,000. The quarterly contribution due on April 15, 2009, is therefore \$140,000, since this amount is larger than the \$50,000 quarterly contribution requirement otherwise applicable but less than the \$500,000 needed to increase the plan's FTAP (including the expected increase in the funding target due to benefits accruing or earned during the plan year) to 100%. The liquidity increment is \$90,000.

(v) Note that any contributions made through March 31, 2009, are included in Plan C's assets as of March 31, 2009, and would therefore not be applied toward satisfying the liquidity shortfall contribution requirement due April 15, 2009. Similarly, any funding standard carryover balance or prefunding balance as of January 1, 2009, cannot be applied to offset the liquidity shortfall contribution requirement. Only contributions made in cash or other liquid assets made after March 31, 2009, and by April 15, 2009, can be used to timely satisfy this requirement.

*Example 10.* (i) The facts are the same as in Example 9. The plan sponsor makes a contribution of \$30,000 on April 15, 2009, and makes an additional contribution of \$110,000 on April 30, 2009. The effective interest rate for Plan C for the 2009 plan year is 5.90%.

(ii) The contribution paid on April 15, 2009, is applied first to the portion of the quarterly contribution that is required under paragraph (c) of this section (that is, the portion not attributable to the liquidity shortfall contribution). This results in an underpayment of this portion of the quarterly contribution due April 15, 2009, of \$20,000 (that is, \$50,000 minus \$30,000). In accordance with paragraph (c)(1)(iii)(A) of this section, the interest rate used to adjust this portion of the late quarterly contribution is increased by 5 percentage points for the ½ month period of underpayment. Accordingly, \$20,000 of the April 15, 2009, contribution is adjusted to the January 1, 2009, valuation date using an interest rate of 10.90% for the ½ month between the April 15, 2009, due date and the April 30, 2009, payment date, and by 5.90% for the 3½ month period between January 1, 2009, and the April 15, 2009, due date. This portion results in an interest-adjusted contribution of \$19,584 as of January 1, 2009 ( $\$20,000 \div 1.1090^{(0.5/12)} \div 1.059^{(3.5/12)}$ ).

(iii) Under paragraph (d)(2) of this section, the interest rate used to adjust the portion of

the underpayment attributable to the liquidity shortfall contribution is increased by 5 percentage points, and the contribution is treated as unpaid until the close of the quarter in which the due date occurs. Therefore, even though the full amount of the liquidity shortfall was paid by April 30, 2009, the increase in the interest rate is applied as if the late liquidity shortfall contribution was not made until June 30, 2009, 2½ months after the contribution was due.

(iv) However, in accordance with paragraph (d)(2) of this section, each payment is discounted for interest based on the date of the actual payment, despite the fact that the 5-percentage-point increase in the interest rate is calculated as if the payment was not made until the end of the quarter. Therefore, the portion of the underpayment due to the liquidity increment (\$140,000 minus the \$50,000 quarterly contribution requirement otherwise required, or \$90,000) is adjusted for interest for the 4-month period between the January 1, 2009, valuation date and the April 30, 2009, date of payment. An interest rate of 10.90% is used for 2½ months (corresponding to the period between the April 15, 2009, due date and June 30, 2009, the end of the quarter in which the payment was due), and Plan C's effective interest rate for the 2009 plan year (5.90%) is used for the remaining 1½ months. Therefore, the portion of the April 30, 2009, contribution attributable to the liquidity increment is adjusted to \$87,452 as of January 1, 2009 ( $\$90,000 \div 1.1090^{(2.5/12)} \div 1.0590^{(1.5/12)}$ ).

*Example 11.* (i) The facts are the same as in Example 10, except that the plan sponsor does not make the second contribution of \$110,000 until July 15, 2009.

(ii) The July 15, 2009, contribution is adjusted for interest for a total of 6½ months for the period between January 1, 2009, and the payment date of July 15, 2009. In accordance with paragraph (d)(2) of this section, the 5-percentage-point increase in the interest rate used to adjust the portion of the contribution attributable to the unpaid liquidity shortfall contribution is applied as if the contribution was made at the end of the quarter in which the payment was due. Therefore, the interest adjustment for the \$90,000 attributable to the late liquidity shortfall contribution uses an interest rate of 10.90% for the 2½-month period corresponding to the period between the April 15, 2009, due date and June 30, 2009, the end of the quarter in which the payment was due, and the effective interest rate of 5.90% for the remaining 4 months.

(iii) The liquidity shortfall is recalculated as of June 30, 2009, and the larger of the resulting amount or the \$50,000 quarterly contribution otherwise applicable is due on July 15, 2009. This amount is required to be paid in addition to the unpaid liquidity shortfall contribution due April 15, 2009. Note that the amount of liquid assets as of June 30, 2009 is smaller than it would have been had the April 15, 2009, liquidity shortfall payment been made. Therefore, the fact that the April 15, 2009, liquidity shortfall payment was not made before June 30, 2009, means that the plan sponsor is required to

contribute more than the amount needed to increase the liquid assets to the base amount as of June 30, 2009. However, in accordance with paragraph (d)(1)(ii) of this section, the total amount of the required installments (including those due but not paid) is limited so that it is no larger than the amount that would increase the plan's FTAP (taking into account the expected increase in the funding target due to benefits accruing or earned during the plan year) to 100%.

*Example 12.* (i) Plan D, which is a small plan described in section 430(g)(2)(B), has a calendar year plan year and a valuation date of December 31. The quarterly required installments for the 2009 plan year are \$30,000 each and each of the required installments is paid on the due date. The effective interest rate for Plan D for the 2009 plan year is 5.90%.

(ii) The total contributions made for the plan year and before the valuation date, adjusted with interest to the valuation date, equal \$92,402. This is developed as shown below:

(A) The contribution paid April 15, 2009, is adjusted by increasing the contribution amount for 8½ months at the effective interest rate ( $\$30,000 \times 1.0590^{(8.5/12)} = \$31,243$ ).

(B) The contribution paid July 15, 2009, is increased for 5½ months at the effective interest rate ( $\$30,000 \times 1.0590^{(5.5/12)} = \$30,799$ ).

(C) The contribution paid October 15, 2009, is increased for 2½ months at the effective interest rate ( $\$30,000 \times 1.0590^{(2.5/12)} = \$30,360$ ).

(iii) Pursuant to § 1.430(g)-1(d)(2), the interest-adjusted value of the contributions for the 2009 plan year that are made before the valuation date is subtracted from the December 31, 2009, plan assets in determining the value of plan assets for the December 31, 2009 actuarial valuation.

(g) *Effective/applicability dates and transition rules*—(1) *In general.* Section 430 generally applies to plan years beginning on or after January 1, 2008. In general, this section applies to plan years beginning on or after January 1, 2009. However, plans are permitted to apply this section in applying the rules of section 430(j) for plan years beginning in 2008.

(2) *Plans with delayed effective date.* In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of PPA '06, this section applies to plan years beginning on or after the first day of the first effective plan year.

(3) *First effective plan year.* For purposes of this section, the first effective plan year for a plan is the first plan year for which section 430 applies to the plan.

(4) *Pre-effective plan year.* For purposes of this section, the pre-effective plan year for a plan is the last plan year before the first effective plan year. Thus, except for plans with a delayed effective date under paragraph

(g)(2) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

(5) *Special rules relating to first effective plan year*—(i) *Determination of minimum required contribution for pre-effective plan year.* In the case of the plan's first effective plan year, the minimum required contribution for the preceding plan year for purposes of paragraph (c)(3)(ii)(B) of this section is equal to the minimum required contribution under section 412 for the pre-effective plan year (determined without regard to any funding waiver under section 412), which is determined as of the last day of the pre-effective plan year and is determined without regard to the use of the plan's credit balance.

(ii) *Determination of funding shortfall for pre-effective plan year.* [Reserved]

## PART 54—PENSION EXCISE TAXES

**Par. 4.** The authority citation for part 54 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

**Par. 5.** Section 54.4971(c)-1 is added to read as follows:

### § 54.4971(c)-1 Taxes on failure to meet minimum funding standards; definitions

(a) *In general.* This section sets forth definitions that apply for purposes of applying the rules of section 4971.

(b) *Accumulated funding deficiency.* With respect to a multiemployer plan, the term *accumulated funding deficiency* has the meaning given to that term by section 431. A plan's accumulated funding deficiency for a plan year takes into account all charges and credits to the funding standard account under section 412 for plan years before the first plan year for which section 431 applies to the plan.

(c) *Unpaid minimum required contribution*—(1) *In general.* The term *unpaid minimum required contribution* means, with respect to any plan year, any minimum required contribution under section 430 for the plan year that is not paid on or before the due date for the plan year under section 430(j)(1).

(2) *Accumulated funding deficiency for pre-effective plan year.* For purposes of this section, a plan's accumulated funding deficiency under section 412 for the pre-effective plan year is treated as an unpaid minimum required contribution for that plan year until correction is made under the rules of paragraph (d)(2) of this section.

(d) *Correct*—(1) *Accumulated funding deficiency.* The term *correct* means, with respect to an accumulated funding deficiency for a plan year, the contribution, to or under the plan, of the

amount necessary to reduce the accumulated funding deficiency as of the end of that plan year to zero. To reduce the deficiency to zero, the contribution must include interest at the plan's valuation interest rate for the period between the end of that plan year and the date of the contribution.

(2) *Unpaid minimum required contribution*—(i) *Interest adjustments*—(A) *General rule*. The term *correct* means, with respect to an unpaid minimum required contribution for a plan year, the contribution, to or under the plan, of an amount that, when discounted to the valuation date for the plan year for which the unpaid minimum required contribution is due at the appropriate rate of interest, equals or exceeds the unpaid minimum required contribution. For this purpose, the appropriate rate of interest is the plan's effective interest rate for the plan year for which the unpaid minimum required contribution is due except to the extent that the payments are subject to additional interest as provided under section 430(j) (3) or (4).

(B) *Pre-PPA accumulated funding deficiency*. The term *correct* means, with respect to the accumulated funding deficiency under section 412 for the pre-effective plan year that is described in paragraph (c)(2) of this section, the contribution, to or under the plan, of the amount of that accumulated funding deficiency increased with interest from the end of the pre-effective plan year to the date of the contribution at the plan's valuation interest rate for the pre-effective plan year.

(ii) *Ordering rule*. For purposes of section 4971 and this section, a contribution is attributable first to the earliest plan year of any unpaid minimum required contribution for which correction has not yet been made.

(3) *Corrective action of certain retroactive plan amendments*. Certain retroactive plan amendments that meet the requirements of section 412(d)(2) may reduce the minimum required contribution for a plan year, which would reduce the accumulated funding deficiency or the amount of the unpaid minimum required contribution for a plan year.

(e) *Taxable period*. The term *taxable period* has the same meaning given that term under § 54.4971-1(e).

(f) *Examples*. The following examples illustrate the rules of this section.

*Example 2.* (i) *Example 1*. Plan A, a single employer defined benefit plan, has a calendar year plan year and a January 1 valuation date. The sponsor of Plan A has a calendar taxable year. Plan A has no funding shortfall as of the end of 2008, and Plan A has no unpaid minimum required contributions for 2008 or

any earlier plan year. The minimum required contribution for the 2009 plan year is \$250,000. The plan sponsor makes one contribution for 2009 on July 1, 2009, in the amount of \$200,000, and the sponsor does not make an election to use the prefunding balance or funding standard carryover balance to offset the minimum required contribution for 2009. The effective interest rate for Plan A for the 2009 plan year is 5.90%.

(ii) The interest-adjusted contribution for 2009 is \$200,000 divided by 1.0590<sup>(6/12)</sup>, or \$194,349, as of January 1, 2009. The unpaid minimum required contribution for the 2009 plan year is \$250,000 minus \$194,349, or \$55,651. The excise tax due under section 4971(a) is 10% of the unpaid minimum required contribution, or \$5,565.

(i) The facts are the same as in *Example 1*. The plan sponsor makes a contribution of \$175,000 on December 31, 2010.

(ii) Under the ordering rule in paragraph (d)(2)(ii) of this section, the contribution made on December 31, 2010, is applied first to correct the unpaid minimum required contribution for 2009. The portion of the contribution paid December 31, 2010, that is required to eliminate the unpaid minimum required contribution for 2009 (taking into account the 2009 effective interest rate for the 24 months between January 1, 2009, and the payment date of December 31, 2010), is \$55,651 multiplied by 1.059<sup>(24/12)</sup> or \$62,412. The remaining payment of \$112,588 (\$175,000 minus \$62,412) is applied to the contribution required for the 2010 plan year.

*Example 3.* (i) Plan B, a single employer defined benefit plan, has a calendar plan year. The sponsor of Plan B has a calendar taxable year. Plan B has an accumulated funding deficiency of \$100,000 as of December 31, 2007, including additional interest due to late quarterly contributions during 2007. The valuation interest rate for the 2007 plan year is 7.5%.

(ii) In accordance with paragraph (c)(2) of this section, the accumulated funding deficiency under section 412 as of December 31, 2007, is considered an unpaid minimum required contribution until it is corrected. Pursuant to paragraph (d)(2)(i)(B) of this section, the amount needed to correct that accumulated funding deficiency is \$100,000 plus interest at the valuation interest rate of 7.5% for the period between December 31, 2007, and the date of payment of the contribution.

(iii) The funding shortfall as of January 1, 2008, is calculated as the difference between the funding target and the value of assets as of that date. The assets are not adjusted by the amount of the accumulated funding deficiency; the fact that the contribution was not made for the 2007 plan year

means that the January 1, 2008, funding shortfall is larger than it would have been otherwise.

*Example 4.* (i) The facts are the same as in *Example 3*. The minimum required contribution for the 2008 plan year is \$125,000, but the plan sponsor does not make any required contributions for 2008.

(ii) The total unpaid minimum required contribution as of December 31, 2008, is the sum of the \$100,000 accumulated funding deficiency under section 412 from 2007 and the \$125,000 unpaid minimum required contribution for 2008, or \$225,000. The section 4971(a) excise tax applies to the aggregate unpaid minimum required contributions for all plan years that remain unpaid as of the end of 2008. In this case, there is an unpaid minimum required contribution of \$100,000 for the 2007 plan year and an unpaid minimum required contribution of \$125,000 for the 2008 plan year. The section 4971(a) excise tax is 10% of the aggregate of those unpaid amounts, or \$22,500.

*Example 5.* (i) The facts are the same as in *Example 4*, except that the plan sponsor makes a contribution of \$150,000 on December 31, 2008. No additional contributions are paid through September 15, 2009. Quarterly contributions of \$25,000 each are due April 15, 2008, July 15, 2008, October 15, 2008, and January 15, 2009. Plan B's effective interest rate for the 2008 plan year is 5.75%.

(ii) In accordance with paragraph (c)(2) of this section, the accumulated funding deficiency under section 412 as of December 31, 2007, is treated as an unpaid minimum required contribution until it is corrected.

(iii) The December 31, 2008, contribution is first applied to the 2007 accumulated funding deficiency under section 412 that is treated as an unpaid minimum required contribution. Accordingly, the amount needed to correct the 2007 unpaid required minimum contribution (\$100,000 multiplied by 1.075, or \$107,500) is applied to eliminate this unpaid minimum required contribution for the 2007 plan year.

(iv) The remaining December 31, 2008, contribution (\$150,000 minus \$107,500, or \$42,500) is then applied to the 2008 minimum required contribution. This amount is first allocated to the quarterly contribution due April 15, 2008. In accordance with § 1.430(j)-1(c)(1)(iii)(A), the adjustment for interest on late quarterly contributions is increased by 5 percentage points for the period of underpayment. Therefore, \$25,000 of the remaining December 31, 2008, contribution is discounted using an interest rate of 10.75% for the 8½-month period between the payment date of December 31, 2008 and the quarterly contribution due date of April 15, 2008, and at the 5.75% effective interest rate for the 3½ months between April 15, 2008, and January 1, 2008. This portion of the December 31, 2008, contribution results in an adjusted amount of \$22,880 (that is, \$25,000 ÷ 1.1075<sup>(8.5/12)</sup> ÷ 1.0575<sup>(3.5/12)</sup>) as of January 1, 2008.

(v) The remaining December 31, 2008, contribution is then applied to the quarterly contribution due July 15, 2008. The balance

of the December 31, 2008, contribution (\$150,000 minus \$107,500 minus \$25,000, or \$17,500) is paid after the due date for the second required quarterly installment. Accordingly, the remaining \$17,500 contribution is adjusted using an interest rate of 10.75% for the 5½-month period between the payment date of December 31, 2008 and the quarterly contribution due date of July 15, 2008, and at the 5.75% effective interest rate for the 6½ months between July 15, 2008, and January 1, 2008. This portion of the December 31, 2008, contribution results in an adjusted amount of \$16,202 (that is,  $\$17,500 \div 1.1075^{(5.5/12)} \div 1.0575^{(6.5/12)}$ ) as of January 1, 2008.

(vi) The remaining unpaid minimum required contribution for 2008 is \$125,000 minus the interest-adjusted amounts of \$22,880 and \$16,202 applied towards the 2008 minimum required contribution as determined in paragraphs (iv) and (v) of this *Example 5*. This results in an unpaid minimum required contribution of \$85,918 for 2008. The section 4971(a) excise tax is 10% of the unpaid minimum required contribution, or \$8,592.

*Example 6.* (i) Plan C, a single employer defined benefit plan, has a calendar year plan year and a January 1 valuation date, and has no funding standard carryover balance or prefunding balance as of January 1, 2008. Plan C's sponsor has a calendar year taxable year. The minimum required contributions for Plan C are \$100,000 for the 2008 plan year, \$110,000 for the 2009 plan year, \$125,000 for the 2010 plan year, and \$135,000 for the 2011 plan year. No contributions for these plan years are made until September 15, 2012, at which time the plan sponsor contributes \$273,000 (which is exactly enough to correct the unpaid minimum required contributions for the 2008 and 2009 plan years).

(ii) The excise tax under section 4971(a) is 10% of the aggregate unpaid minimum required contributions for all plan years remaining unpaid as of the end of any plan year ending within the 2008 taxable year. Accordingly, the excise tax for the 2008 taxable year is \$10,000 (that is, 10% of \$100,000). The excise tax for the 2009 taxable year is \$21,000 (that is, 10% of the sum of \$100,000 and \$110,000) and the excise tax for the 2010 taxable year is \$33,500 (that is, 10% of the sum of \$100,000, \$110,000, and \$125,000).

(iii) The contribution made on September 15, 2012, is applied to correct the unpaid minimum required contributions for the 2008 and 2009 plan years by the deadline for making contributions for the 2011 plan year. Therefore, the excise tax under section 4971(a) for the 2011 taxable year is based only on the remaining unpaid minimum required contributions for the 2010 and 2011 plan years, or \$26,000 (that is, 10% of the sum of \$125,000 and \$135,000).

(iv) The plan sponsor may also be required to pay an excise tax of 100% under section 4971(b), if the unpaid minimum required contributions are not corrected by the end of the taxable period.

(g) *Effective/applicability dates and transition rules*—(1) *Statutory effective date*—(i) *In general*. In general, the

amendments made to section 4971 by section 114 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (PPA '06), apply to taxable years beginning on or after January 1, 2008, but only with respect to plan years that end with or within any such taxable year.

(ii) *Plans with delayed PPA '06 effective dates*. In the case of a plan for which the effective date of section 430 is delayed in accordance with sections 104 through 106 of PPA '06, the amendments made to section 4971 by section 114 of PPA '06 apply to taxable years beginning on or after January 1, 2008, but only with respect to plan years beginning on or after the date section 430 first applies with respect to the plan.

(2) *Effective date of regulations*. This section is effective for taxable years beginning on and after the statutory effective date described in paragraph (g)(1) of this section, but in no event does this section apply to taxable years ending before April 15, 2008.

(3) *Pre-effective plan year*. For purposes of this section, the pre-effective plan year for a plan is the last plan year beginning before section 430 applies to the plan. Thus, except for plans with a delayed effective date under paragraph (g)(1)(ii) of this section, the pre-effective plan year for a plan is the last plan year beginning before January 1, 2008.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2008–0180]

RIN 1625–AA00

#### Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone upon certain waters of the Patapsco River, Northwest Harbor and Inner Harbor during the movements of the historic sloop-of-war USS CONSTELLATION. This action is necessary to provide for

the safety of life on navigable waters during two tows of the vessel in Baltimore, Maryland; one from its berth at Baltimore's Inner Harbor to a berth at the South Locust Point Marine Terminal, and the other from the South Locust Point Marine Terminal to its berth at Baltimore's Inner Harbor. This action will restrict vessel traffic in portions of the Patapsco River, Northwest Harbor, and Inner Harbor during these events.

**DATES:** Comments and related material must reach the Coast Guard on or before May 30, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–0180 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: <http://www.regulations.gov>.

(2) Mail: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) Hand delivery: Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: 202–493–2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Mr. Ronald Houck, at Coast Guard Sector Baltimore, Waterways Management Division, at telephone number (410) 576–2674 or (410) 576–2693. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.